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MEDIA RELEASE

**GOVERNMENT RESPONSE TO COMMITTEE REPORT ON THE
COUNTER-TERRORISM LEGISLATION AMENDMENT BILL (NO. 1) 2014**

The Government has responded to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) *Advisory report on the Counter-Terrorism Legislation Amendment (No. 1) Bill 2014* (the Bill).

The PJCIS made 16 unanimous recommendations, including, importantly, that the Bill be passed.

Following consultation with all relevant agencies, the Government has decided to accept, or accept-in-principle, all of the recommendations in the report. Thirteen of the recommendations will result in minor amendments to the Bill and Explanatory Memorandum. The other two recommendations will result in small changes to administrative arrangements to enhance operational and administrative safeguards and oversight mechanisms. The PJCIS's final recommendation is that the Bill be passed. The Government will move the amendments in the Senate this week.

This Bill is part of the Government's comprehensive response to the heightened security threat environment, both internationally and at home, in particular to that posed by Australians participating in, and supporting, foreign conflicts or undertaking training with extremist groups.

It will enhance the ability of Australia's law enforcement and intelligence agencies to take timely action in relation to Australian persons who are, or are suspected of being, involved in terrorism-related activity. This includes persons who are enabling or supporting terrorist activity and persons who are suspected of fighting with terrorist organisations in foreign conflicts. The Bill will address pressing legislative limitations identified in the context of present or recent operational activities (both domestic counter-terrorism investigations and Australian Defence Force (ADF) activity against the ISIL terrorist organisation in Iraq).

The Bill will enhance the control order regime in the *Criminal Code Act 1995* to allow the Australian Federal Police to seek control orders in relation to a broader range of individuals of security concern, namely those who support or facilitate terrorists and foreign fighters. Amendments to the *Intelligence Services Act 2001* will enhance the ability of the Australian Secret Intelligence Service to assist the ADF in support of military operations.

The Government recognises the valuable bipartisan work of the Committee, particularly the Chair, Liberal MP, Dan Tehan and Deputy Chair, Labor MP Anthony Byrne, and thanks everyone who participated in this inquiry.

The Government's response to the Committee's recommendations follows.

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Recommendation	Government response
Schedule 1—Criminal Code Act 1995 amendments	
<p>Recommendation 1</p> <p>Appointment of the Independent National Security Legislation Monitor and consideration of additional safeguards</p> <p>The Committee recommends that the Government finalise the appointment of the Independent National Security Legislation Monitor (INSLM) as a matter of absolute urgency.</p> <p>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.</p>	<p>The Government accepts this recommendation</p> <p>The Government firmly supports independent oversight of national security and counter-terrorism legislation. The Government has decided to retain the Office of the Independent National Security Legislation Monitor and will announce a new Monitor shortly.</p> <p>The Government supports the next Monitor considering the recommendations of the Council of Australian Governments review in light of the proposed expansion of the control order regime and will task the next Monitor on their appointment with conducting such a review.</p>
<p>Recommendation 2</p> <p>The terms ‘supports’ and ‘facilitates’ to be based on language in the existing Criminal Code</p> <p>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.</p>	<p>The Government accepts this recommendation in-principle</p> <p>The Government agrees that the language in the amendments should be consistent with the existing language in the Criminal Code. However, the Government considers the Bill is already consistent with how the terms ‘supports’ and ‘facilitates’ are used in the Criminal Code.</p> <p>The Criminal Code uses these terms but does not define them. That is, the terms have their ordinary meaning and are appropriately left for the courts to determine. This is exactly how the terms are treated in the Bill.</p> <p>Since the Government understands the intent of the Committee is to ensure greater explanation around the terms ‘supports’ and ‘facilitates’, it will amend the Explanatory Memorandum to provide additional information while remaining consistent with language in the Criminal Code.</p>

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<p>Recommendation 3</p> <p>Requirement for the Australian Federal Police to provide a statement of facts when seeking the Attorney-General's consent to request an interim control order</p> <p>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.</p>	<p>The Government accepts this recommendation The Government will amend the Bill to increase the information the AFP must provide to the Attorney-General when seeking consent to request an issuing court make an interim control order.</p> <p>The Bill currently requires the AFP to provide the Attorney-General with:</p> <ul style="list-style-type: none"> • a draft of the interim control order to be requested; • information (if any) that the member has about the person's age; and • a summary of the grounds on which the order should be made. <p>The Bill will be amended to require the AFP to also provide:</p> <ul style="list-style-type: none"> • a statement of facts relating to why the order should be made; and • if the member is aware of any facts relating to why the order should not be made—a statement of those facts.
<p>Recommendation 4</p> <p>Attorney-General's consent for urgent control orders to be obtained within eight hours</p> <p>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.</p>	<p>The Government accepts this recommendation The Government will amend the Bill so 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. This reflects the view of the Committee, and some witnesses, that 8 hours is sufficient, even if the Attorney-General is travelling and temporarily unavailable for the purposes of providing subsequent consent.</p>
<p>Recommendation 5</p> <p>Issuing court to examine individual obligations, prohibitions and restrictions</p> <p>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.</p>	<p>The Government accepts this recommendation The Government will amend the Bill so that the court must examine and be satisfied that each obligation, prohibition or restriction is reasonably necessary, reasonably appropriate and adapted to achieving one of the purposes of the control order regime.</p>

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<p>Recommendation 6</p> <p>AFP to explain each of the obligations, prohibitions and restrictions</p> <p>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.</p>	<p>The Government accepts this recommendation The Government will amend the Bill so that the AFP must explain why each obligation, prohibition or restriction requested in the order should, or should not, be imposed on the person.</p>
Schedule 2—Intelligence Services Act 2001 amendments	
<p>Recommendation 7</p> <p>Ministerial authorisations – ASIS assistance to the ADF – classes of Australian persons</p> <p>The Committee recommends that the Explanatory Memorandum to the Counter-Terrorism Legislation Amendment Bill (No. 1) be amended to provide further information about how a class of Australian persons will be defined.</p> <p>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 <i>Australian Security Intelligence Organisation Act 1979</i>.</p>	<p>The Government accepts this recommendation The Government will amend the Explanatory Memorandum to further explain how classes of Australian persons will be defined for the purpose of Ministerial authorisations for the Australian Secret Intelligence Service (ASIS) to provide assistance to the Australian Defence Force in support of military operations. In practice, this will be involvement, or likely involvement, in activities which are or are likely to be a threat to security. These amendments will explain that such assistance (including the relevant class of Australian persons) must be specifically requested by the Defence Minister, and that the Foreign Minister must be satisfied that the class of persons is involved, or is likely to be involved, in an activity of the type specified in paragraph 9(1A)(a).</p> <p>The amendments will further explain that a class of persons is defined solely by reference to the involvement, or likely involvement, of all of its members in activities of the type specified in that paragraph, and not the personal or situational characteristics of individual persons (such as religious, political or ideological orientation, ethnicity, or mere presence in a particular location).</p> <p>The Government will also amend the Explanatory Memorandum to further explain that the Attorney-General's agreement to a class of persons can only be provided where the entire class of persons is involved, or is likely to be involved, in an activity or activities that are, or are likely to be, a threat to security as defined in section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> (ASIO Act). In particular, the</p>

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	Government will clarify that the class of persons is defined solely by reference to the involvement, or likely involvement, of all of its members in an activity that is, or is likely to be, a threat to security, and not the personal or situational characteristics of individual persons (such as religious, political or ideological orientation, ethnicity, or mere presence in a particular location).
<p>Recommendation 8</p> <p>Oral emergency Ministerial authorisations and oral agreements by the Attorney-General</p> <p>The Committee recommends that, subject to the passage of the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, the Inspector-General of Intelligence and Security provide close oversight of:</p> <ul style="list-style-type: none"> • all Ministerial authorisations given orally under proposed subsection 9A(2) of the <i>Intelligence Services Act 2001</i>; and • all oral agreements provided by the Attorney-General under the proposed amendments to paragraph 9(1A)(b) of the <i>Intelligence Services Act 2001</i>. 	<p>The Government accepts this recommendation While recognising that this recommendation is principally a matter for the Inspector-General of Intelligence and Security (IGIS), the Government strongly supports the notion that the oral emergency authorisation provisions of the <i>Intelligence Services Act 2001</i> (IS Act) should, if enacted, be subject to close, independent oversight of the IGIS. The Government recognises the Committee's comments that the proposed amendments represent a substantial change to the Ministerial authorisations regime, as well as the evidence of the IGIS to the inquiry that she intends to pay close attention to emergency authorisations, and that the <i>Inspector-General of Intelligence and Security Act 1986</i> (IGIS Act) provides a sufficient legislative basis for such oversight.</p> <p>The Government notes, for completeness, that the statutory mandate of the IGIS relates to the activities of intelligence agencies rather than the decisions of the Ministers. Therefore the IGIS's oversight will address agencies' actions in applying for and implementing oral emergency authorisations, including compliance with the obligation to create a written record as soon as practicable within 48 hours of issuing.</p>

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<p>Recommendation 9</p> <p>Emergency authorisations by agency heads</p> <p>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 <i>Intelligence Services Act 2001</i> within eight hours.</p> <p>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 paragraphs 9B(5) and 9B(6) of the <i>Intelligence Services Act 2001</i>.</p>	<p>The Government accepts this recommendation The Government accepts the Committee's view that a shorter timeframe for Ministerial notification would give stronger effect to the paramount principle of Ministerial responsibility and accountability for authorisations issued under the IS Act. Accordingly, the Government will move amendments to the Bill, which will add a further requirement that an agency head must notify the relevant responsible Minister within eight hours after giving the authorisation.</p>
<p>Recommendation 10</p> <p>Emergency authorisations by agency heads</p> <p>The Committee recommends that, subject to passage of the Counter-Terrorism Legislation Amendment Bill (No. 1), 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 <i>Intelligence Services Act 2001</i>.</p>	<p>The Government accepts this recommendation The Government agrees that it is important for the IGIS to conduct oversight of emergency authorisations issued by agency heads, recognising their exceptional nature, and the expectation that they will be issued rarely. The Government will move amendments to the Bill to provide a requirement that such oversight be conducted within 30 days to enable the Government and the Parliament to have visibility of emergency agency head authorisations.</p> <p>The Government notes that such a statutory requirement would be exceptional, given that an important part of the statutory independence of the Office of the IGIS is the discretion of the IGIS to determine his or her priorities within the statutory mandate of the IGIS Act. However, following consultation with the IGIS, the Government has determined that amendments to implement recommendation 10 would not unduly compromise this independence given the extraordinary and rare nature of the emergency authorisation power proposed to be conferred by section 9B.</p>
<p>Recommendation 11</p> <p>Emergency authorisations by agency heads</p> <p>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</p>	<p>The Government accepts this recommendation</p> <p>The Government agrees that it is appropriate that the Committee is made aware that an emergency authorisation has been issued by an agency head and, whether or not, in the view of the IGIS, the agency head complied with the requirements of the IS Act. To avoid doubt, and consistent with the Committee's</p>

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<p>emergency authorisations issued under proposed section 9B and inform the Committee whether the <i>Intelligence Services Act 2001</i> was fully complied with in the issuing of the authorisation.</p>	<p>statutory functions, the IGIS's notification would be limited to the IGIS's view on the compliance of agencies' actions with legislative requirements and in no way relate to the disclosure of operational matters.</p> <p>Consistent with the nature of the Office of the IGIS (as an independent, statutory office within the executive Government that reports to relevant Ministers and the Parliament via annual reports), the Government will move amendments that require the IGIS to report to the relevant responsible Minister (within 30 days of emergency authorisations being issued) on whether the IGIS is satisfied with the legality of the authorisation or if there are any compliance concerns. The amendments will include a requirement that, when notifying the Minister, the IGIS must provide the Committee with a copy of the conclusion about the legality of the authorisation.</p> <p>The Government further notes that, consistent with the statutory mandate of the IGIS to conduct oversight of intelligence agencies and not the actions of Ministers, the view of the IGIS would be limited to compliance by the agency head with the requirements of proposed section 9B.</p>
<p>Recommendation 12</p> <p>Emergency agreement to authorisations – Director-General of Security</p> <p>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:</p> <ul style="list-style-type: none"> • with the agreement of the Director-General of Security; or • without the agreement of either the Attorney-General or the Director-General of Security. <p>Written advice should be provided as soon as practicable and within 48 hours as outlined in proposed paragraph 9C(5) of the <i>Intelligence Services Act 2001</i>.</p>	<p>The Government accepts this recommendation For the reasons set out in response to recommendation 9 (emergency authorisations) the Government agrees that a shorter notification timeframe would give stronger effect to the paramount principle of Ministerial responsibility and accountability for agreements to authorisations under the IS Act, where the relevant Australian person or class of persons is, or is likely to be, involved in activities that are, or are likely to be, a threat to security as defined in the ASIO Act.</p> <p>The Government will move amendments to the Bill to add a further requirement that an agency head must notify the Attorney-General within eight hours after giving the notification.</p>
<p>Recommendation 13</p> <p>Emergency agreement to authorisations – Director-General of Security</p> <p>The Committee recommends that, subject to the passage of the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, the Inspector-General of Intelligence and</p>	<p>The Government accepts this recommendation Consistent with the Government's response to recommendation 10 (emergency authorisation by agency heads), the Government agrees that it is appropriate for the IGIS to conduct oversight of emergency agreements to the issuing of</p>

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<p>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:</p> <ul style="list-style-type: none"> • authorisation was given with the agreement of the Director-General of Security; or • authorisation was given without the agreement of the Attorney-General or the Director-General of Security. 	<p>authorisations by the Director-General of Security (where the Attorney-General is not readily available or contactable). Such oversight recognises the exceptional nature of this agreement and the expectation that proposed section 9C would be relied upon rarely. The Government will move amendments to the Bill to require that such oversight occur within 30 days.</p> <p>The Government notes that such a statutory requirement would be exceptional, given that an important part of the statutory independence of the Office of the IGIS is the discretion of the IGIS to determine his or her priorities within the statutory mandate of the IGIS Act. However, following consultation with the IGIS, the Government has determined that amendments to implement recommendation 13 would not unduly compromise this independence, given the extraordinary and rare nature of the emergency agreement power proposed to be conferred by section 9C.</p>
<p>Recommendation 14</p> <p>Emergency agreement to authorisations – Director-General of Security</p> <p>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:</p> <ul style="list-style-type: none"> • 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 <p>and inform the Committee whether the <i>Intelligence Services Act 2001</i> was fully complied with in the issuing of the authorisation.</p>	<p>The Government accepts this recommendation</p> <p>Consistent with the Government's response to recommendation 11 (emergency authorisation provided by agency heads), the Government agrees that it is appropriate the Committee is made aware of emergency agreements provided by the Director-General of Security (or the issuing of emergency authorisations in the absence of such agreement) and whether or not, in the view of the IGIS, the agency head complied with the requirements of the IS Act. To avoid doubt, and consistent with the Committee's statutory functions, this notification would be limited to the IGIS's views on the compliance of agencies' actions with legislative requirements and in no way relate to the disclosure of operational matters.</p> <p>Consistent with the nature of the Office of the IGIS (as an independent, statutory office within the executive Government that reports to relevant Ministers and the Parliament via annual reports), the Government will move amendments that require the IGIS to report to the relevant responsible Minister (within 30 days of emergency authorisations being issued) on whether the IGIS is satisfied with the legality of the authorisation or if there are any compliance concerns. The amendments will include a requirement that, when</p>

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	<p>notifying the Minister, the IGIS must provide the Committee with a copy of the conclusion about the legality of the authorisation.</p> <p>The Government further notes that, consistent with the statutory mandate of the IGIS to conduct oversight of intelligence agencies and not the actions of Ministers, the view of the IGIS would be limited to compliance by the agency head with the requirements of proposed section 9C.</p>
<p>Recommendation 15</p> <p>Responsible Minister' for the Intelligence Services Act agencies</p> <p>The Committee recommends that the <i>Intelligence Services Act 2001</i> be amended to clarify that the 'responsible Minister' refers only to the Prime Minister, Defence Minister, Foreign Minister and Attorney-General, or those acting in those positions.</p>	<p>The Government accepts this recommendation The Government supports the need for clarity in the definition of relevant responsible Ministers in the IS Act, and will move amendments to the Bill to ensure that each Minister referred to in this Act is taken to be the senior portfolio Minister alone.</p>
Passage of the Bill	
<p>Recommendation 16</p> <p>Passage of the Bill</p> <p>The Committee commends its recommendations to the Parliament and recommends that the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 be passed.</p>	<p>The Government accepts this recommendation</p> <p>The Government thanks the Committee for its thorough and bipartisan consideration of the Bill and for its ongoing contribution to recent reforms of Australia's counter-terrorism and intelligence legislation. The Government agrees that the Committee's recommendations will enhance the integrity of the measures in the Bill and their operation and oversight in practice.</p>