

22 April 2015



Ms Sophie Dunstone  
Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Ms Dunstone

**Migration Amendment (Strengthening Biometrics Integrity) Bill 2015**

I write further to the Law Council of Australia submission dated 10 April 2015 to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Migration Amendment (Strengthening Biometrics Integrity) Bill 2015 (the Bill).

The Law Council has had the benefit of discussions with officers of the Department of Immigration and Border Protection (DIBP) to discuss the Inquiry and the *Migration Act 1958* (Cth) (Migration Act).

The Law Council now understands that the Bill would *not* enable DIBP to introduce a regulation to permit the collection of personal identifiers, such as a sample of blood by a finger prick or the taking of a sample of saliva. While paragraph 5A(1)(g) of the Migration Act provides the power to prescribe additional personal identifiers by regulation, additional requirements in subsection 5A(2) are also relevant. In particular, paragraph 5A(2)(b) requires that before the Governor-General makes regulations for the purposes of paragraph 5A(1)(g), the Minister must be satisfied that, among other things, the identifier is an image of, or a measurement or recording of, an external part of the body. This would appear to prevent the taking of samples of blood by a finger prick or saliva.

This clarification does not affect the recommendations made by the Law Council about the most appropriate way to respond to the challenges presented by the Bill. Specifically, in view of the sensitivity of biometric information, the Law Council notes Recommendation 35 made by the Parliamentary Joint Committee of Intelligence and Security (PJCIS) in its *Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, which recommended the removal of the ability to prescribe the collection of additional categories of biometric information within the Migration Regulations.<sup>1</sup>

<sup>1</sup> See Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, Recommendation 35.

This was as a result of concerns by the PJCS that permitting categories of biometric information via regulation would not provide sufficient parliamentary scrutiny of the proposals. This recommendation was subsequently accepted by the Government.<sup>2</sup>

Accordingly, it is appropriate that any expansion of the types of biometric information able to be collected be prescribed by the Migration Act itself and not through regulations.

Thank you for the opportunity to provide these comments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Hagan', written in a cursive style.

MARTYN HAGAN  
SECRETARY-GENERAL

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<sup>2</sup> See Hon George Brandis QC, Attorney-General for Australia, [Government response to committee report on the Counter-Terrorism Legislation Amendment \(Foreign Fighters\) Bill 2014](#), (Media Release, 22 October 2014).