

### New counter-terrorism legislation

By Caroline Dobraszczuk

The Australian Government has been busy passing and considering many new laws in relation to counter terrorism. The first set of laws, contained in the *National Security Legislation Amendment Bill (No 1) 2014* was passed by both Houses on 1 October 2014. This bill mainly amends the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) and the *Intelligence Services Act 2001* (the IS Act). The attorney general stated in his second reading speech for this bill that 150 Australians, both in Australia and outside Australia, are involved in the conflicts in Syria and Iraq '...from engagement in fighting to providing support such as funding or facilitation.' He stated that the bill '...contains measures to address practical limitations in the current legislation, which were largely identified by the Parliamentary Joint Committee on Intelligence and Security (PJCS) in its *Report on Potential Reforms of Australia's National Security Legislation*, as tabled on 24 June 2013. Some of the main new laws are as follows.

ASIO's warrant based powers, to search, access computers, use surveillance devices and inspect postal or delivery articles, are amended to address some practical limitations. For example, the definition of 'computer' is expanded to mean more than one computer or more than one computer network. Also, the definition of 'listening device' is amended to mean 'any device capable of being used, whether alone or in conjunction with any other device, to overhear, record, monitor or listen to sounds...' An important amendment is to provide for a new 'multiple powers warrant scheme' which will enable ASIO to obtain a single warrant authorising the exercise of multiple powers in relation to a target. For example, the new proposed Subdivision G provides for the minister to issue an identified person warrant in relation to a person and give conditional approval for ASIO to do one or more of the following: access records at premises; access data in computers; use one or more surveillance devices; access postal articles that are in the post; and access articles that are being delivered by a delivery service provider. The subdivision then goes on to set out what ASIO can do in relation to each of these issues once it is authorized to do so by the minister or the director general. There is a stringent test for authorisation, e.g. the minister or director-general has to be satisfied, on reasonable grounds, that doing the thing or things under the warrant will substantially assist the collection of intelligence relevant to the prejudicial activities of the identified person.

ASIO will have the capability to conduct covert intelligence operations. Consequently there will be immunity for participants in covert operations. This is similar to Part 1AB of

the *Crimes Act 1914* which applies to Australian Federal Police operations.

The bill clarifies the legislative basis for certain cooperative information sharing activities of ASIO and to refer certain matters to law enforcement agencies for investigation.

There will be new offences relating to unauthorised dealings with an intelligence related record, including copying, transcription, removal and retention. These offences will have a maximum penalty of three years' imprisonment.

The second set of laws are contained in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*. The bill will amend several Acts. The attorney-general in the second reading speech stated that 'The rapid resurgence in violent extremism and the participation in overseas conflicts by some Australians present new and complex security challenges for our nation. The ongoing conflicts in Syria and Iraq are adding to this challenge and the number of Australians who have sought to take part, either by directly participating in these conflicts or providing support for extremists fighting there, is unprecedented.' Some of the main proposed amendments are as follows:

The bill provides for the control order regime to apply to returning foreign fighters and to those convicted of terrorism offences where it would substantially assist in preventing a terrorist attack.

There is to be a new regime of 'delayed notification search warrants.' This will allow the AFP to covertly enter and search premises without the knowledge of the occupier of the premises and then provide notification at a later stage. The purpose of this is to keep an investigation confidential.

There are to be amendments to the *Foreign Evidence Act 1994* which prescribe great discretion to the court in deciding whether to admit evidence obtained from overseas, in terrorism related proceedings.

The bill provides for a new offence of 'advocating terrorism'. That is, a person will commit an offence if they intentionally counsel, promote, encourage or urge the doing of a terrorist act or the commission of a terrorism offence. The offence carries a maximum penalty of five years. There does not have to be a direct link to an actual act of terrorism or violence being carried out, just advocating terrorism.

There will also be a new offence of entering a foreign country with the intention of engaging in a hostile activity; also an offence of entering in or remaining in an area declared by the

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foreign affairs minister to be an area where a listed terrorist organisation is engaging in a hostile activity. The offence of entering a declared area will not apply if the person enters the declared area solely for legitimate purposes which are specified in proposed section 119.3(3). The legitimate purposes include providing aid of a humanitarian nature or making a news report where working as a journalist.

There are proposed new laws to allow Customs officers to detain a person where the Customs officer has reasonable grounds to suspect that the person is intending to commit a Commonwealth offence or is a threat to national security or the security of a foreign country. The attorney-general stated in the second reading speech, in relation to these particular new laws that "These amendments play a crucial role in Australia's defence against foreign fighters, as they prevent individuals from travelling outside Australia where their intention is to commit acts of violence."

The minister for immigration will be able to cancel the visa of

a person who is offshore where ASIO suspects that the person might be a risk to security.

The minister for foreign affairs will be able to temporarily suspend a passport to prevent a person who is in Australia from travelling overseas where ASIO has security concerns about that person. ASIO will also be able to prevent persons who they have security concerns about, from going overseas to participate unlawfully in foreign conflicts.

The bill also proposes for laws to cancel the welfare payments for people about which there are security concerns. The attorney general stated in the second reading speech that 'Like the new declared area offence, my expectation is that this new power will only be used in exceptional circumstances where welfare payments are assisting or supporting criminal activity.'

Further consideration of this bill was adjourned to 27 October 2014. There is no doubt that both sets of laws are controversial yet very interesting, and clearly display the federal government's response to the incredible times we live in.

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