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The Parliament of the Commonwealth of Australia

**Advisory report on the  
Counter-Terrorism  
Legislation Amendment Bill  
(No. 1) 2014**

**Parliamentary Joint Committee on Intelligence and Security**

November 2014  
Canberra

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## **Membership of the Committee**

**Chair** Mr Dan Tehan MP

**Deputy Chair** Hon Anthony Byrne MP

**Members** Mr Andrew Nikolic AM, CSC, MP      Senator David Bushby  
Hon Tanya Plibersek MP      Senator the Hon Stephen Conroy  
Hon Philip Ruddock MP      Senator the Hon John Faulkner  
Hon Bruce Scott MP      Senator David Fawcett  
Senator the Hon Penny Wong





## **Terms of reference**

On 29 October 2014, the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 was referred to the Committee by the Attorney-General.



## List of abbreviations

ADF	Australian Defence Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGO	Australian Geospatial-Intelligence Organisation
ASD	Australian Signals Directorate
ASIO	Australian Security Intelligence Organisation
ASIO Act	<i>Australian Security Intelligence Organisation Act 1979</i>
ASIS	Australian Secret Intelligence Service
COAG	Council of Australian Governments
Criminal Code	<i>Criminal Code Act 1995</i>
Foreign Fighters Bill	Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014
IGIS	Inspector-General of Intelligence and Security
INSLM	Independent National Security Legislation Monitor
IS	Islamic State
ISA/ IS Act	<i>Intelligence Services Act 2001</i>





## List of recommendations

The Committee's recommendations appear in the order in which the corresponding measures appear in the report. They do not reflect the priority that the Committee places on each issue.

### 2 Schedule 1 – Proposed amendments to the *Criminal Code Act 1995*

#### Recommendation 1

The Committee recommends that the Government finalise the appointment of the Independent National Security Legislation Monitor (INSLM) as a matter of absolute urgency.

Further, the Committee recommends that, in light of the proposed expansion of the control order regime, the Government task the newly appointed INSLM to consider whether the additional safeguards recommended in the 2013 Council of Australian Governments Review of Counter-Terrorism Legislation should be introduced. Particular consideration should be given to the advisability of introducing a system of 'Special Advocates' into the regime.

#### Recommendation 2

The Committee recommends that, to the extent possible, the terms 'supports' and 'facilitates' in the proposed amendments to the control order regime be based on language in the existing Criminal Code and that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 and its Explanatory Memorandum be amended to reflect this.

#### Recommendation 3

The Committee recommends that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to require that, when seeking the Attorney-General's consent to request an interim control order, the Australian Federal Police must provide the Attorney-General with a

statement of facts relating to why the order should be made, and any known facts as to why it should not be made.

#### **Recommendation 4**

The Committee recommends that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to require that the Attorney-General's consent to an urgent interim control order be obtained within eight hours of a request being made by a senior member of the Australian Federal Police.

#### **Recommendation 5**

The Committee recommends that proposed section 104.4 in the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to ensure that an issuing court retains the authority to examine the individual obligations, prohibitions and restrictions in a draft control order to determine whether each condition is reasonably necessary, and reasonably appropriate and adapted.

#### **Recommendation 6**

The Committee recommends that proposed paragraphs 104.3(d) and 104.23(2)(b) in the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to retain the current requirement that the Australian Federal Police explain why each of the obligations, prohibitions and restrictions proposed in a draft control order should, or should not, be imposed on the person.

### **3 Schedule 2 – Proposed amendments to the *Intelligence Services Act 2001***

#### **Recommendation 7**

The Committee recommends that the Explanatory Memorandum to the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to provide further information about how a class of Australian persons will be defined.

The Committee further recommends that the Explanatory Memorandum be amended to make it clearer that any Australian person included in a specified class of Australian persons agreed to by the Attorney-General, must be involved in an activity or activities that pose a threat to security as defined by the *Australian Security Intelligence Organisation Act 1979*.

**Recommendation 8**

The Committee recommends that, subject to passage of the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, the Inspector-General of Intelligence and Security provide close oversight of:

- all ministerial authorisations given orally under proposed subsection 9A(2) of the *Intelligence Services Act 2001*, and
- all oral agreements provided by the Attorney-General under the proposed amendments to paragraph 9(1A)(b) of the *Intelligence Services Act 2001*.

**Recommendation 9**

The Committee recommends that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to require an agency head to notify the relevant responsible Minister of an authorisation given by the agency head under proposed section 9B of the *Intelligence Services Act 2001* within eight hours.

Copies of the authorisation and other documents should then be provided to the Minister and the Inspector-General of Intelligence and Security as outlined in proposed subsections 9B(5) and 9B(6) of the *Intelligence Services Act 2001*.

**Recommendation 10**

The Committee recommends that, subject to passage of the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, the Inspector-General of Intelligence and Security be required to oversight within 30 days all emergency authorisations given by agency heads under proposed section 9B of the *Intelligence Services Act 2001*.

**Recommendation 11**

The Committee recommends that the Inspector-General of Intelligence and Security be required to notify the Parliamentary Joint Committee on Intelligence and Security within 30 days of all emergency authorisations issued under proposed section 9B and inform the Committee whether the *Intelligence Services Act 2001* was fully complied with in the issuing of the authorisation.

**Recommendation 12**

The Committee recommends that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be amended to require an agency head to notify the Attorney-General within eight hours of an emergency authorisation 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.

Written advice should then be provided to the Attorney-General as soon as practicable and within 48 hours as outlined in proposed subsection 9C(5) of the *Intelligence Services Act 2001*.

#### **Recommendation 13**

The Committee recommends that, subject to passage of the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, the Inspector-General of Intelligence and Security be required to oversight within 30 days, all instances in which agreement to an emergency authorisation from the Attorney-General was required and not obtainable, and instead:

- authorisation was given with the agreement of the Director-General of Security, or
- authorisation was given without the agreement of either the Attorney-General or the Director-General of Security.

#### **Recommendation 14**

The Committee recommends that the Inspector-General of Intelligence and Security be required to notify the Parliamentary Joint Committee on Intelligence and Security within 30 days of all instances in which agreement to an emergency authorisation from the Attorney-General was required and not obtainable, and instead:

- authorisation was given with the agreement of the Director-General of Security, or
- authorisation was given without the agreement of either the Attorney-General or the Director-General of Security

and inform the Committee whether the *Intelligence Services Act 2001* was fully complied with in the issuing of the authorisation.

#### **Recommendation 15**

The Committee recommends that the *Intelligence Services Act 2001* be amended to clarify that 'responsible minister' refers only to the Prime Minister, Defence Minister, Foreign Minister, and Attorney-General, or those acting in those positions.

**Recommendation 16**

The Committee commends its recommendations to the Parliament and recommends that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be passed.

