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The Parliament of the Commonwealth of Australia

# Annual Report of Committee Activities 2014–2015

**Parliamentary Joint Committee on Intelligence and Security**

September 2015  
Canberra

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# Contents

Membership of the Committee during 2014–2015.....	v
Terms of reference.....	vii

## THE REPORT

<b>1 The year in review .....</b>	<b>1</b>
Overview of activities .....	2
Reviews of administration and expenditure .....	3
Bills inquiries.....	5
National Security Legislation Amendment Bill (No. 1) 2014 .....	5
Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014.....	6
Counter-Terrorism Legislation Amendment Bill (No. 1) 2014.....	7
Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014.....	8
Criminal Code listings .....	9
Other activities .....	9
Private briefings .....	9
International Intelligence Review Agencies Conference 2014.....	9
<b>2 Expansion of Committee functions.....</b>	<b>11</b>
Scheduled reviews.....	12
Oversight of AFP counter-terrorism activities.....	12
Emerging issues.....	13
Activities undertaken in 2014–15 .....	13
Review of ‘declared areas’ .....	14

Additional notifications and reviews.....	15
Oversight of data retention scheme .....	15
Concluding remarks .....	17

## **APPENDICES**

Appendix A – Functions of the Committee.....	19
Appendix B – Committee reports (1 July 2014 to 30 June 2015) .....	23
Appendix C – AFP activities under Part 5.3 of the Criminal Code (1 June 2014 – 30 May 2015) .....	25
Appendix D – Reviews and notifications to the Committee in 2014–15 .....	29



## Membership of the Committee during 2014–2015

**Chair** Mr Dan Tehan MP

**Deputy Chair** Hon Anthony Byrne MP

**Members** Hon Jason Clare MP (from 25/11/14 to  
24/6/15)

Hon Mark Dreyfus QC, MP (from  
25/11/14)

Mr Andrew Nikolic AM, CSC, MP

Hon Tanya Plibersek MP (to 24/11/14)

Hon Philip Ruddock MP

Hon Bruce Scott MP (to 24/11/14 and  
from 24/6/15)

Senator David Bushby (from 16/7/14)

Senator the Hon Stephen Conroy  
(from 16/7/14)

Senator the Hon John Faulkner (to  
6/2/15)

Senator David Fawcett

Senator Katy Gallagher (from 25/6/15)

Senator the Hon Joe Ludwig (to  
16/7/15)

Senator John Williams (from 25/11/14  
to 22/6/15)

Senator the Hon Penny Wong (from  
16/7/14 to 25/11/14 and from 25/6/15)





## Terms of reference

This report is made under Part 4 Section 31 of the *Intelligence Services Act 2001*, which states:

As soon as practicable after each year ending on 30 June, the Committee must give to the Parliament a report on the activities of the Committee during the year.



## 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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1 *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.

## Expansion of Committee functions

- 2.1 As outlined in Chapter 1, the Committee's functions have expanded to allow Committee oversight over various aspects of the counter-terrorism measures passed by the Parliament during the year.
- 2.2 In summary, these expanded functions include:
- Review of the following legislative measures:
    - ⇒ the control order regime, preventative detention order regime, questioning and detention warrant regime and stop, search and seizure powers,
    - ⇒ sections 119.2 and 119.3 of the Criminal Code (relating to declared areas), and
    - ⇒ the data retention scheme.
  - Review of bills introduced as part of the ongoing operation of the data retention scheme.
  - Oversight of the counter-terrorism activities of the Australian Federal Police (AFP).
  - Review of declared areas made under section 119.3 of the Criminal Code.
- 2.3 In addition, the Committee must be notified in a number of circumstances regarding the operation of certain new provisions under the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014* (Cth) and the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth).
- 2.4 The expanded review and oversight powers and range of events of which the Committee must be notified, have substantially increased the functions of the Committee and its security role in the area of national security.

- 2.5 These new functions are discussed further below. A table of the activities undertaken by the Committee pursuant to these expanded functions is provided at Appendix D.

## Scheduled reviews

- 2.6 As part of its new responsibilities, the Committee is required to undertake a series of reviews to track the effectiveness and operation of national security legislative reforms that have been introduced into law.
- 2.7 Certain powers that the Committee reviewed as part of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 will sunset on 7 September 2018. The Committee must review the operation, effectiveness and implications of the following provisions by 7 March 2018:
- ⇒ Special powers relating to terrorism offences (including the issuing of search warrants) under Division 3, Part III of the ASIO Act and related provisions,
  - ⇒ Powers relating to terrorist acts and terrorism offences (including stop, each and seizure powers) under Division 3A of Part IAA of the *Crimes Act 1914* (Cth) and related provisions,
  - ⇒ Control order and preventative detention powers under Division 104 and 105 of the Criminal Code and related provisions, and
  - ⇒ Provisions relating to the offence of entering or remaining in declared areas and the declaration of areas pursuant to sections 119.2 and 119.3 of the Criminal Code, and related provisions.<sup>1</sup>
- 2.8 In relation to the Data Retention Act, the Committee must commence a review of the operation of the data retention scheme by 13 April 2019 and complete the review by 13 April 2020.<sup>2</sup>

## Oversight of AFP counter-terrorism activities

- 2.9 In its advisory report into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, the Committee recommended that its

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1 *Intelligence Services Act 2001*, s. 29(1)(bb).

2 *Telecommunications (Interception and Access) Act 1979*, s. 187N, (as amended by the Data Retention Act).

functions be extended to encompass the counter-terrorism activities of the AFP, including, but not limited to, anything involving classified material.<sup>3</sup>

- 2.10 Following the Government's response to the Committee's report,<sup>4</sup> the Intelligence Services Act was amended to extend the Committee's functions to monitoring and reviewing the performance by the AFP of its functions under Part 5.3 of the Criminal Code.<sup>5</sup> This section of the Criminal Code contains the Commonwealth terrorism offences, control order and preventative detention order regimes.
- 2.11 In June 2015, the AFP provided its first briefing to the Committee in relation to its functions under Part 5.3 of the Criminal Code, via a private (classified) briefing. The issues raised in that briefing are outlined below, noting that some information provided in that briefing cannot be released publicly due to its sensitive nature.

## Emerging issues

- 2.12 The AFP informed the Committee that a large number of issues identified throughout the year had been rectified by the introduction of the *Counter-terrorism Legislation Amendment (Foreign Fighters) Act 2014* and the *Counter-terrorism Legislation Amendment Act (No.1) 2014*.
- 2.13 The AFP identified and discussed a number of emerging issues with the Committee, including:
- operational issues relating to the protection of sensitive information,
  - operational issues relating to monitoring compliance with control orders,
  - the use of state-based preventative detention orders instead of Commonwealth-based preventative detention orders, due to the longer duration of state-based orders, and
  - difficulty in securing prosecutions for terrorism financing under section 102.6 of the *Criminal Code* due to the proof of receipt required.

## Activities undertaken in 2014–15

- 2.14 The AFP provided details of its activities from 1 June 2014 to 30 May 2015 in relation to Part 5.3 of the Criminal Code. These are outlined in detail in Appendix C of this report.

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3 Recommendation 14, Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, p. xv.

4 Attorney-General's Department, *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 2 July 2015.

5 *Intelligence Services Act 2001*, s. 29(1)(baa).

- 2.15 In summary, the AFP reported that as at 30 May 2015:
- nine prosecutions had been supported by the AFP under terrorism offences (Division 101 of the Criminal Code),
  - no prosecutions had been supported by the AFP under the offences relating to financing terrorism and terrorists (Division 103 of the Criminal Code),
  - three interim control orders had been applied for by the AFP, with none of these control orders yet being confirmed (Division 104),
  - one person had been charged under section 104.27 with the offence of contravening a control order and the matter was currently before the NSW courts, and
  - no preventative detention orders or continued preventative detention orders had been applied for (Division 105).

## **Review of ‘declared areas’**

- 2.16 The *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* created a new offence for persons who enter, or remain in, specific overseas areas declared by the Foreign Affairs Minister.<sup>6</sup>
- 2.17 The Committee may conduct a review of the declaration of each area made under proposed section 119.3, within the disallowance period for each declaration (modelled on the process of listing of terrorist organisations under 102.1A of the Criminal Code).<sup>7</sup>
- 2.18 The Committee conducted its first inquiries into declared areas in 2014–15. These were:
- *Review of the declaration of al-Raqqa province, Syria*, tabled in March 2015
  - *Review of the declaration of Mosul district, Ninewa Province, Iraq*, tabled in May 2015
- 2.19 The Committee supported each declaration and recommended that the legislative instruments not be disallowed. The reports can be viewed on the Committee’s website.

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6 *Criminal Code Act 1995*, ss. 119.2, 119.3.

7 *Criminal Code Act 1995*, ss. 119.3 (7).

## Additional notifications and reviews

- 2.20 Following the commencement of the *Counter-terrorism Legislation Amendment Act (No.1) 2014*, the Inspector-General of Intelligence and Security is required to provide the Committee with a copy of any report produced on the legality or compliance with provisions regarding:
- emergency authorisations made by an agency to conduct certain activities, where a Minister is unavailable to provide the authorisation,<sup>8</sup> and
  - where agreement to an emergency authorisation from the Attorney-General is required and not obtainable, and instead authorisation is given with the agreement of the Director-General of Security, or without the agreement of either the Attorney-General or the Director-General of Security.<sup>9</sup>
- 2.21 Amendments to the Criminal Code provisions relating to the declaration of terrorist organisations allow the Minister to amend regulations to include aliases or remove former names via legislative instrument. Consistent with its review of the listing and relisting of terrorist organisations, the Committee may also review any legislative instrument making such amendment.<sup>10</sup>

## Oversight of data retention scheme

- 2.22 The implementation phase of the data retention scheme will commence on 13 October 2015. After this date, the Committee will be required to review:
- any Bill introduced into Parliament that proposes to change the defined set of telecommunications data required and not required to be retained by carriers, carriage service providers and internet service providers for two years,<sup>11</sup>
  - any Bill introduced to either House that proposes to amend the list of service providers required to retain certain data, within 15 days after the introduction of the Bill,<sup>12</sup>

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8 *Intelligence Services Act 2001*, s. 9B (8A).

9 *Intelligence Services Act 2001*, s. 9C(6)(c).

10 *Criminal Code Act 1995*, ss. 102.1AA, 102.1A.

11 *Telecommunications (Interception and Access) Act 1979*, s. 187AA (4) (as amended by the Data Retention Act).

12 *Telecommunications (Interception and Access) Act 1979*, s. 187A(3C)(a) (as amended by the Data Retention Act).

- any Bill introduced to either House that proposes to amend the list of ‘criminal law enforcement agencies’,<sup>13</sup> and
  - any Bill introduced to either House that proposes to amend the list of ‘enforcement agencies’.<sup>14</sup>
- 2.23 The Committee’s expanded functions also include:
- reviewing any matter relating to the retained data activities of ASIO, as reported in its annual report,<sup>15</sup> and
  - reviewing any matter relating to the retained data activities of the AFP regarding offences against Part 5.3 of the Criminal Code, as specified in its annual report to the Minister pursuant to section 94(1) of the *Telecommunications (Interception and Access) Act 1979*.<sup>16</sup>
- 2.24 Unlike the Committee’s other functions, in undertaking these reviews, the Committee may review particular operations or investigations of ASIO and the AFP.<sup>17</sup> However, the Committee must conduct its review for the sole purpose of assessing and making recommendations on the overall operation and effectiveness of the new data retention scheme. The Committee may not investigate the data retention activities of service providers.<sup>18</sup>
- 2.25 The relevant minister must notify the Committee in the following circumstances:
- should a declaration be made to require a service provider to retain data relating to a relevant service,<sup>19</sup> or
  - should a journalist information warrant be issued to ASIO or a law enforcement agency.<sup>20</sup>
- 2.26 The relevant minister must provide the Committee with a copy of any report prepared by the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman:

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13 *Telecommunications (Interception and Access) Act 1979*, s. 110A (11) (as amended by the Data Retention Act).

14 *Telecommunications (Interception and Access) Act 1979*, s. 176A (11) (as amended by the Data Retention Act).

15 *Intelligence Services Act 2001*, s. 29(1)(bd); *ASIO Act 1979*, s. 94 (1), (2A)(c)-(j) (as amended by the Data Retention Act).

16 *Intelligence Services Act 2001*, s. 29(1)(be) (as amended by the Data Retention Act).

17 *Intelligence Services Act 2001*, s. 29 (4) (as amended by the Data Retention Act).

18 *Intelligence Services Act 2001*, s. 29 (5) (as amended by the Data Retention Act).

19 *Telecommunications (Interception and Access) Act 1979*, s. 187B (7) (as amended by the Data Retention Act).

20 *Telecommunications (Interception and Access) Act 1979*, s. 185D(1)(b), 185D(5)(a)(ii) (as amended by the Data Retention Act).

- relating to a journalist information warrant or an authorisation for the disclosure of information or documents made under the authority of a warrant,<sup>21</sup> or
  - relating to the purpose or manner of access to retained data by means of one or more authorisations under relevant divisions of the Intelligence Services Act.<sup>22</sup>
- 2.27 The Committee may also request a briefing from the Inspector-General of Intelligence and Security, or the Ombudsman, on any report outlined above.<sup>23</sup>

## Concluding remarks

- 2.28 The Committee completed a substantial number of activities throughout 2014–15, in the context of a heightened security threat to Australia and our interests overseas. In particular, there has been a need to address the increasing threat posed by the potential return of foreign fighters to Australia.
- 2.29 The demanding workload of the Committee during 2014–15 reflects the changing nature of the global security environment and the need for legislative reform to ensure that our intelligence agencies remain equipped with the necessary tools to counter the threats posed to the safety of Australians, both overseas and in Australia. Balanced with this is the need to ensure that individual privacy and other fundamental freedoms and rights we enjoy as Australians remain protected in our laws.
- 2.30 In reviewing the administration and expenditure of the AIC agencies, the Committee considers whether the agencies are equipped with the resources necessary to meet Australia’s current and emerging national security challenges. These reviews also form a key component of the accountability framework that the agencies operate within, noting the highly sensitive nature of their business and operations.
- 2.31 In undertaking reviews of the proposed reforms to national security legislation introduced into the Parliament over the last year, a bipartisan approach was paramount to ensuring that the Committee provided valuable input into the proposed measures.

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21 *Telecommunications (Interception and Access) Act 1979*, ss. 185D (3), (7) (as amended by the Data Retention Act).

22 *Telecommunications (Interception and Access) Act 1979*, ss. 185E (1), (3) (as amended by the Data Retention Act).

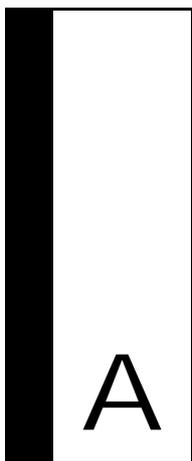
23 *Telecommunications (Interception and Access) Act 1979*, ss. 185D (4), (8) 185E (2), (4), (as amended by the Data Retention Act).

- 2.32 The enhanced transparency, oversight and review mechanisms that feature in the national security measures, based on the recommendations of the Committee, will help foster public confidence and ensure that the legislative reforms are effective in achieving their stated purpose, while incorporating appropriate safeguards.
- 2.33 The Committee considers that its additional oversight and review functions will play a vital role in ensuring that the reforms operate effectively and with appropriate levels of accountability. The Committee will report further on the exercise of its new functions in annual reports to follow.
- 2.34 Delays in obtaining security clearances can pose difficulties for staffing of the Committee Secretariat. The Committee thanks the intelligence agencies for their assistance with security clearances throughout the reporting period.
- 2.35 The Committee benefitted from the assistance of four technical advisors from the relevant government organisations, who provided specialist expertise to assist the Committee's inquiries into the foreign fighters and data retention legislation. The Committee thanks these officers for their valuable contribution to these inquiries.
- 2.36 Finally, the Committee thanks all stakeholders, including representatives of the intelligence agencies, the Attorney-General's Department and the Office of the Inspector-General of Intelligence and Security, who contributed to the Committee's work throughout the year. Committee members also extend their thanks to the Secretariat for their outstanding work during the year.

**Mr Dan Tehan MP**

Chair

September 2015



## Appendix A – Functions of the Committee

Section 29 of the *Intelligence Services Act 2001*, as at 30 June 2015 (compilation date 13 December 2014):

- (1) The functions of the Committee are:
  - (a) to review the administration and expenditure of ASIO, ASIS, AGO, DIO, ASD and ONA, including the annual financial statements of ASIO, ASIS, AGO, DIO, ASD and ONA; and
  - (b) to review any matter in relation to ASIO, ASIS, AGO, DIO, ASD or ONA referred to the Committee by:
    - (i) the responsible Minister; or
    - (ii) a resolution of either House of the Parliament; and
  - (baa) to monitor and to review the performance by the AFP of its functions under Part 5.3 of the Criminal Code; and
  - (bab) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the AFP or connected with the performance of its functions under Part 5.3 of the Criminal Code to which, in the opinion of the Committee, the attention of the Parliament should be directed; and
  - (bac) to inquire into any question in connection with its functions under paragraph (baa) or (bab) that is referred to it by either House of the Parliament, and to report to that House upon that question; and
  - (bb) to review, by 7 March 2018, the operation, effectiveness and implications of the following:
    - (i) Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979 and any other provision of that Act as far as it relates to that Division;

- (ii) Division 3A of Part IAA of the Crimes Act 1914 and any other provision of that Act as far as it relates to that Division;
    - (iii) Divisions 104 and 105 of the Criminal Code and any other provision of the Criminal Code Act 1995 as far as it relates to those Divisions;
    - (iv) sections 119.2 and 119.3 of the Criminal Code and any other provision of the Criminal Code Act 1995 as far as it relates to those sections; and
  - (c) to report the Committee's comments and recommendations to each House of the Parliament and to the responsible Minister.
- (2) The Committee may, by resolution, request the responsible Minister to refer a matter in relation to the activities of ASIO, ASIS, AGO, DIO, ASD or ONA (as the case may be) to the Committee, and the Minister may, under paragraph (1)(b), refer that matter to the Committee for review.
- (3) The functions of the Committee do not include:
- (a) reviewing the intelligence gathering and assessment priorities of ASIO, ASIS, AGO, DIO, ASD or ONA; or
  - (b) reviewing the sources of information, other operational assistance or operational methods available to ASIO, ASIS, AGO, DIO, ASD or ONA; or
  - (c) reviewing particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS, AGO, DIO or ASD; or
  - (d) reviewing information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information; or
  - (e) reviewing an aspect of the activities of ASIO, ASIS, AGO, DIO, ASD or ONA that does not affect an Australian person; or
  - (f) reviewing the rules made under section 15 of this Act; or
  - (g) conducting inquiries into individual complaints about the activities of ASIO, ASIS, AGO, DIO, ASD, ONA or AFP; or
  - (h) reviewing the content of, or conclusions reached in, assessments or reports made by DIO or ONA, or reviewing sources of information on which such assessments or reports are based; or

- (i) reviewing the coordination and evaluation activities undertaken by ONA; or
- (j) reviewing sensitive operational information or operational methods available to the AFP; or
- (k) reviewing particular operations or investigations that have been, are being or are proposed to be undertaken by the AFP.





## Appendix B – Committee reports (1 July 2014 to 30 June 2015)

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### Type of Committee Activity

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#### Inquiries

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<i>Title of report</i>	<i>Tabling date</i>	<i>Government response</i>
Advisory Report on the National Security Legislation Amendment Bill (No. 1) 2014	17 September 2014	19 September 2014 (by media release)
Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014	17 October 2014	22 October 2014 (by media release)
Advisory Report on the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014	20 November 2014	25 November 2014 (by media release)
Advisory Report on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014	27 February 2014	<p>The Committee requested that the Government respond to the outstanding recommendations in the 2013 report, <i>Report on the Inquiry into Potential Reforms of Australia's National Security Legislation</i>, by 1 July 2015.</p> <p>This response was received on 1 July 2015 (tabled 10 August 2015).</p> <p>The Government responded to the Committee's report into the Bill on 3 March 2015 (by media release).</p>
Inquiry into authorisation of access to telecommunications data to identify a journalist's source	8 April 2015	No response required

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**Administrative and Expenditure Reviews**


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<i>Title of report</i>	<i>Tabling date</i>	<i>Government response</i>
Review of Administration and Expenditure: No. 11 and No. 12–Australian Intelligence Agencies	22 September 2014	1 July 2015 (by letter to the Committee) Not yet tabled

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**Annual reports**


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<i>Title of report</i>	<i>Tabling date</i>	<i>Government response</i>
Annual Report of Committee Activities 2012-13	16 December 2014	No response required
Annual Report of Committee Activities 2013-14	16 December 2014	No response required

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**Reviews of Terrorist Listings**


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<i>Title of report</i>	<i>Organisations covered</i>	<i>Tabling date</i>	<i>Government response</i>
Review of the listing of Boko Haram	Boko Haram and Islamic State	22 September 2014	12 May 2015
Review of the re-listing of the Islamic State			
Review of the listing of Al-Murabitun	Al-Murabitun	16 December 2014	12 May 2015
Review of the re-listing of Ansar al-Islam, Islamic Movement of Uzbekistan, Lashkar-eJhangvi and Jaish-e-Mohammad	Ansar al-Islam, Islamic Movement of Uzbekistan, Lashkar-eJhangvi and Jaish-e-Mohammad	25 May 2015	
Review of the Criminal Code re-listing of Hizballah's External Security Organisation (ESO) as a terrorist organisation	Hizballah's External Security Organisation (ESO)	22 June 2015	

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**Reviews of Declared Areas**


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<i>Title of report</i>	<i>Area declared</i>	<i>Tabling date</i>	<i>Government response</i>
Review of the declaration of al-Raqqqa province, Syria	al-Raqqqa province, Syria	18 March 2015	23 July 2015 (tabled 10 August 2015)
Review of the declaration of Mosul district, Ninewa province, Iraq	Mosul district, Ninewa province, Iraq	25 May 2015	23 July 2015 (tabled 10 August 2015)

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## Appendix C – AFP activities under Part 5.3 of the Criminal Code (1 June 2014 – 30 May 2015)

<b>Terrorism offences (Division 101)</b>	<b>Number of prosecutions supported by the AFP</b>	<b>Comments</b>
101.1 Terrorist acts	1	
101.2 Providing or receiving training connected with terrorist acts	0	
101.4 Possessing things connected with terrorist acts	2	
101.5 Collecting or making documents likely to facilitate terrorist acts	0	
101.6 Other acts done in preparation for, or planning, terrorist acts	6	

<b>Terrorist organisations (Division 102)</b>	<b>Number of prosecutions supported by the AFP</b>	<b>Comments</b>
102.2 Directing the activities of a terrorist organisation	0	
102.3 Membership of a terrorist organisation	0	

102.4	0
Recruiting for a terrorist organisation	
102.5	0
Training involving a terrorist organisation	
102.6	4
Getting funds to, from or for a terrorist organisation	
102.7	0
Providing support to a terrorist organisation	
102.8	0
Associating with terrorist organisations	

### Financing terrorism

#### Division 103

103.1	0
Financing terrorism	
103.2	0
Financing a terrorist	

Control Orders Division 104	Number applied for by AFP	Number issued	Comments
Subdivision B Interim control orders	3	3	AFP advised that none of the three interim control orders issued had been confirmed as at 30 May 2015.  One draft interim control order was modified by a court under s104.4(3) prior to issue.
Subdivision C Urgent interim control orders	0 by electronic means 0 in person		
S104.27 Offence of contravening a control order	1 prosecution was supported by the AFP		Ongoing prosecution

Preventative detention orders Division 105	Number applied for by AFP	Number issued	Comments
Initial preventative detention orders	0	0	

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Continued preventative detention orders	0	0
Persons taken into custody under PDO	N/A	0
PDOs revoked	N/A	0
Prohibitive contact orders	0	0
Prohibitive contact orders revoked	N/A	0
Section 105.41 Disclosure offences for PDO	0	0

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## Appendix D – Reviews and notifications to the Committee in 2014–15

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<b>Telecommunications (Interception and Access) Act 1979</b>		
<i>Item</i>	<i>Activity</i>	<i>Comments</i>
Section 110(A)(11) Any Bill introduced that proposes to amend the list of 'criminal law enforcement agencies'	N/A	Data Retention Act to commence on 13 October 2015
To be referred by the Minister		
Section 176A (11) Any Bill introduced that proposes to amend the list of 'enforcement agencies'	N/A	Data Retention Act to commence on 13 October 2015
To be referred by the Minister		
Section 187AA (4) Any Bill introduced proposing changes to the information to be kept (and not kept) by carriers, service carriage providers and internet service providers	N/A	Data Retention Act to commence on 13 October 2015
To be referred by the Minister		
Section 187A(3C)(a) Any Bill introduced proposing changes to the list of service providers required to retain certain data	N/A	Data Retention Act to commence on 13 October 2015
To be referred by the Minister		
Section 187B (7) Any declaration made to require a service provider to retain data relating to a relevant service	N/A	Data Retention Act to commence on 13 October 2015
Minister must give written notice of the declaration to the Committee		

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Section 185D(1)(b) Any journalist information warrant issued by ASIO	N/A	Data Retention Act to commence on 13 October 2015
Minister must notify the Committee		
Section 185D (5)(a)(ii) Any journalist information warrant issued by a law enforcement agency	N/A	Data Retention Act to commence on 13 October 2015
Minister must notify the Committee		
Section 185D (3) Any report prepared by the Inspector-General of Intelligence and Security relating to: <ul style="list-style-type: none"> <li>- A journalist information warrant issued to ASIO</li> <li>- An authorisation is made under the authority of the warrant</li> </ul>	N/A	Data Retention Act to commence on 13 October 2015
Minister must provide copy of the report to the Committee		
Committee may request a briefing by the Inspector-General		
Section 185D (7) Any report prepared by the Ombudsman relating to: <ul style="list-style-type: none"> <li>- A journalist information warrant issued to the AFP</li> <li>- An authorisation is made under the authority of the warrant</li> </ul>	N/A	Data Retention Act to commence on 13 October 2015
Minister must provide copy of the report to the Committee		
Committee may request a briefing by the Ombudsman		

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<b>Intelligence Services Act 2001</b>		
<b>Item</b>	<b>Activity</b>	<b>Comments</b>
Section 9B (8A) Any report produced on the legality or compliance with provisions relating to emergency authorisations made by an agency Inspector-General of Intelligence and Security to provide the Committee with a copy of the conclusions in the report.	0	Introduced by the Counter-Terrorism Legislation Amendment Act (No. 1) 2014
Section 9C(6)(c) Any report produced on the legality or compliance with provisions relating to an authorisation where agreement is not provided by the Attorney-General, Director-General of ASIO, or both Inspector-General of Intelligence and Security to provide the Committee with a copy of the conclusions in the report.	0	Introduced by the Counter-Terrorism Legislation Amendment Act (No. 1) 2014
Section 29(1)(bd) Any matter relating to the data retention activities of ASIO, as reported in its annual report pursuant to section 94(2A)(c)-(j) of the ASIO Act 1979.	N/A	Data Retention Act to commence on 13 October 2015
Section 29(1)(be) Any matter relating to the data retention activities of the AFP, as reported to the Minister pursuant to 186(1)(e)-(k) of the Telecommunications (Interception and Access) Act 1979.	N/A	Data Retention Act to commence on 13 October 2015