



**Parliamentary Joint Committee
on Intelligence and Security**

**Inquiry into the
Counter-Terrorism Legislation
Amendment Bill (No. 1) 2014**

**Submission by the
Australian Federal Police**

November 2014

Introduction

The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security inquiry into the *Counter-Terrorism Legislation Amendment Bill (No. 1) 2014* (the Bill).

2. This submission focuses on those measures in Schedule 1 to the Bill which amend the Control Order provisions under Division 104 of the *Criminal Code Act 1995*. The specific measures were foreshadowed in the AFP's October 2014 submission to the Committee's inquiry into the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (the Foreign Fighters Bill). That submission also discussed the changing nature of the terrorist threat environment, and how that change necessitated legislative reform – points which will not be restated here for brevity, but are equally relevant to the Committee's current inquiry.

The four areas discussed in this submission relate to amendments to:

1. Extend the preventative purposes for which a control order can be applied to preventing the provision of support for or the facilitation of terrorist acts or engagement in hostile activity in a foreign country,
2. Streamline the process for seeking the Attorney-General's consent to apply for a control order,
3. Provide guidance to the court on matters to consider when setting a date for the confirmation of a control order, and
4. Change the way that conditions for a proposed order are considered, so that they are treated as an integrated whole, rather than individually.

Extending preventative purposes

3. As discussed in our submission to the Committee on its inquiry into the Foreign Fighters Bill, individuals engaging in behaviours that support or facilitate terrorism or foreign incursions pose as great a risk as those directly engaging in terrorist acts or foreign incursions. The AFP considers that the overriding purpose of the control order regime should be to prevent terrorism. Preventing or disrupting persons who provide critical support to those activities is equally important and effective as preventing or disrupting those directly involved in those acts of terrorism or hostility. This means targeting both persons directly committing acts of terrorism or hostile activities overseas (which the regime currently addresses), and persons who provide critical support to those activities (without whom the act or hostility could not occur).

4. Based on current and ongoing assessment of the operational environment, the AFP has identified serious risks that control orders would greatly assist in mitigating. However, the control order regime, even as recently amended, will not be available to manage those who seek to facilitate or support terrorist acts or persons travelling overseas to participate in hostile activities. The following examples demonstrate this limitation:

Case Study 1

A person of interest (POI) is an Australian citizen who has returned from Syria, where it is suspected the person engaged in hostile activities. There is evidence that, since returning to Australia, the person is working to radicalise others, including minors.

The evidence indicates, to the balance of probabilities, that the POI is using his experience and contacts to facilitate the travel of one or more radicalised youths to a conflict zone to engage in hostile activities. However, there is not currently sufficient admissible evidence to support criminal charges being laid.

Case Study 2

A POI is an Australian who, evidence suggests, is facilitating the collection of funds or resources in Australia. The evidence indicates, to the balance of probabilities, that one or more persons who have been urged, incited, promoted or supported to commit a terrorist act in Australia are being provided funds and other support to do so.

The evidence is insufficient to establish a terrorism financing or other relevant charge (ie. it is not capable of meeting the criminal standard of proof – beyond reasonable doubt).

Case Study 3

The POI is an Australian citizen with extensive contacts in Turkey / Syria. The evidence indicates, to the balance of probabilities, that this person has assisted in purchasing airline tickets of Australian citizens and arranged for his Turkish / Syrian contacts to meet those Australians in Turkey and facilitated their travel into Syria to fight for ISIS.

5. Under the current construction of control order provisions, the AFP would not be in a position to apply for a control order in relation to the POIs in these three case studies. An extension of the regime to prevent the facilitation or support of engagement in hostile activity in a foreign country would allow the AFP to apply to the court for an order that may assist in mitigating the risk, for example by imposing conditions prohibiting certain associations, and requiring the subject to report to the AFP. Where there is insufficient information to proceed with a criminal charge, there are no options available to the AFP to manage the identified and ongoing risk in such circumstances.

6. The AFP is not seeking to reduce the threshold for the court to agree to issue the control order, but considers it critically important the regime be extended to those supporting or facilitating terrorist acts or engagement in hostile activities overseas.

Streamlining the process for seeking the Attorney-General's consent to apply for a control order

7. The AFP is now in the position of preparing control order applications, in an environment in which we must act quickly to manage the ongoing threat to the community. This requires the AFP to manage a known terrorist threat, while working through the information that has been collected as the result of search warrants, and information that is still being collected by investigators and intelligence officers.

8. Preparing the information the legislation requires to be given to the Attorney-General (for consent) takes time. Currently, the legislation practically requires the AFP to have its entire case ready – akin to a sizeable brief of evidence – before the AFP can apply to the court for an interim order. It also requires the Attorney-General to consider all of the information that would be provided to the court, despite the fact that the Attorney-General is only required to consent to an application being made. The time taken to consider this information (which may run to more than 100 pages) delays the ability to lodge an application with the court, consequently delaying the commencement of the control order conditions.

9. The AFP wants to ensure that appropriate safeguards, such as the requirement for the Attorney-General to provide consent or for the court to consider the application, remain in force. However, the AFP considers that the procedural requirements for the initial seeking of consent can be streamlined, without diminishing the level of accountability under the control order regime.

Guidance to the court on matters to consider when setting a date for confirmation of the control order

10. Currently, the court has no specific guidance on what matters to consider when determining what is 'practicable' in terms of setting a date for the confirmation of a control order. The AFP considers it important to make clear on the face of the legislation that there may be time required for both the applicant and respondent to prepare information to support the confirmation.

11. In the case of the AFP, that may include ensuring that supporting information is in an admissible format, or to:

- allow authorities time to collect and analyse information relating to the individual;
- allow translation of information that may be necessary; and
- await the results of information from other police inquiries (including from outside Australia).

12. The respondent may require time to seek translation of the control order, seek appropriate legal representation, or collect other materials to support their case.

Considering conditions as an integrated whole, rather than individually

13. The conditions and obligations the AFP may seek to impose on a person are targeted at controlling a specific behaviour (or set of behaviours) to reduce the risk of a terrorist act. Each condition or obligation is interdependent and builds on the others, so that the set or series of conditions and obligations, taken together are reasonably necessary and adapted for the purpose of protecting the public from a terrorist act.

14. By considering the conditions and obligations as a whole – which supports the integrated approach the AFP takes to considering the application of such conditions and obligations, the issuing court is in a better position to assess the overall effect of the conditions / obligations on the individual, the level of imposition the conditions / obligations have on the individual, thus ensuring the rights of the individual are properly balanced with the requirements for law enforcement to prevent and ameliorate the risk of terrorist act(s).

Summary

15. The AFP strongly supports the proposed amendments to the control order regime in Schedule 1 of the Bill, and considers the amendments are measured, proportionate and accountable improvements required to ensure that the AFP has the necessary tools to protect the Australian community from terrorist threats and prevent those in Australia who would support or facilitate the commission of hostile activities overseas.

16. The AFP thanks the Committee for the opportunity to provide this submission, and hopes that it will assist the Committee in its consideration of these important reforms.