

Submission to the inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014

Dear Sir/Madam

This document forms the submission to the Parliamentary Joint Committee on Intelligence and Security from the undersigned signatories who form a wide section of the Brisbane community. Your consideration and feedback on the matters raised in this submission would be much appreciated.

This submission is set out as follows:

1	New offences of entering or remaining in a 'declared area'	1
1.1	Determination of a Declared Area	1
1.2	Legitimate purpose of travel as per proposed subsection 119.2(3) and relationship with other aspects of the legislation.....	2
2	Racial discrimination and hate crimes	2
3	Other concerns.....	3
3.1	Customs detention powers.....	3
3.2	Period of sunset provisions.....	3
3.3	Previously submitted queries (yet to be answered)	3
4	Signatories:.....	Error! Bookmark not defined.

1 New offences of entering or remaining in a 'declared area'

For the record, we oppose the introduction of this new offence. Despite this opposition, we have set out below a number of recommended amendments to the proposals in relation to this offence. Our preference, however, remains for this offence to not be introduced.

1.1 Determination of a Declared Area

We **strongly recommend** that the legislation include:

- 1.1.1 a limit on the size of the declared area be included in the legislation. This limit should at least prevent entire countries from being declared. This is consistent with the statements of assurance provided by the Attorney General in multiple media appearances and in person to the Brisbane community on 17 September 2014.
- 1.1.2 a mechanism to ensure that an area is only deemed to be a declared area for the shortest possible time necessary. This can be achieved through a mandatory requirement that the Minister review the declaration of areas on at least a monthly basis
- 1.1.3 a mechanism to ensure against the Minister adopting a conservative approach by continually adding to the declared area rather than replacing areas which should no longer be deemed to be a declared area
- 1.1.4 the requirement for the Minister to obtain parliamentary approval (as opposed to a briefing of the leader of the opposition as proposed) to deem an area to be a declared area
- 1.1.5 the inclusion of a sunset clause for the COAG recommended term of 5 years (the costs associated with reviewing the legislation in 5 years will be less than the value of the

restoration of civil liberties for Australians) to safeguard against the risk of abuse of these powers by either the current Minister or a future minister for all future generations to come

1.2 Legitimate purpose of travel as per proposed subsection 119.2(3) and relationship with other aspects of the legislation

We **strongly recommend** that the legislation include:

- 1.2.1 Clarity on how one may prove their purpose of travel if it is classed as 'a bona fide visit to a family member' so that travellers can ensure they are prepared when they get to the airport
- 1.2.2 A clear definition on who will qualify as a family member and how this is to be proved
- 1.2.3 Permission to visit friends, colleagues and/or acquaintances – the current proposal is a significant restriction on a person's civil rights, is disproportionate given the number of people it is likely to affect and implies that all non-family members in a declared area are terrorists in some form or another. It is ironic that such categories may include victims of terrorism activities or family members of victims who require moral and physical support from both friends and family
- 1.2.4 A clear restriction on the ability to use other aspects of the legislation to detain a traveller where a person has provided evidence of travel for legitimate purpose. These may include among others control orders, questioning orders, extended detention at Customs and the use of the lower threshold of 'suspicion' for arrest. As the proposed legislation suggests, once evidence is provided by the traveller, it is up to the authorities to prove beyond reasonable doubt in a court that the evidence is not true – it is extremely concerning that the legislation gives them the power to potentially apply these other aspects of the legislation to detain the traveller while this process is being carried out.

2 Racial discrimination and hate crimes

We **strongly recommend** that the legislation include:

- 2.1.1 Amendments to the relevant legislation (Acts and Regulations) which lower the threshold for arrest and increase the severity of punishment for criminals convicted of hate crimes and/or racial discrimination that:
 - a) is either partially or wholly targeted at groups of people who may be specifically impacted by these counterterrorism proposals; or
 - b) may be reasonably considered to have been influenced either partially or wholly by the introduction of these counterterrorism proposals.

The groups of people who may be specifically impacted by these counterterrorism proposals are currently likely to be Muslims and Russians/Ukrainians given the crisis in the Middle East and Russia/Ukraine respectively. This may be a different group in future generations. It is noted that while the government has gone to some length to show that the proposed laws are not targeting the Muslim community, the Murdoch press and other Australian media outlets have focused very strongly on Muslim groups and individuals.

- 2.1.2 A requirement that the Minister be required to declare the groups of people who may be specifically impacted at time of determining an area to be a 'Declared Area' for the purposes of the recommendation directly above.

3 Other concerns

3.1 Customs detention powers

- 3.1.1 We recommend a reduction in the detention powers offered to Customs from 4 hours to 90 minutes. This is double the current allowance and is far more reasonable than the sixfold increase proposed

3.2 Period of sunset provisions

- 3.2.1 We recommend an adoption of the 5 year sunset provisions as recommended by COAG rather than the 10 years proposed for questioning orders, control orders and preventative detention orders.

3.3 Previously submitted queries (yet to be answered)

We **strongly recommend** that the legislation be amended having regard to the considerations set out below. These considerations are based on a number of queries which were raised with the Attorney General on 17 September 2014. These queries remain unanswered. Consideration should be given to:

- 3.3.1 How lowering the threshold for arrest will be applied objectively in practice to the arrest procedures under the auspices of 'reasonable suspicion'
- 3.3.2 The mechanisms or safeguards have put in place to ensure procedural justice
- 3.3.3 The apparent erosion of the citizens' rights to the freedom of expression (e.g. impact on level of political activism) and the freedom of religion (e.g. being able to discuss all aspects of a religion within the confinements of the current laws)
- 3.3.4 The likely effectiveness of any measures being taken by the government to protect minority groups from likely increase in instances of hate crimes and racial vilification as a result of these proposals? More needs to be done to prevent and suppress racism, xenophobia, and vigilantism. In light of recent incidents, amendments to legislation against hate crime, including offences, may indeed be necessary
- 3.3.5 How terms such as 'Promotion or encouragement' of terrorist activities and 'Armed Hostilities' are to be defined. In the modern era of social media sites like Facebook, this is something that may impact all of us.
- 3.3.6 The definition of 'terrorist organisation' and whether this term will be defined clearly in the legislation or will the government of the day have the power to determine what constitutes a terrorist organisation? (This affects many aid workers within our societies)
- 3.3.7 How the attainment and submission of evidence from foreign countries, including the proposed use of evidentiary certificates, will be applied objectively in practice.
- 3.3.8 Whether an alleged offender, once detained, maintain their legal right to silence and will they be warned that any statements they make may be used against them in a court of law?
- 3.3.9 The need to rush through legislation and why prominent groups (e.g. academics and law societies) have not been sufficiently consulted and given adequate time to submit proposals and responses.
- 3.3.10 The need for more extensive anti-terrorism laws (and the evidence relied upon to ascertain this need). Whether there is any empirical evidence which suggests the need for these laws.

- 3.3.11 The Government makes reference to other instances of the law where similar provisions to those being proposed as part of the counter terrorism bill exist (e.g. the need to point to evidence for cases involving treason or bribery, and the threshold for arrest being suspicion in most State jurisdictions). While these references may be valid, the fundamental difference is that in terrorism related matters, there is the additional impact of the authority to detain alleged offenders without charge for periods ranging from 7 to 14 days under various other provisions. Consideration should be given to the risk of the powers being applied in an unintended manner or abused as a result of the combination of such provisions.
- 3.3.12 Whether any of the proposed changes, will apply retrospectively, and if yes, how this will be applied objectively in practice.