National security legislation in the 44th and 45th Parliaments: a quick guide

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This quick guide provides summaries of, and links to key resources on, Government Bills passed in the 44th and 45th Parliaments that related to:

• introducing or expanding counter-terrorism or national security-related powers
• introducing or expanding terrorism or national security-related offences
• protecting critical infrastructure or
• the functions and powers of the six agencies comprising the Australian Intelligence Community.¹

It provides the same information for Government national security Bills that lapsed when the 45th Parliament was prorogued, and which may be re-introduced in the 46th Parliament.²

Government national security Bills passed in the 44th and 45th Parliaments

National Security Legislation Amendment Act (No. 1) 2014

Summary
The main purpose of the Act was to implement recommendations made in chapter 4 of the PJCIS’s 2013 Report of the Inquiry into Potential Reforms of Australia’s National Security Legislation. Key changes included:

• updating and expanding the Australian Security Intelligence Organisation’s (ASIO) powers, including by introducing ‘identified person’ warrants and ‘special intelligence operations’
• updating and expanding the Australian Secret Intelligence Service’s (ASIS) powers and

¹. The summaries of the Acts are, for the most part, based closely on the descriptions of the Bills in the ‘Bills Digest at a glance’ or ‘Purpose of the Bill’ sections of the relevant Bills digests, adapted as necessary to take account of any amendments to the Bill during its passage through Parliament.

². The Parliamentary Joint Committee on Intelligence and Security also considered several Bills that did not necessarily fit neatly into the above parameters: the Law Enforcement Legislation Amendment (State Bodies and Other Measures) Bill 2016, the Criminal Code Amendment (War Crimes) Bill 2016, the Home Affairs and Integrity Agencies Legislation Amendment Bill 2018, and the Foreign Influence Transparency Scheme Bill 2018.

The summaries of these Bills are taken, with minor adaptations, from the ‘Bills Digest at a glance’ or ‘Purpose of the Bill’ sections of the relevant Bills digests (except where none was published before the Bill lapsed).
• updating existing offences and increasing penalties, and creating new offences, in relation to the protection of intelligence-related information.

Key references
• National Security Legislation Amendment Act (No. 1) 2014
• ‘National Security Legislation Amendment Bill (No. 1) 2014’, Bill homepage
• M Biddington and C Barker, National Security Legislation Amendment Bill (No. 1) 2014, Bills digest, 28 August 2014
• Parliamentary Joint Committee on Intelligence and Security (PJCIS), Advisory report on the National Security Legislation Amendment Bill (No. 1) 2014, September 2014

Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014

Summary
The Act made extensive amendments to several existing Acts, as part of the Government’s response to the increased threat of terrorism posed by Australians engaging in, and returning from, conflicts in foreign states. It also represented the Government’s response to recommendations in reports by the Independent National Security Legislation Monitor (INSLM), and in the Council of Australian Governments’ Review of Counter Terrorism Legislation. Key changes included:

• extending the sunset date for a range of counter-terrorism powers (control orders; preventative detention orders; ASIO questioning and detention powers; and stop, search and seizure powers)

• expanding the grounds on which control orders can be made

• introducing new offences for advocating terrorism and entering ‘declared areas’

• introducing delayed notification search warrants for terrorism offences carrying maximum penalties of seven years or more and

• allowing for cancellation of certain welfare or benefits for individuals on security grounds.

Key references
• Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014
• ‘Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014’, Bill homepage
• C Barker, M Biddington, M Coombs and M Klapdor, Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, Bills digest, 17 October 2014
• PJCIS, Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, October 2014

Counter-Terrorism Legislation Amendment Act (No. 1) 2014

Summary
This Act expanded the purposes of the control order regime and the grounds on which orders may be made; allows the PJCIS to review and report on amendments to terrorist organisation regulations to add aliases or remove former names of organisations; and expanded powers under the Intelligence Services Act 2001 (IS Act) by:
• amending ASIS’s functions to explicitly include providing assistance to the Australian Defence Force (ADF) in support of military operations and cooperation with the ADF on intelligence matters

• expanding provisions for emergency authorisations of ASIS, Australian Signals Directorate (ASD) and Australian Geospatial-Intelligence Organisation activities and

• allowing ministerial authorisations to be given for ASIS to undertake activities in relation to one or more members of a class of Australian persons in certain circumstances.

Key references
- Counter-Terrorism Legislation Amendment Act (No. 1) 2014
- ‘Counter-Terrorism Legislation Amendment Bill (No. 1) 2014’, Bill homepage
- C Barker, Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, Bills digest, 19 November 2014
- PJCIS, Advisory report on the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014, November 2014

Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015

Summary
The Act introduced a statutory obligation for telecommunications and internet service providers to retain for two years types of telecommunications data (metadata) prescribed in the Act and amended provisions governing government agency access to metadata. Provisions added at the recommendation of the PJCIS in its report on the Bill introduced journalist information warrants for circumstances where an agency seeks access to metadata for the purpose of identifying a journalist’s source.

Key references
- Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015
- ‘Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015’, Bill homepage
- J Murphy and M Biddington, Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, Bills digest, 26 March 2015
- PJCIS, Advisory report on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, February 2015

Australian Citizenship Amendment (Allegiance to Australia) Act 2015

Summary
The Act introduced two new security-related grounds on which a dual citizen can lose their Australian citizenship—acting inconsistently with the person’s allegiance to Australia by engaging in certain conduct; being sentenced to at least six years imprisonment for certain offences and ministerial satisfaction of certain issues—and expanded an existing ground (to include fighting for or being in the service of a terrorist organisation declared by the Minister).
Key references

- **Australian Citizenship Amendment (Allegiance to Australia) Act 2015**
- ‘Australian Citizenship Amendment (Allegiance to Australia) Bill 2015’ Bill homepage
- M Harrison-Smith and C Barker, *Australian Citizenship Amendment (Allegiance to Australia) Bill 2015*, Bills digest, 2 September 2015

**Counter-Terrorism Legislation Amendment Act (No. 1) 2016**

Summary

The Bill for this Act was first introduced in 2015, but lapsed when Parliament was prorogued in April 2016. The 2016 version of the Bill included amendments in response to the PJCIS’s [report on the 2015 Bill](#) and two additional measures recommended by the INSLM.

The Act made amendments to several existing Acts based on ‘recent counter-terrorism investigations and operational activity’. Key changes included:

- further expanding the control order regime and related provisions, including by:
  - lowering the minimum age at which a control order may be imposed from 16 to 14 years of age
  - introducing new monitoring powers in relation to individuals subject to control orders and
  - allowing courts to consider in control order proceedings information that is not disclosed to the person subject to the order or their representative for security reasons (and, at the [recommendation of the INSLM](#), introducing special advocates to represent the interests of those people in proceedings from which they and their legal representatives have been excluded)
- updating offences for disclosure of information about ASIO special intelligence operations (at the [recommendation of the INSLM](#))
- introducing a new offence of advocating genocide.

Key references

- **Counter-Terrorism Legislation Amendment Act (No. 1) 2016**
- 2015 Bill:
  - ‘Counter-Terrorism Legislation Amendment Bill (No. 1) 2015’, Bill homepage
  - C Barker, J Mills and J Murphy, *Counter-Terrorism Legislation Amendment Bill (No. 1) 2015*, Bills digest, 15 February 2016
- 2016 Bill:
  - ‘Counter-Terrorism Legislation Amendment Bill (No. 1) 2016’, Bill homepage
  - C Barker and C Raymond, *Counter-Terrorism Legislation Amendment Bill (No. 1) 2016*, Bills digest, 10 October 2016
**Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016**

**Summary**

The Act introduced continuing detention orders. A Supreme Court may make an order that a ‘terrorist offender’ continues to be imprisoned for up to a further three years at a time, if satisfied:

- to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing an offence against Part 5.3 of the *Criminal Code Act 1995* (*Criminal Code*) that carries a maximum penalty of seven years or more if released into the community at the end of a custodial sentence (or an earlier order) and

- that there is no less restrictive measure that would be effective in preventing the unacceptable risk.

**Key references**

- *Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016*
- ‘Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016’, Bill homepage

**Telecommunications and Other Legislation Amendment Act 2017**

**Summary**

The Act:

- introduced an obligation on carriers, carriage service providers and carriage service intermediaries to do their best to protect networks and facilities from unauthorised access and interference

- introduced an obligation on carriers and some carriage service providers to notify the Government of planned changes to their networks and services that might compromise their ability to comply with the security obligation and

- gives the Minister a new power to direct a carrier, carriage service provider or carriage service intermediary to take action that is reasonably necessary to protect a network or facility from a national security risk.

**Key references**

- *Telecommunications and Other Legislation Amendment Act 2017*
- ‘Telecommunications and Other Legislation Amendment Bill 2017’, Bill homepage
- M Biddington and J Murphy, *Telecommunications and Other Legislation Amendment Bill 2016*, Bills digest, 8 August 2017
- PJCIS, *Advisory report on the Telecommunications and Other Legislation Amendment Bill 2016*, June 2017
Security of Critical Infrastructure Act 2018

Summary
The Security of Critical Infrastructure Act:

• established a Register of Critical Infrastructure Assets that will include information about who owns and operates those assets and which must not be made public and

• allows the Minister to give a direction to a reporting entity or an operator of a critical infrastructure asset to do, or refrain from doing, a specified act or thing within a certain timeframe. The power may be used if the Minister is satisfied that there is a risk that is prejudicial to security that cannot otherwise be mitigated.

These measures apply initially to critical infrastructure assets in the electricity, gas, water and ports sectors.

Key references
• PJCIS, Advisory report on the Security of Critical Infrastructure Bill 2017, March 2018

Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018

Summary
The Act:

• established the ASD as an independent statutory agency (reporting directly to the Minister for Defence)

• included among ASD’s statutory functions the prevention and disruption of cybercrime and protection of specialised technologies acquired in connection with the performance of certain other functions and

• provides legislative authority for the ASD to provide material, advice and other assistance relating to cybersecurity to prescribed persons and bodies (in addition to Commonwealth and state and territory government authorities).

These measures were recommended by the 2017 Independent Intelligence Review.

Key references
• Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018
• ‘Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Bill 2018’, Bill homepage
• C Barker, Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Bill 2018, Bills digest, 26 March 2018
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National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018

Summary

The Act:

- updated Australian espionage offences and Commonwealth secrecy offences and offences against government (including treason)
- introduced new foreign interference, sabotage, and theft of trade secrets offences
- introduced a new aggravated offence of providing false and misleading information in the context of a security clearance processes and
- allows telecommunications interception powers to be used to investigate most of the offences updated or inserted by the Act.

The reforms followed a comprehensive internal review of Australian laws relating to foreign interference requested by the Prime Minister in 2017.

Key references

- National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018
- ‘National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018’, Bill homepage
- J Tomaras, O Griffiths, D Markham and C Petrie, National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, Bills digest, 28 June 2018
- PJCIS, Advisory report on the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, June 2018

Counter-Terrorism Legislation Amendment Act (No. 1) 2018

Summary

The Act:

- extended the provisions relating to control orders, preventative detention orders and the declared area offence, and terrorism-related stop, search and seizure powers, for a further three years
- extended the provisions relating to ASIO questioning warrants and questioning and detention warrants for a further 12 months (they are now due to sunset on 7 September 2019) and
- implemented the Government’s response to certain recommendations made by the INSLM and the PJCIS in their most recent reviews of those provisions.

Key references

- Counter-Terrorism Legislation Amendment Act (No. 1) 2018
- ‘Counter-Terrorism Legislation Amendment Bill (No. 1) 2018’, Bill homepage
Office of National Intelligence Act 2018

Summary

The Office of National Intelligence Act expanded the Office of National Assessments into the Office of National Intelligence (ONI), including establishing the functions and powers of the agency and the Director-General of National Intelligence. This implemented a key recommendation of the 2017 Independent Intelligence Review.

The Office of National Intelligence (Consequential and Transitional Provisions) Act made amendments to a range of Acts consequential to the repeal of the Office of National Assessments Act 1977 and establishment of ONI, and more substantive amendments to the Crimes Act 1914 (allowing ONI staff to acquire and use assumed identities), the Australian Security Intelligence Organisation Act 1979 (enabling other intelligence agencies to cooperate with and assist ONI to perform its functions) and the Australian Border Force Act 2015 and the Australian Crime Commission Act 2002.

Key references


Defence Amendment (Call Out of the Australian Defence Force) Act 2018

Summary

The Act clarified and streamlined the processes under which the ADF may be called out to protect Commonwealth interests and states and self-governing territories from ‘domestic violence’. The changes were introduced following an internal Defence review of the ADF’s support to domestic counter-terrorism arrangements undertaken after the Lindt café siege in Sydney.

Key references

- Defence Amendment (Call Out of the Australian Defence Force) Act 2018
- ‘Defence Amendment (Call Out of the Australian Defence Force) Bill 2018’, Bill homepage
- O Griffiths, Defence Amendment (Call Out of the Australian Defence Force) Bill 2018, Bills digest, 13 November 2018
- Senate Legal and Constitutional Affairs Legislation Committee, Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 [Provisions], September 2018
**Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018**

**Summary**
The Act facilitates access to certain communications and data by law enforcement and intelligence agencies for the purposes of disrupting and investigating criminal activity and threats to national security, including terrorism. Key changes included:

- introducing a new industry assistance regime under which designated communications providers may be requested or required to assist law enforcement and intelligence agencies to decrypt certain communications
- introducing computer access warrants for law enforcement agencies
- expanding search powers for police and Australian Border Force officers and
- provisions for voluntary assistance to ASIO accompanied by a civil liability protection, and additional coercive powers for ASIO to require assistance in relation to its execution of a warrant authorised under existing provisions.

**Key references**
- Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018
- ‘Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018’, Bill homepage
- C Barker, H Portillo Castro and M Biddington, Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018, Bills digest, 3 December 2018
- PJCIS, Advisory report on the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018, December 2018

**Intelligence Services Amendment Act 2018**

**Summary**
The Act allows:

- the Minister for Foreign Affairs to specify additional persons (or classes of persons) who may be protected by ASIS staff members and agents outside Australia under Schedule 2 to the IS Act (which provides for limited provision of weapons, and use of and training in the use of weapons and self-defence techniques) and
- ASIS staff members and agents, to use force (including the use of a weapon) outside Australia in certain circumstances, under approvals given by the Minister for Foreign Affairs.

**Key references**
- Intelligence Services Amendment Act 2018
- ‘Intelligence Services Amendment Bill 2018’, Bill homepage
- C Barker, ‘The use of weapons and use of force by the Australian Secret Intelligence Service’, FlagPost, Parliamentary Library blog, 3 December 2018
- PJCIS, Advisory Report on the Intelligence Services Amendment Bill 2018, December 2018
Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019

Summary
The Act introduced new offences for internet service providers, content service providers and hosting services related to allowing the sharing of ‘abhorrent violent material’ (including material that records or streams engagement in a terrorist act). It also enables the eSafety Commissioner to issue a notice to a content service provider or hosting service notifying them that such material can be accessed by, or is hosted on, their service.

The Act was introduced in the wake of the March 2019 terrorist attack in Christchurch, New Zealand, which the attacker live-streamed on Facebook. The video footage was then copied and shared across social media platforms.

Key references
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- Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019
- ‘Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019’, Bill homepage

Government national security Bills that lapsed when the 45th Parliament was prorogued

Crimes Legislation Amendment (Police Powers at Airports) Bill 2018

Summary
The Bill would amend the Crimes Act to:

- expand existing police powers to require identity information from a person at a major airport
- introduce new move-on powers for police under which they may give a written direction to a person at a major airport to not take a flight, or to leave the airport premises as soon as possible
- introduce new powers for police to give a direction to a person at a major airport that the person stop or do anything else considered necessary to facilitate the exercise of the identity information request or move-on powers and
- allow the Minister to determine by legislative instrument that certain airports are major airports for the purposes of exercising the powers outlined above.

Key references

- C Barker and M Biddington, Crimes Legislation Amendment (Police Powers at Airports) Bill 2018, Bills digest, 29 November 2018

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3. The Bill for this Act was introduced and passed within two days. The Bill was not referred to a committee for inquiry, and no Bills digest was published.
**Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018**

**Summary**

The Bill would amend section 35A of the *Australian Citizenship Act 2007* to:

- adjust the ‘statelessness threshold’ for the exercise of the cessation power from the existing requirement that a person is a citizen or national of another country, to a requirement that the Minister be satisfied the person will not ‘become’ a person who is not a citizen or national of any country
- include additional offences for which conviction may lead to the loss of a person’s Australian citizenship and
- provide that Australian citizenship may be lost regardless of any sentence imposed on conviction for some offences (currently, it may only be lost where a person has been sentenced to at least six years imprisonment).

**Key references**

- ‘Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018’, Bill homepage

**Counter-Terrorism (Temporary Exclusion Orders) Bill 2019**

**Summary**

The Bill would introduce two new orders, each of which could be made by the Minister for Home Affairs:

- a temporary exclusion order, which may prevent an Australian citizen aged 14 years or older who is overseas from returning to Australia for up to two years at a time and
- a return permit, under which the Minister may impose conditions on the person’s entry into Australia, including conditions with which the person must comply for up to 12 months after re-entering the country.

**Key references**

- ‘Counter-Terrorism (Temporary Exclusion Orders) Bill 2019’, Bill homepage
- C Barker, *Counter-Terrorism (Temporary Exclusion Orders) Bill 2019*, Bills digest, 1 April 2019
Counter-Terrorism Legislation Amendment Bill 2019

Summary
The Bill would amend:

• provisions in the Crimes Act relating to restrictions on bail and parole, including introducing a presumption against bail and parole for individuals who have demonstrated support for, or have links to, terrorist activity and

• the continuing detention order regime in the Criminal Code to expand eligibility for the scheme and amend information disclosure obligations relating to applications for such orders.

Key reference 4
• ‘Counter-Terrorism Legislation Amendment Bill 2019’, Bill homepage

Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019

Summary
The Bill would:

• amend the Independent National Security Legislation Monitor Act 2010 to change the timeframe in which the INSLM must review the operation, effectiveness and implications of the Telecommunications and Other Legislation Amendment (Assistance and Access) Act and

• amend the Telecommunications Act 1997 and make a series of consequential amendments to facilitate additional agencies to use the industry assistance powers in Part 15 of that Act.

Key references 5
• ‘Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019’, Bill homepage

• M Biddington, Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019, Bills digest, 27 March 2019

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4. The Bill was referred to the PJCIS, but a report on that inquiry was not published before the Bill lapsed, nor was a Bills digest. A Bills digest will be published if the Bill is re-introduced in the 46th Parliament.

5. The Bill was not referred to a committee for inquiry.