



Australian Government

Independent National Security Legislation Monitor

CERTAIN MATTERS REGARDING  
THE IMPACT OF AMENDMENTS  
TO THE COUNTER-TERRORISM  
LEGISLATION AMENDMENT  
(FOREIGN FIGHTERS) BILL 2014

*The Hon Roger Gyles AO QC*

*May 2016*



Certain Matters Regarding the Impact of  
Amendments to the Counter Terrorism  
Legislation Amendment (Foreign Fighters)  
Bill 2014

*The Hon Roger Gyles AO QC*

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**Independent National Security Legislation Monitor**

THE HON ROGER GYLES AO QC

ONE NATIONAL CIRCUIT  
BARTON ACT

2 May 2016

The Hon Malcolm Turnbull MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

**Independent National Security Legislation Monitor report on certain matters regarding the impact of amendments to the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014**

Pursuant to section 30 of the *Independent National Security Monitor Act 2010* (INSLM Act) I give you herewith my report on the abovementioned matter, referred to me under section 7 of the Act. This Report does not include information of the kind referred to in subsection 29(3) of the INSLM Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Gyles', enclosed in a thin black rectangular border.

Roger Gyles AO QC  
Independent National Security Legislation Monitor



## Background

1. On 11 December 2014, in conjunction with my (then Acting) appointment, the (then) Prime Minister referred the following matter to me pursuant to section 7 of the *Independent National Security Legislation Monitor Act 2010* (INSLM Act):

... matters raised in [a] letter by the Minister for Immigration and Border Protection, regarding the expected impact on his agencies of amendments to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* made as a result of the PJCIS report on that Bill.
2. As the above referral indicates, the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (the Bill) was reviewed by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) during the course of its passage through the Parliament. The PJCIS made many recommendations for amendment of the Bill, all of which were accepted by the Government and the Parliament and reflected in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (the Foreign Fighters Act).
3. The letter from the (then) Minister for Immigration and Border Protection indicated that there were three aspects of the Bill which might have an adverse impact on the operation of his agencies. These were, in summary, as follows:
  - The Bill originally proposed that the period for which a person could be detained under section 219ZJB of the *Customs Act 1901* without notification of a family member or other person be extended from 45 minutes to four hours, whereas the PJCIS recommended (**Recommendation 32**) that the period be reduced to two hours;
  - The PJCIS recommended (**Recommendation 33**) that further reporting requirements be imposed in relation to the frequency of use of Customs detention powers and that the Ombudsman be notified where the power to refuse contact with a family member or other person on national security and other specified grounds, is used; and
  - The PJCIS recommended (**Recommendation 35**) that the ability contained in the Bill to prescribe within the Migration Regulations the collection of additional categories of biometric information be removed.
4. I wrote to the Prime Minister and to the Secretary of the Department of Immigration and Border Protection (DIBP) on 29 October 2015, indicating my intention to review this matter and seeking an initial response from DIBP. This has been followed up on several occasions without any substantive reply. DIBP has been advised that, in the absence of a timely response from DIBP, I would proceed to report on this reference. No such response has been forthcoming.

## Report

5. Against that background and bearing in mind my statutory obligation under section 30 of the INSLM Act to report on the reference from the (then) Prime Minister, I have decided to report as follows on the reference.
6. The changes recommended by the PJCIS and accepted by the Government and the Parliament and reflected in the Foreign Fighters Act all operated to moderate the operation of the legislation on affected persons or to increase related oversight and reporting.
7. To the extent that anyone may advocate even greater restraint in the relevant operation of the legislation than was reflected in the Foreign Fighters Act, they had an opportunity to do so before the PJCIS.
8. That being the case, and in the absence of any argument being advanced for some alteration of the relevant legislation to obviate the impact of the legislation on the operations of DIBP and related agencies, I do not propose to recommend any amendment to the relevant provision at this stage and in this context.