

## The year in review

- 1.1 The Parliamentary Joint Committee on Intelligence and Security (the Committee) is established pursuant to section 28 of the *Intelligence Services Act 2001* (Cth).
- 1.2 The Committee comprises eleven members, five of whom must be Senators and six of whom must be members of the House of Representatives. A majority of the Committee's members must be Government members.<sup>1</sup>
- 1.3 The Committee's functions are set out at section 29 of the Intelligence Services Act and outlined at Appendix A.
- 1.4 Pursuant to section 31 of the Intelligence Services Act, the Committee is required to provide the Parliament with a report on its activities over each financial year.
- 1.5 This report is made in compliance with this obligation and covers the period from 1 July 2014 to 30 June 2015.
- 1.6 The past year has seen significant activity by the Committee and a national focus on counter-terrorism measures. The result of this changed security environment has been an expansion of the functions, oversight and scrutiny responsibilities of the Committee. Accordingly, the Committee has determined that its annual report provides an effective forum for the Committee to report on inquiry activities, as well as notification and oversight activities.
- 1.7 This report is the first of this new format. As many of these new functions only came into effect towards the end of or after the reporting year, the items are noted in the appendix but there have been no notifications or reviews to date. As the mandate of the Committee expands, so the Committee expects that its annual report will provide a vital

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<sup>1</sup> *Intelligence Services Act 2001*, ss. 28 (2), (3).

accountability mechanism to the Parliament and to the Australian public, providing confidence in the scrutiny and oversight of intelligence agencies and national security powers.

## Overview of activities

- 1.8 During 2014–15, the Committee held 62 meetings, at a total duration of 106 hours and 30 minutes.
- 1.9 The Committee undertook 16 inquiries and tabled 14 reports throughout the year (including two annual reports). Two inquiries were underway as at 30 June 2015.
- 1.10 A full list of the reports tabled by the Committee during 2014–15 is provided at Appendix B. These inquiries are discussed further below.
- 1.11 In summary, over the course of the year the Committee completed:
- Reviews No. 11, 12 and 13 of the administration and expenditure of the six intelligence agencies comprising the Australian Intelligence Community (AIC).<sup>2</sup>
  - Reviews of the listing of two terrorist organisations and the relisting of six terrorist organisations pursuant to the *Criminal Code Act 1995* (Cth) (Criminal Code).<sup>3</sup>
  - Inquiries into other matters pertaining to the intelligence agencies, as referred by the Attorney-General.
- 1.12 A significant portion of the Committee’s time during 2014–15 was focussed on examining national security legislation introduced by the Government and referred to the Committee for inquiry and report.
- 1.13 Many of the proposed legislative changes referred to the Committee were foreshadowed in the inquiry into *Potential Reforms of Australia’s National Security Legislation*, conducted by the Parliamentary Joint Committee on Intelligence and Security of the 43<sup>rd</sup> Parliament.<sup>4</sup> The reforms included changes to data retention laws and a broader update of Australia’s national security legislation.

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2 *Intelligence Services Act 2001*, s. 29(2)(a). These agencies are the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Australian Signals Directorate, the Australian Geospatial-Intelligence Organisation, the Defence Intelligence Organisation and the Office of National Assessments.

3 *Criminal Code Act 1995*, s. 102.1A.

4 Parliamentary Joint Committee on Intelligence and Security, *Report on the Inquiry into Potential Reforms of Australia’s National Security Legislation*, May 2013.

- 1.14 Other national security measures referred to the Committee aimed to respond to the increasing threat posed by returning foreign fighters and individuals within Australia who support terrorism.
- 1.15 The intensive nature of the Committee's inquiries into draft legislation and the short timeframes given placed significant demands on the Committee. Across the four Bills reviewed during the reporting period, the Committee made 109 recommendations. All of these recommendations were accepted and resulted in 63 amendments to the Bills before the Parliament. While the Committee recognises and understands the exceptional circumstances influencing the timeframes set for the Committee's reviews, considering such complex legislation in short timeframes was not optimal and it would have been preferable if more time had been available for each inquiry.
- 1.16 The Committee's oversight and review functions have expanded following recommendations made in the Bill inquiries.
- 1.17 Pursuant to these expanded functions, the Australian Federal Police (AFP) provided the first briefing to the Committee on its functions under Part 5.3 of the Criminal Code during the year.
- 1.18 Further, the Committee undertook its first inquiries into the declaration of areas in overseas countries pursuant to changes made to the Criminal Code.<sup>5</sup>
- 1.19 The Committee's expanded functions are discussed in more detail in Chapter 2.

## Reviews of administration and expenditure

- 1.20 Pursuant to section 29 of the Intelligence Services Act, the Committee must review the administration and expenditure of the AIC agencies on an annual basis.<sup>6</sup>
- 1.21 In its reviews, the Committee examines each agency's financial performance and management for the relevant financial year, and considers the budgetary framework that each agency operates within.
- 1.22 The Committee also considers a number of matters that impact on the administration of agencies, including
- legislative changes and litigation,
  - strategic direction and organisational structure,

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5 *Criminal Code Act 1995*, ss. 119.2 and 119.3.

6 *Intelligence Services Act 2001*, s. 29(2)(a).

- human resource management,
  - security issues,
  - public accountability and public relations, and
  - performance management.
- 1.23 On 22 September 2014, the Committee tabled the report of its reviews of administration and expenditure for 2011–12 and 2012–13. These inquiries were largely conducted during 2013–14, with the Committee holding private hearings with each of the intelligence agencies, the Inspector-General of Intelligence and Security and the Australian National Audit Office during that time.
- 1.24 In its report, the Committee made two recommendations. The first was that the Government consider legislative and other reforms necessary to equip the AIC agencies to meet current and emerging technologies.<sup>7</sup>
- 1.25 Secondly, the Committee recommended the Government review the ongoing application of the efficiency dividend and other savings measures on Australian intelligence agencies.<sup>8</sup>
- 1.26 The Attorney-General wrote to the Committee on 30 June 2015, providing the Government’s response to the report. The Attorney-General noted that the Government had introduced legislation designed to equip the AIC agencies to fulfil their mandate in a contemporary, evolving security environment, respond to the threat of foreign fighters and meet operational needs. This legislation included the *National Security Legislation Amendment Act (No. 1) 2014* and the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*, which are discussed further below.
- 1.27 The Attorney-General confirmed the Government would exempt the Office of National Assessments (and the Office of the Inspector-General of Intelligence and Security) from the application of the efficiency dividend from 2015–16. This measure was announced in the 2015–16 Budget.<sup>9</sup>
- 1.28 In May 2015, the Government announced \$1.2 billion in new funding for national security, building on the \$1 billion it announced in the previous year. Four hundred and fifty million dollars of these funds were

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7 Parliamentary Joint Committee on Intelligence and Security, *Review of Administration and Expenditure: No. 11 and No. 12 – Australian Intelligence Agencies*, September 2014, p. xiii.

8 Parliamentary Joint Committee on Intelligence and Security, *Review of Administration and Expenditure: No. 11 and No. 12 – Australian Intelligence Agencies*, September 2014.

9 Commonwealth of Australia, *2015–16 Budget Paper No. 2: Budget Measures*, [www.budget.gov.au](http://www.budget.gov.au), viewed 2 July 2015.

earmarked to ‘strengthen intelligence capabilities and to counter extremist messaging’.<sup>10</sup>

- 1.29 During 2014–15, the Committee also conducted its inquiry into the administration and expenditure of AIC agencies for the 2013–14 financial year. The report for this inquiry was tabled on 7 September 2015.

## Bills inquiries

- 1.30 The Committee was referred a number of Bills for inquiry and report during the reporting period. Some of this legislation was anticipated during the inquiry into *Potential Reforms of Australia’s National Security Legislation*, conducted by the Committee’s predecessor in the 43<sup>rd</sup> Parliament.
- 1.31 The Committee examined and reported to the Parliament on the following Bills during 2014–15:
- National Security Legislation Amendment Bill (No. 1) 2014
  - Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014
  - Counter-Terrorism Legislation Amendment Bill (No. 1) 2014
  - Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014
- 1.32 On 24 June 2015, the Attorney-General referred the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 to the Committee. This inquiry was conducted during 2015–16 and will be discussed in the Committee’s next annual report.
- 1.33 As noted above, the passage of the above Bills resulted in a number of significant changes to the Committee’s functions and operations, which are outlined in Chapter 2.

## National Security Legislation Amendment Bill (No. 1) 2014

- 1.34 On 16 July 2014, the Attorney-General, Senator the Hon George Brandis QC, introduced the National Security Legislation Amendment Bill (No. 1) 2014. The Attorney-General wrote to the Committee on the same date to refer the Bill’s provisions for inquiry and report.<sup>11</sup>
- 1.35 The Attorney-General informed the Committee that the Bill would implement the Government’s response to Chapter 4 of the *Report on the*

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10 Commonwealth of Australia, *Budget 2015, Protecting Australia*, p. 3.

11 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the National Security Legislation Amendment Bill (No. 1) 2014*, 17 September 2014, p. 2.

*Inquiry into Potential Reforms of Australia's National Security Legislation*, which the Committee tabled in May 2013. This chapter dealt with reforms to the Intelligence Services Act and the *Australian Security Intelligence Organisation Act 1979* (Cth).

- 1.36 The Attorney-General stated that the Bill contained a 'package of targeted reforms to modernise and improve the legislative framework governing the activities of the Australian Intelligence Community' to ensure it kept pace with the evolving security environment.<sup>12</sup>
- 1.37 The Committee sought to judge the effectiveness of the Bill on its own merits in its inquiry, rather than revisiting the policy considerations and recommendations of the 2013 report.<sup>13</sup>
- 1.38 The Committee recommended that the Bill be passed, subject to consideration of a number of proposed amendments to the Bill and Explanatory Memorandum.<sup>14</sup>
- 1.39 The Government supported all 17 of the Committee's recommendations.<sup>15</sup>

## **Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014**

- 1.40 On 24 September 2014, the Attorney-General introduced the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 into the Senate. On the same day, the Attorney-General wrote to the Committee to refer the provisions of the Bill for inquiry and request it to report by 17 October 2014.
- 1.41 The Attorney-General stated that the Bill was intended to 'enhance the capability of Australia's law enforcement, intelligence and border protection agencies to protect Australian communities from the threat posed by returning foreign fighters and those individuals within Australia supporting foreign conflicts'.<sup>16</sup>

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12 Senator the Hon George Brandis QC, Attorney-General, *Senate Hansard*, 16 July 2014, p. 65.

13 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the National Security Legislation Amendment Bill (No. 1) 2014*, 17 September 2014, p. 74.

14 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the National Security Legislation Amendment Bill (No. 1) 2014*, 17 September 2014, pp. ix-xii.

15 Senator the Hon George Brandis QC, Attorney-General, *Media Release: Government Response to Committee report on National Security Legislation Amendment Bill (No. 1) 2014*, 19 September 2014, [www.attorneygeneral.gov.au/mediareleases](http://www.attorneygeneral.gov.au/mediareleases), viewed 2 July 2015.

16 Senator the Hon George Brandis QC, Attorney-General, *Senate Hansard*, 24 September 2014, p. 65.

- 1.42 The Committee recommended that the Bill be passed, subject to a number of proposed amendments.<sup>17</sup> The Government supported all 37 recommendations made by the Committee, which focused on improving the clarity of provisions in the Bill and ensuring that the powers provided for in the Bill would be used appropriately and be subject to proper review.<sup>18</sup>
- 1.43 In its advisory report, the Committee made a number of recommendations regarding its own role in ensuring adequate accountability mechanisms would be in place to ensure the proper application of the laws into the future. These recommendations, which were accepted by Government, are discussed further in Chapter 2.

### **Counter-Terrorism Legislation Amendment Bill (No. 1) 2014**

- 1.44 On 29 October 2014, the Attorney-General introduced the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 into the Senate and referred the Bill to the Committee.
- 1.45 The Attorney-General indicated that the measures in the Bill responded to areas of operational need identified by agencies. Specifically, the Bill addressed three key areas:
- Australian Secret Intelligence Service support and cooperation with the Australian Defence Force on military operations,
  - provision for emergency Ministerial authorisations to intelligence agencies to undertake activities in the performance of their statutory functions, and
  - changes to the control order regime to allow the AFP to seek control orders in relation to a broader range of individuals of security concern and to streamline the application process.<sup>19</sup>
- 1.46 The Committee made 16 recommendations in its report into the Bill. The Government accepted all recommendations but one in full, and accepted the remaining recommendation in principle.<sup>20</sup>

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17 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, pp. xii-xix.

18 Senator the Hon George Brandis QC, Attorney-General, *Government response to committee report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, 22 October 2014, [www.attorneygeneral.gov.au/Mediareleases](http://www.attorneygeneral.gov.au/Mediareleases), viewed 8 July 2015.

19 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014*, November 2014, pp. 1-2.

20 Attorney-General's Department, *Government Response to committee report on the Counter-Terrorism Legislation Amendment Bill (No. 1) Bill 2014*, 25 November 2014, [www.attorneygeneral.gov.au/mediareleases](http://www.attorneygeneral.gov.au/mediareleases), viewed 2 July 2015.

## Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014

- 1.47 On 30 October 2014, the Minister for Communications, the Hon Malcolm Turnbull MP, introduced the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 into the House of Representatives. On 21 November 2014, the Attorney-General wrote to the Committee to refer the provisions of the Bill for inquiry and report.
- 1.48 This Bill in part responded to recommendations of the former Parliamentary Joint Committee on Intelligence and Security, made in the *Report of the Inquiry into Potential Reforms of Australia's National Security Legislation*.<sup>21</sup>
- 1.49 The Committee examined the appropriateness of the data retention regime proposed in the Bill, ensuring that the Bill incorporated appropriate safeguards and accountability mechanisms for the proper application of laws into the future.
- 1.50 In its consideration of how to enhance the safeguards and accountability measures of the data retention regime, the Committee made a number of recommendations which, if implemented, would extend the Committee's powers of review to include the exercise of agency powers under the new regime.
- 1.51 The Government supported all of the Committee's 39 recommendations, including the proposed expansion of the Committee's functions.<sup>22</sup>
- 1.52 In its report on the Bill, the Committee recommended that a further inquiry be undertaken into the question of how to deal with the authorisation of a disclosure or use of telecommunications data for the purpose of determining the identity of a journalist's source.<sup>23</sup>
- 1.53 On 4 March 2015 the Attorney-General referred this question to the Committee for inquiry and report.
- 1.54 Subsequent to the referral, amendments were made to the Bill that provided for the protection of journalists' sources. The Committee supported these amendments, which included additional oversight functions for the Committee.
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21 *Senate Hansard*, 10 August 2015, p. 125.

22 Senator the Hon George Brandis QC, Attorney-General, and Minister for Communications, the Hon Malcolm Turnbull MP, *The Australian Government has responded to the inquiry of the Parliamentary Joint Committee on Intelligence and Security into the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014*, 3 March 2015, [www.attorneygeneral.gov.au/Mediareleases](http://www.attorneygeneral.gov.au/Mediareleases), viewed 3 September 2015.

23 Recommendation 26, Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014*, February 2015, p. xxi, pp. 251–258.



- 1.55 On this basis, the Committee determined to conclude its formal review on the matter.<sup>24</sup>

## **Criminal Code listings**

- 1.56 In the reporting period, the Committee reviewed the listing of two terrorist organisations and relisting of six terrorist organisations under the Criminal Code.
- 1.57 The Government listed Boko Haram as a terrorist organisation on 1 July 2014 and al-Murabitun as a terrorist organisation on 5 November 2014. The Committee reviewed and supported each of these listings, recommending that the regulations not be disallowed.
- 1.58 In addition, the Committee reviewed the relisting of Islamic State, Ansar al-Islam, Islamic Movement of Uzbekistan, Lashkar-e Jhangvi, Jaish-e-Mohammad and Hizballah's External Security Organisation. Again, the Committee supported the relisting of each of these organisations and recommended that the regulations not be disallowed.

## **Other activities**

### **Private briefings**

- 1.59 The Committee received a series of private briefings from relevant Commonwealth departments, as well as Commonwealth, state and territory agencies, relating to its inquiries over the reporting period.

### **International Intelligence Review Agencies Conference 2014**

- 1.60 Since 2002, the Committee has sent representatives to the biennial conference of oversight agencies. Previous conferences attended by Committee members have been held in London, Washington, Cape Town, Auckland, Sydney and Ottawa.
- 1.61 The 2014 conference was held in London on 7–9 July 2014 and was jointly hosted by the United Kingdom's Intelligence and Security Committee of Parliament, Interception of Communications Commissioner and Intelligence Services Commissioner. The conference focused on 'the complex balance between protecting the individual's right to privacy and ensuring our collective right to security'.

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24 Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the authorisation of access to telecommunications data to identify a journalist's source*, March 2015.

- 1.62 Attending on behalf of the Committee were:
- Mr Dan Tehan MP, and
  - The Hon Philip Ruddock MP.
- 1.63 The Committee notes the value of the International Intelligence Review Agencies Conference and has sought to have attendance at this biennial conference included in the outgoing parliamentary delegation program.