



**Castan Centre for Human Rights Law
Monash University**

**Submission to the Senate Legal and Constitutional
Affairs Committee**

***Inquiry into the Provisions of the
Independent National Security Legislation Monitor
(Improved Oversight and Resourcing) Bill 2014***

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The Castan Centre for Human Rights Law supports legislative amendments that would strengthen the role and the practical operation of the Independent National Security Legislation Monitor ('INSLM').

Appointment of the INSLM

The Castan Centre supports those provisions of the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014 that would establish a mandatory timeframe for appointment of a INSLM in the event that the office is vacant (Items 15 and 16, Schedule 1).

For reasons given in other submissions to this inquiry (Submission 1, 2 and 3), the Castan Centre does not support Item 14 of Schedule 1 of the Bill, which would mandate a full-time appointment. The Castan Centre agrees with the Law Council of Australia (Submission 2) that Item 14 should be amended to permit appointment on either a full-time or part-time basis, and believes that this flexibility could be combined with the suggestion made by the Gilbert + Tobin Centre of Public Law (Submission 3) that provision be made for multiple part-time appointments where the workload of the INSLM warrants them.

Office of the INSLM

The Castan Centre supports the creation of an Office of the INSLM (Item 6 of Schedule 1) and also supports clause 20A in Item 17 of Schedule 1, and Items 22 and 23 of Schedule 1 to allow enhanced staffing of that office.

The Castan Centre does not support Clause 20B, however, for the same reasons as put forward by the Gilbert + Tobin Centre (Submission 3): conferring upon the INSLM a power of delegation risks undermining the function of the INSLM as a truly independent oversight and review officer.

Functions of the INSLM

The Castan Centre supports Item 3 of Schedule 1 of the Bill, as a complement to s 6(1)(b)(ii) of the *Independent National Security Legislation Monitor Act 2010* (Cth).

The Castan Centre does not support Item 7 of Schedule 1, and those other parts of the Bill intended to support the operation of this provision (Items 1, 2, 4, 7, 8, 9 and 13). This is for the reasons stated by the Gilbert + Tobin Centre (Submission 3): the INSLM's function is to review existing laws, and the office has certain powers and immunities conferred upon it to facilitate this function. The function of advising on the enactment of legislation is quite different, and has the potential to be highly politically charged. The office of the INSLM should be insulated from the potential controversy surrounding participation in the legislative process.

The Castan Centre supports in part, but not in full, Item 12 of Schedule 1 of the Bill. For the reasons stated in the previous paragraph, the Castan Centre does not support the proposal that the INSLM provide advice to a Committee on Legal and Constitutional Affairs pertaining to the likely operation and effect of proposed legislation. However, if a Committee on Legal and Constitutional Affairs, in order to support its own functions, wished to receive information on the operation and effect of existing national security legislation, then it would be appropriate for it to refer such a matter to the INSLM for reporting to the Committee.

For the reasons put forward in Submissions 2, 3 and 4, the Castan Centre does not support Items 10, 18 or 24 of Schedule 1 of the Bill. The Centre places particular weight on the submission of the Australian Human Rights Commission (Submission 4), which favours the existing provision for consultation over a new power of reference to be exercised by the Commission.

Reports of the INSLM

The Castan Centre supports Items 19, 20 and 21 of Schedule 1 of the Bill. The tabling of reports, and responses from the Government to such reports, are essential elements to the effective operation of the INSLM.