

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 3

Program: Other Agency

Question No. SBE14/190

Senator Wright asked the following written question from the 20 November and 11 December 2014 hearings.

1. Given the very rapid expansion in the powers of the AFP under the Government's recently enacted counter-terrorism laws, what changes can the community expect to see in terms of how the AFP goes about their counter-terrorism investigations?
 - a) For example, should the community expect more raids, greater use of control orders and preventative detention orders, greater use of arrest without warrant powers?
2. The experience of the Melbourne terrorist raids in September this year suggests that the issue of multiple control orders may not always lead to the laying of many of criminal charges.
 - a) What kind of correlation can the Australian community expect to see between the use of control orders and preventative detention orders and the laying of criminal charges and/or prosecutions for terrorist activity?
3. What steps has the AFP taken to establish or develop relationships of trust with the communities they rely upon most to assist them in their counter-terrorism investigations?
4. Will the AFP play a role in explaining to these communities how the new laws – including the new 'no-go zone' offence and delayed notification search warrant provisions will work in practice?
 - a) How will these communities know about their rights to complain to the Ombudsman?
5. Has any cultural awareness or other training been undertaken within the AFP to assist in establishing and maintaining positive relationships with the communities most affected by their counter-terrorism operations?
6. What type of difficulties has the AFP experienced in collecting evidence relating to a person's activities in places experiencing violent conflict, such as Syria and Iraq?
 - a) Would these same difficulties be faced by those people who have travelled to these places for legitimate purposes but will now be required to prove this in court under the 'no-go zone' offences?

The answer to the honourable senator's question is as follows:

1. It is not appropriate for the AFP to comment on operational methodology. The AFP will continue to investigate and disrupt criminal activities, utilising the legislative capacities appropriately and with due regard to human rights and public safety. It should be noted that AFP counter-terrorism investigations focus on prevention, with public safety being the overriding consideration for an investigation moving to an overt or disruptive phase.
2. Applications for control orders are subject to the requirements set out in the Criminal Code and will be pursued in appropriate circumstances. It should be noted that no control orders

were requested by the AFP as a result of operational activity in Sydney or elsewhere in September 2014.

There is no direct correlation between the use of control orders and preventative detention orders and the laying of criminal charges and/or prosecutions. Each situation in which a control order or preventative detention order is sought will involve consideration of whether terrorism offences have been committed and whether charges could be laid, being mindful at all times of public safety concerns. The AFP may have sufficient information to justify seeking a control order or a preventative detention order in situations where a person's conduct either does not amount to a terrorism offence, or where the available evidence is insufficient to support charging them with a terrorism offence. It should be noted that the seeking or issuing of a control order, or a preventative detention order, would not prevent appropriate criminal charges being laid at a later date.

3. Engagement with communities on the new counter terrorism measures is a high priority for the Australian Government. The Government is committed to working with our communities to challenge the radicalisation of young Australians and violent extremism. The AFP regularly engages with representatives of the community and persons with expertise in this field on the best way to keep the Australian community safe.

In support of the Attorney-General's Department (AGD)-led Countering Violent Extremism (CVE) Strategy, the AFP's Community Liaison Teams (CLTs) in Sydney, Melbourne and Brisbane are actively involved in numerous community engagement activities in partnership with key community groups and other law enforcement and government agencies. Resources are also being directed to the establishment of CLT capacities in Adelaide, Perth and Canberra.

These activities aim to strengthen ties between the AFP and the community. Active engagement allows the AFP to build trust between the police and community members; assists in development and building of social cohesion and resilience of affected communities; and to address potential concerns or tensions which may arise from overt police activity.

4. The Attorney-General's Department is the lead agency in relation to engaging with communities regarding the recent legislative reforms. The AFP will support the Attorney-General's Department through this process. For example, the AFP has participated in a number of community meetings, led by the Attorney-General's Department, to inform members of the community regarding the legislative reforms.

The AFP and the Commonwealth Ombudsman are active through a number of media in providing advice to the community on the processes to make a complaint about the actions of AFP members and about the policies, practices and procedures of the AFP as an agency. The majority of this information is accessible online and is available in a variety of languages. The AFP also provides advice to individuals of their right to complain through social media, community presentations and media releases.

5. Islamic awareness training, facilitated by the AFP Learning and Development portfolio, has been consistently delivered in various forms since 2003. This training is provided by an external provider and has drawn on members of the Muslim community. This training

assists AFP members and members of the AFP's partner agencies in developing an understanding of a number of the aspects of the Islamic faith.

6. In circumstances where evidence is required from countries experiencing serious internal conflict, law enforcement authorities face various challenges in obtaining relevant evidence. Those challenges include facilitating the execution of formal government-to-government requests between Australia and countries which may not have an effectively functioning government apparatus, or which may not have a government recognised by Australia, through to meeting evidentiary requirements under Australian evidence legislation, in particular, the *Foreign Evidence Act 1994*.

The recent amendments to the Foreign Evidence Act (made by the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*) give the court greater flexibility to admit foreign evidence in criminal proceedings. A person seeking to defend a charge that he/she entered or remained in a declared area on the basis that he/she was in that area for legitimate purposes is only required to adduce or point to evidence suggesting a reasonable possibility that such a legitimate purpose existed; the prosecution is then required to prove that the person was not in the declared area for the claimed legitimate purpose beyond reasonable doubt. Evidence which would substantiate a legitimate purpose in such circumstances will generally be within the defendant's knowledge, possession or control.