

Introduction

The bill and its referral

1.1 On 12 November 2015, the Attorney-General, Senator the Hon George Brandis QC, introduced the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015 (the Bill) into the Senate.

1.2 In his second reading speech, the Attorney-General stated that:

The measures introduced in this Bill reflect lessons learned from recent counter-terrorism investigations and operational activity. The Bill also gives effect to a number of recommendations from the Council of Australian Governments Review of Counter-Terrorism Legislation.

The Bill seeks to maintain a careful balance between enhancing our law enforcement capabilities and protecting individual rights. The provisions set out in this Bill include a range of safeguards that also complement the suite of counter-terrorism measures introduced by this government in 2014.¹

1.3 On the same day, the Attorney-General wrote to the Committee to refer the provisions of the Bill for inquiry and report by 15 February 2016. The Attorney-General requested that the Committee should, as far as possible, conduct its inquiry in public.

¹ Senator the Hon George Brandis QC, Attorney-General, *Senate Hansard*, 12 November 2015, p. 8422.

Conduct of the inquiry

- 1.4 The Chair of the Committee, Mr Dan Tehan MP, announced the inquiry by media release on 12 November 2015 and invited submissions from interested members of the public. Submissions were requested by 10 December 2015.
- 1.5 The Committee received 17 submissions and 4 supplementary submissions. A list of submissions received by the Committee is at Appendix A.
- 1.6 The Committee held one public hearing and one private hearing in Canberra on 14 December 2015. It also received two private briefings and conducted a site inspection at the Australian Federal Police (AFP) Headquarters. Details of the hearings are included at Appendix B.
- 1.7 Copies of submissions and the transcript of the public hearing can be accessed on the Committee's website at www.aph.gov.au/pjcis. Links to the Bill and Explanatory Memorandum are also available on the Committee's website.
- 1.8 As with its previous bill inquiries, the Committee benefitted from the provision of secondees with technical expertise from the Attorney-General's Department and AFP.

Report structure

- 1.9 This report consists of five chapters:
- This introductory chapter sets out the conduct of the inquiry, provides an overview of the key provisions of the Bill, and discusses evidence received about the rationale for the proposed amendments,
 - Chapters 2 to 5 discuss each of the Bill's schedules in detail:
 - ⇒ Schedules 2, 4, 15 and 16, which relate to control orders for children and the protection of national security information, are discussed in Chapter 2.
 - ⇒ Schedules 3, 8, 9 and 10, which relate to monitoring persons subject to a control order, are discussed in Chapter 3.
 - ⇒ Schedules 1, 5, 6 and 11, which contain other amendments to the *Criminal Code Act 1995* (Criminal Code), including those concerning

preventative detention orders and advocating genocide, are discussed in Chapter 4.

⇒ Schedules 12, 13, 14 and 17, which concern amendments to other legislation, are discussed in Chapter 5.

Other inquiries

1.10 The control order regime was amended twice in 2014 by the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* and the *Counter-Terrorism Legislation Amendment Act (No. 1) 2014*. This Committee conducted inquiries into both bills, resulting in bipartisan reports. The Committee made 53 recommendations across the two inquiries, with 10 concerning control orders. All of the Committee's recommendations were accepted by the Government and changes made to the control order regime.²

1.11 These changes included:

- a revised sunset clause for the control order and preventative detention order regimes of 7 September 2018,
- amendments to the *Independent National Security Legislation Monitor Act 2010* to require the Independent National Security Legislation Monitor (INSLM) to review, by 7 September 2017, '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', and
- amendments to the *Intelligence Services Act 2001* to require the Committee to review, by 7 March 2018, the 'operation, effectiveness and implications' of Division 104 and Division 105 of the *Criminal Code*.³

1.12 At the time of the Committee's second inquiry in November 2014, the Committee noted that the majority of the recommendations of the 2013 Council of Australian Governments (COAG) Review of Counter-Terrorism Legislation to strengthen safeguards in the existing control

2 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, Canberra, October 2014, pp. 51–61, 70–79; Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Amendment Bill (No. 1) 2014*, Canberra, November 2014, pp. 5–27.

3 *Criminal Code*, Sections 104.32 and 105.53; *Independent National Security Legislation Monitor Act 2010*, Section 6(1B); *Intelligence Services Act 2001*, Paragraph 29(bb)(iii).

order regime had not yet been implemented.⁴ Accordingly, the Committee recommended that the INSLM be tasked with undertaking a review of the COAG proposals and advising of any recommendations relating to control orders that should be implemented. The Committee further recommended that particular consideration be given to the advisability of introducing a system of 'Special Advocates' into the regime.⁵

- 1.13 After the appointment of the Hon Roger Gyles AO QC as INSLM, the then Prime Minister referred the following matter pursuant to section 7 of the *Independent National Security Legislation Monitor Act 2010* in line with the Committee's recommendation:

[W]hether the additional safeguards recommended in the 2013 Council of Australian Government Review of Counter-Terrorism Legislation in relation to the control order regime should be introduced, with particular consideration given to the advisability of introducing a system of 'Special Advocates' into the regime, as recommended in the advisory report on the Counter-Terrorism Legislation Amendment Bill (No 1) 2014 by the Parliamentary Joint Committee on Intelligence and Security (PJCIS), tabled on 20 November 2014.⁶

- 1.14 Submissions were received by the INSLM and a public hearing conducted on 16 December 2015. The INSLM's website noted the introduction of the Bill, stating that 'the inquiry will now proceed taking into account those provisions that relate to the reference'.⁷
- 1.15 The INSLM's first report on control order safeguards was released on 5 February 2016. The report focused on consideration of special advocates, with a further report on the remainder of the Prime Minister's reference to follow at a later date.⁸

4 The report of the Council of Australian Governments Review of Counter-Terrorism Legislation was tabled in Parliament on 14 May 2013 and can be accessed at <www.ag.gov.au/Consultations/Pages/COAGReviewofCounter-TerrorismLegislation.aspx>.

5 Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Amendment Bill (No. 1) 2014*, Canberra, November 2014, p. 24.

6 The Hon Roger Gyles AO QC, Independent National Security Legislation Monitor, *Control Order Safeguards (INSLM Report) Special Advocates and the Counter-Terrorism Legislation Amendment Bill (No 1) 2015*, January 2016, p. 1.

7 Independent National Security Legislation Monitor (INSLM), 'INSLM Current Inquiries', <www.dpmc.gov.au/pmc/about-pmc/core-priorities/independent-national-security-legislation-monitor/inslm-current-inquiries>, viewed 5 January 2016.

8 The Hon Roger Gyles AO QC, Independent National Security Legislation Monitor, *Control Order Safeguards (INSLM Report) Special Advocates and the Counter-Terrorism Legislation Amendment Bill (No 1) 2015*, January 2016, p. 2.

1.16 The INSLM made the following recommendations:

1. That the recommendations of the COAG Review as to the introduction of a system of special advocates into the control order regime be accepted and implemented if proposed s 38J of the [*National Security Information (Criminal and Civil Proceedings) Act 2004*] (NSI Act) in Schedule 15 of the 2015 Bill, is to become law; and
2. That proposed s 38J of the NSI Act in Schedule 15 of the Bill, should not come into force until Recommendation 1 has been implemented.⁹

1.17 The INSLM's findings are discussed in Chapter 2.

Outline of the bill

1.18 The Bill comprises 17 schedules and will mostly affect the control order regime. Amendments will also be made to the following acts:

- *Australian Security Intelligence Organisation Act 1979*
- *Administrative Appeals Tribunal Act 1975*
- *Classification (Publications, Films and Computer Games) Act 1995*
- *Criminal Code Act 1995* (the Criminal Code)
- *Crimes Act 1914*
- *National Security Information (Criminal and Civil Proceedings) Act 2004*
- *Public Interest Disclosure Act 2014*
- *Taxation Amendment Act 1953*
- *Telecommunications (Interception and Access) Act 1979*, and
- *Surveillance Devices Act 2004*.

1.19 Following is a summary of the key elements of each schedule, which are discussed in greater detail in subsequent chapters.

9 The Hon Roger Gyles AO QC, Independent National Security Legislation Monitor, *Control Order Safeguards (INSLM Report) Special Advocates and the Counter-Terrorism Legislation Amendment Bill (No 1) 2015*, January 2016, p. 10.

Schedule 1–Receiving funds for legal assistance

- 1.20 Schedule 1 will amend the existing exemption to the offence of ‘getting funds to, from or for a terrorist organisation’ at section 102.6(3)(a) of the Criminal Code to include legal assistance in matters involving the question of whether an entity is a terrorist organisation. This will enable a lawyer to receive funds from a terrorist organisation in cases where it seeks to challenge its status as a terrorist organisation.
- 1.21 The amendment implements the Government’s response to recommendation 20 of the 2013 COAG Review of Counter-Terrorism Legislation, which was supported in part by COAG.

Schedule 2–Control orders for young people

- 1.22 Schedule 2 amends Division 104 of the Criminal Code to allow a control order to be issued for persons aged 14 and 15 years old. In doing so, the Bill proposes that a number of additional obligations be imposed on the AFP and the issuing court in relation to a person aged less than 18 years, including:
- when seeking the Attorney-General’s consent to request an interim control order, the AFP must inform the Attorney-General of the person’s age,
 - when making an interim control order, the issuing court is required to take into account ‘the best interests’ of the person when considering whether to impose each of the obligations, prohibitions and restrictions sought by the AFP. Matters that must be taken into account are:
 - ⇒ age, maturity, sex and background (including lifestyle, culture and traditions) of the person
 - ⇒ their physical and mental health
 - ⇒ the benefit to the person of having a meaningful relationship with his or her family and friends
 - ⇒ the right of the person to receive an education
 - ⇒ the right of the person to practice his or her religion, and
 - ⇒ any other matters the issuing court considers relevant,
 - where an issuing court makes an interim control order, it must, as soon as practicable after making the order, appoint a ‘court-appointed advocate’ to represent the child’s best interests. The court appointed advocate is not the child’s legal representative, is not obliged to act on their instructions, and may disclose information considered to be in the

child's best interests even if such disclosure is against the child's wishes, and

- control order documents must be served on the court appointed advocate and reasonable steps taken to serve them on a parent or guardian.

Schedule 3—Control orders and tracking devices

1.23 Schedule 3 amends Division 104 of the Criminal Code to impose obligations on a person required to wear a tracking device to ensure that the tracking device remains operational and functional. A person would be required to:

- ⇒ ensure the device remains in good working order,
- ⇒ authorise the AFP to take steps to ensure the device is in good working order,
- ⇒ authorise the AFP to enter premises to install equipment necessary for the operation of the tracking device,
- ⇒ report to have the device inspected, and
- ⇒ if the device is not working, notify the AFP as soon as practicable but within four hours.

Schedule 4—Issuing court for control orders

1.24 The amendments proposed in Schedule 4 would remove the Family Court of Australia from the definition of 'issuing court' for the purpose of a control order, partially implementing a recommendation of the 2013 COAG Review of Counter Terrorism Legislation. The issuing courts would then be the Federal Court of Australia and Federal Circuit Court of Australia.

Schedule 5—Preventative detention orders – 'imminent' test

1.25 Schedule 5 will amend Division 105 of the Criminal Code by inserting a defined term 'imminent terrorist act' as a threshold for the preventative detention order (PDO) regime, based on a suspicion on reasonable grounds by an AFP member, and the satisfaction of an issuing authority, that an attack is '*capable of being carried out, and could occur, within the next 14 days*'.

- 1.26 The current threshold for a PDO to be issued is that an attack is ‘one that is imminent’ (not defined) and is ‘*expected to occur, in any event, at some time in the next 14 days*’.

Schedule 6—Issuing authorities for preventative detention orders

- 1.27 The amendment proposed in Schedule 6 would remove the Family Court of Australia from the definition of ‘superior court’ in section 100.1 of the Criminal Code; that is, the list of superior courts in which a retired judge must have served for five years before becoming eligible to be appointed as an issuing authority for continued PDOs.
- 1.28 The amended definition of superior court will include the High Court, the Federal Court of Australia, the Supreme Court of a state or territory, or the District Court (or equivalent) of a state or territory. Serving judges of federal courts, serving judges of state and territory supreme courts, and the President or Deputy President of the Administrative Appeals Tribunal would also be eligible to be appointed as issuing authorities under existing legislation.

Schedule 7—Application of amendments of the Criminal Code

- 1.29 Schedule 7 outlines the application of the proposed amendments to Division 104 and Division 105 of the Criminal Code, including that:
- Schedules 2 and 3 apply to an order made under Division 104 after the commencement of the section where
 - ⇒ the order is requested after commencement, and
 - ⇒ the conduct in relation to that request occurred before or after commencement,
 - despite the amendment made by Schedule 4, matters already afoot in the Family Court of Australia can continue, and
 - the new threshold for PDOs applies to new, extended or continued PDOs.

Schedule 8—Monitoring compliance with control orders

- 1.30 Schedule 8 would create a monitoring powers regime in a new Part IAAB of the *Crimes Act 1914* (Crimes Act) for individuals subject to a control order. The proposed regime is closely modelled on existing provisions in the *Regulatory Powers (Standard Provisions) Act 2014*.

- 1.31 The regime would enable premises and persons to be searched either by consent or on the basis of a warrant, targeted at monitoring compliance with conditions of a control order 'for the purposes of preventing a person from engaging in terrorist act planning or preparatory acts'. Unlike the existing regime, the proposed amendments will not require the issuing authority to be satisfied that an offence has already occurred or is going to be committed.
- 1.32 The amendments enable a wide range of premises to be searched, as long as the control order subject has a 'prescribed connection' with the premises. This includes premises where the person works, conducts volunteer work, or studies.
- 1.33 The amendments include an incidental power to seize evidential material identified in the course of searching premises or a person.

Schedule 9—Telecommunications interception

- 1.34 The amendments proposed in Schedule 9 will allow agencies to apply to an issuing authority for a telecommunications interception warrant for the purposes of monitoring compliance with a control order. The warrant can be issued following the making of a control order but prior to it being served on the person, and telecommunications interception information can be used in any proceedings associated with that control order.
- 1.35 The amendments include deferred reporting arrangements on the use of such warrants.
- 1.36 The amendments also permit intercepted material to be used in connection with PDOs nationally, not just the Commonwealth scheme, and retrospectively validate previous communication or use of telecommunications interception information for a purpose connected with State and Territory PDO legislation.
- 1.37 The amendments also allow the limited use of telecommunications interception information obtained under a warrant relating to an interim control order which is subsequently declared void. However, use is allowed only when necessary to assist in preventing or reducing the risk of a terrorist act being committed, serious harm to a person, serious damage to property or a purpose connected with PDOs nationally.

Schedule 10—Surveillance devices

- 1.38 Schedule 10 will amend the *Surveillance Devices Act 2004* to allow agencies to apply for a surveillance device warrant for the purpose of monitoring

compliance with a control order. The warrant can be issued following the making of a control order but prior to it being served on the person and surveillance device information can be used in any proceedings associated with that control order.

- 1.39 The amendments include deferred reporting arrangements on the use of such warrants.
- 1.40 The amendments also allow the limited use of surveillance device information obtained under a warrant relating to an interim control order which is subsequently declared void. However, use is allowed only when necessary to assist in preventing or reducing the risk of a terrorist act being committed, serious harm to a person, serious damage to property or a purpose connected with PDOs nationally.

Schedule 11–Offence of advocating genocide

- 1.41 Schedule 11 amends the Criminal Code to create a new offence of ‘publicly advocating genocide’ to people inside or outside Australia, carrying a maximum sentence of seven years’ imprisonment. The offence is intended as tool to enable law enforcement to intervene earlier in the radicalisation process.
- 1.42 The term ‘advocates’ is defined in the Bill to mean ‘counsel, promote, encourage or urge’, identical to the terms used in the existing ‘advocating terrorism’ offence.

Schedule 12–Security assessments

- 1.43 Under schedule 12, section 40 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) would be amended to allow ASIO to furnish security assessments directly to states and territories. Currently, security assessments can only be provided directly to a state or territory in respect of a designated special event (such as a major intergovernmental meeting or sporting event) or, in all other cases, indirectly via a Commonwealth agency.

Schedule 13–Classification of publications, films and computer games

- 1.44 Schedule 13 will amend the *Classification (Publications, Films and Computer Games) Act 1995* to align the definition of ‘advocates’ with the Criminal Code definition as amended by the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*. A publication, film or computer

game would therefore advocate the doing of a terrorist act if it 'directly or indirectly counsels, promotes, encourages or urges the doing of a terrorist act'.

Schedule 14–Delayed notification search warrants

- 1.45 Delayed notification search warrants were introduced into the Crimes Act by the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*.
- 1.46 The proposed amendment is intended to clarify that while an eligible officer applying for a delayed notification search warrant must hold the relevant suspicions and belief set out in section 3ZZBA of the Crimes Act, the chief officer and eligible issuing officer need only be satisfied that there are reasonable grounds for the eligible officer to hold the relevant suspicions and belief (that is, the eligible officer is not required to personally suspect or believe).
- 1.47 The amendment brings the issuing requirements for a delayed notification search warrant in line with other search warrant provisions in the Crimes Act.

Schedule 15–Protecting national security information in control order proceedings

- 1.48 Schedule 15 amends the *National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act) to enable the court to make three new types of orders in proceedings for the making, confirming or varying of a control order (new section 38J):
- the subject of the control order and their legal representative may be provided a redacted or summarised form of the national security information. However, the court may consider all of the information contained in the original source document, even where that information has not been provided in the redacted or summarised form,
 - the subject of the control order and their legal representative may not be provided with any information contained in the original source document. However, the court may consider all of that information, or
 - a witness may be called and the information provided by the witness need not be disclosed to the subject of the control order or their legal representative. However, the court may consider all of the information provided by the witness.

- 1.49 The effect of these orders is that it will allow the court to consider information that is not disclosed to the subject of the control order or their legal representative.

Schedule 16–Dealing with national security information in proceedings

- 1.50 The National Security Information Regulation (NSI Regulation) prescribes requirements for accessing, storing, handling, destroying and preparing security classified documents and national security information in proceedings to which the NSI Act applies.
- 1.51 Schedule 16 would amend section 19 of the NSI Act to allow the court to make an order enabling the parties and the Attorney-General to depart from the NSI Regulation in relation to particular national security information.

Schedule 17–Disclosures by taxation officers

- 1.52 Schedule 17 will add an additional exception to the existing exceptions to the offence prohibiting disclosure of protected information by taxation officers in the *Taxation Administration Act 1953*.
- 1.53 Disclosure will be permitted for the purposes of preventing, detecting, disrupting or investigating conduct that relates to a matter of security as defined by section 4 of the ASIO Act.

Rationale for the Bill

- 1.54 In his second reading speech, the Attorney-General outlined the current threat environment facing Australia:

Around 110 Australians are currently fighting in Syria and Iraq. At least 41 Australians are believed to have been killed and approximately 30 Australians have returned from the conflict.

There are about 190 people in Australia actively supporting extremist groups through financing and recruitment or seeking to travel to the conflict in Syria and Iraq.

ASIO is currently investigating several thousand leads and persons of concern. More than 400 of these are high-priority cases. That's more than double the number since early 2014.

Since 12 September 2014, when the National Terrorism Public Alert level was raised to High, 26 people have been charged as a result of 10 counter-terrorism operations around Australia. That's more than one third of all terrorism related arrests since 2001.¹⁰

1.55 The Attorney-General's Department stated that 'Australians currently face the most significant threat from terrorism in our nation's history', pointing in particular to the risks posed by Australians who travel to conflict zones such as Syria and Iraq and then return to Australia.¹¹

1.56 The proposed amendments, as noted in the Attorney-General's second reading speech, respond to recent operational experience. The AFP offered the following rationale for the Bill:

Since the initial raising of the terror threat in September 2014, the operational pace has continued to increase, as has the number of ongoing investigations. In the 2014–15 financial year alone, the AFP conducted eight disruption activities that resulted in 25 people being charged with a number of terrorism and other related offences.

The speed of radicalisation and the trend towards smaller, opportunistic plots, dictate that police must act quickly in the interest of ensuring community safety. This increasingly necessitates taking matters to operational resolution at early stages of an investigation when, and if, an imminent threat has been identified. The tragic murder of Mr Curtis Cheng in October 2015 by a 15 year old highlights the high cost to the community when threats remain undisrupted, as well as underscoring the increasingly young age of those being radicalised.

The fact that measures to prevent and disrupt terror threats addressed by the Bill have been used infrequently does not mean the existence of these tools is unwarranted. Rather, it highlights the commitment of law enforcement agencies, including the AFP, to using such measures judiciously and in accordance with the public interest. That there are only a small number of persons who have been found to warrant the use of these measures thus far is not predictive of the future. With the current terrorism threat level at 'probable', there is likely to be increased need to apply such measures in the near future.

10 Senator the Hon George Brandis QC, Attorney-General, *Senate Hansard*, 12 November 2015, p. 8422.

11 Attorney-General's Department, *Submission 9*, p. 3.

The amendments in the Bill address the increased need to ensure the effective operation of existing preventative and risk mitigation mechanisms, such as control orders and preventative detention orders, while safeguarding accountability and strengthening existing requirements. The AFP considers strengthening these short-medium term preventative tools does not weaken the criminal justice system. On the contrary, it ensures that traditional arrest, charge and criminal prosecution are not used as blunt instruments applied indiscriminately to address the risk a person may pose to the safety of the community.¹²

- 1.57 Describing control orders as a preventative measure, not intended to be punitive or a substitute for prosecution, the AFP went on to state that:

In the current fluid and evolving terrorism threat environment, police may have sufficient intelligence to establish serious concern regarding the threat posed by an individual or group, but may not have sufficient time or evidence to commence criminal prosecution. In these circumstances, control orders provide a mechanism to manage the threat in the short to medium term. Use of a control order is thus considered in conjunction with and complementary to criminal prosecution options, and allows a balance to be achieved between mitigating the risk to community safety posed by an individual and allowing criminal investigations to continue.¹³

- 1.58 Assistant Commissioner Neil Gaughan of the AFP told the Committee at the public hearing:

The legislative reform we are seeking in this bill primarily focuses on control orders and preventive detention orders. These powers have been used infrequently and, in my view, very judiciously. However, whilst the operational environment remains as it is, it is likely there will be an increase in the need to apply these measures in the future. We are seeking the proposed amendments as a result of experience in using these orders over the last 15 months. I should add that, in a couple of circumstances, control orders appear to have a positive influence on behaviour. While this is indeed early days, I think this is a positive, if not unintended, consequence of the system.¹⁴

12 Australian Federal Police, *Submission 3*, p. 4.

13 Australian Federal Police, *Submission 3*, p. 5.

14 Assistant Commissioner Neil Gaughan, National Manager Counter Terrorism, Australian Federal Police, *Committee Hansard*, 14 December 2015, p. 35.

- 1.59 While some submitters reiterated their opposition to or concerns about aspects of Australia's counter-terrorism framework,¹⁵ contributors to the inquiry generally acknowledged the need to safeguard Australia's national security.¹⁶ The Australian Human Rights Commission, for example, commented that:

The Commission recognises the vital importance of ensuring that intelligence and law enforcement agencies have appropriate powers to protect Australia's national security and to protect the community from terrorism. Indeed, such steps are consistent with Australia's international obligations in international law, both under Security Council Resolutions, and to protect the right to life of persons under its jurisdiction. This right is itself a human right, enshrined in article 6 of the International Covenant on Civil and Political Rights (ICCPR).¹⁷

- 1.60 The measures proposed in the Bill did, however, attract detailed comment and are discussed in later chapters.

- 1.61 In addition, the Committee received evidence about community perceptions that Australia's counter-terrorism framework contributes to social division. Representatives of the Muslim Legal Network (NSW) conveyed community concerns about the application of counter-terrorism laws, noting in particular that control orders have to date only been applied to Muslim individuals.¹⁸

- 1.62 Ms Rabea Khan, Vice President of the Muslim Legal Network (NSW) explained the need to understand the context in which these laws

are coming into play, particularly with young children who are at risk of radicalisation. They are dealing with this sense of identity and sense of belonging to Australian or Western society. We are in a context where Islam is the top headline of every newspaper and every news channel. The place of Muslims in Australia is constantly being questioned, and these young people grow in that

15 Gilbert + Tobin Centre for Public Law, *Submission 2*, pp. 1, 7; Law Council of Australia, *Submission 6*, pp. 6, 15, 19 and 28; Joint Media Organisations, *Submission 7*, p. 1; Victorian Bar and Criminal Bar Association of Victoria, *Submission 12*, p. 1; Amnesty International Australia, *Submission 13*, p. 1; Joint councils for civil liberties, *Submission 17*, pp. 4, 11 and 18.

16 Police Federation of Australia, *Submission 1*, p. 1; Australian Lawyers for Human Rights, *Submission 4*, p. 1; Law Council of Australia, *Submission 6*, p. 4; Muslim Legal Network (NSW), *Submission 11*, p. 4; Queensland Government, *Submission 16*, p. 1; Joint councils for civil liberties, *Submission 17*, p. 2.

17 Australian Human Rights Commission, *Submission 5*, p. 3.

18 Mr Zaahir Edries, President, Muslim Legal Network (NSW), *Committee Hansard*, 14 December 2015, pp. 23–24, 26–27; Muslim Legal Network (NSW), *Submission 11*, pp. 3–4.

environment. There is a sense of growing social divisiveness, as groups like Reclaim Australia have shown. When we are talking to young people about the reasons for radicalisation it is relevant that we also address the context in which these children or young people are coming from.¹⁹

- 1.63 Mr Zaahir Edries, President of the Muslim Legal Network (NSW) also commented that:

We have not had the opportunity or the benefit of exhaustive consultation with our community, but what we do get on an ad hoc basis from people, who may have been approached by policing agencies within New South Wales or even ASIO officials, are reports that there seems to be a targeting of young Muslim, potentially Middle Eastern, men and an almost threatening attitude by some – I would not say all – law enforcement agents in the way they question or interact with these people. From the perspective of many young people within the community – and I do not think it is just the Muslim community – there is an over-representation or a saturation of their attitude towards this legislation that it seems geared towards regulating these potentially at risk young people. That is not something we could leave out. It is an underlying theme in many areas within the Muslim community. Accurate or not, it is something that exists and something that is important to those people whom we do not necessarily represent but from whom we receive comment.²⁰

- 1.64 The Victorian Bar and Criminal Bar Association of Victoria similarly argued, in relation to control orders, that ‘many will view the amendment as targeting Muslim youth who already have a strong sense of persecution and alienation’.²¹

Committee comment

- 1.65 The Committee notes that the measures proposed in the Bill reflect recent operational experience and will give effect to some of the

19 Ms Rabea Khan, Vice President, Muslim Legal Network (NSW), *Committee Hansard*, 14 December 2015, p. 27.

20 Mr Edries, *Committee Hansard*, 14 December 2015, p. 26.

21 Victorian Bar and Criminal Bar Association of Victoria, *Submission 12*, p. 2.

recommendations of the 2013 COAG Review of Counter-Terrorism Legislation.

- 1.66 Australia faces a rapidly changing security environment, where the operational pace has and continues to increase, and where the number of ongoing investigations is also increasing. The Explanatory Memorandum points to an increasing number of smaller groups or lone actors engaging in short-term, low-complexity attack plans, with reduced warning times making it more difficult for agencies to detect, investigate and disrupt attacks before they occur. Individuals and groups are more resistant to disruption and the number of persons-of-concern is 'substantially higher than at any point historically'. Further, if and when foreign fighters return, pressure on agencies is expected to increase substantially.²²
- 1.67 The AFP highlighted the importance of short to medium term preventative tools, such as control orders, as effective prevention and risk mitigation tools, arguing they have been used judiciously to date.
- 1.68 Indeed, when the Committee inquired into the control order regime in its consideration of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 and the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 only two control orders had been issued since inception of the regime in 2005. Since then, four further control orders have been issued.
- 1.69 The Committee accepts that the security risks to Australia are increasing and that even a small number of terrorist attacks can have a profound national effect. Measures are required to address the threats terrorism poses to the Australian community. These measures must, however, be balanced and proportionate.
- 1.70 The Committee acknowledges evidence from the Muslim Legal Network (NSW) about community perceptions. Concerns have been raised in this inquiry and previous inquiries about the potential for national security legislation to have a marginalising effect on sections of the Australian community. The Committee reiterates its strong support for efforts to promote social cohesion.
- 1.71 The Committee acknowledges that control orders are intrusive, however accepts that they are a preventative measure that targets conduct. The Committee also points out that laws passed by the Parliament are intended to protect the Australian community as a whole.
- 1.72 This inquiry has proceeded concurrently with the INSLM's review of the safeguards in the control order regime. The Committee's consideration of
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22 Explanatory Memorandum, p. 33.

the Bill has been informed by the INSLM's findings in relation to implementing a system of special advocates into the control order regime. The Committee notes that the INSLM's report focused on this particular matter, and that he will address the remainder of the Prime Minister's reference in a later report.

- 1.73 Matters raised by submitters concerning the content of the Bill are discussed in the following chapters. The Committee has examined the appropriateness of the proposed amendments, including whether the Bill incorporates adequate safeguards and accountability mechanisms.