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# Review of the Counter-Terrorism and Other Legislation Amendment Bill 2023

*submission by the Australian Federal Police*

Parliamentary Joint Committee on Intelligence and Security



**AFP**

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## Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to make this submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on its review of the Counter-Terrorism and Other Legislation Amendment Bill 2023 (the Bill).
2. The Bill includes key amendments to the Control Order scheme, aligning the conditions with those in the Extended Supervision Order (ESO) scheme. The AFP has advocated for this change for a number of years, particularly since the operationalisation of the ESO scheme and the AFP's experience based on the two offenders that have had ESO imposed on them. The Bill also seeks to extend the sun-setting date of a number of law enforcement powers that assist in the response to counter terrorism. The Bill will assist law enforcement in managing the threat posed by persons of counter terrorism interest in the community.
3. The AFP notes that the Attorney-General's Department has also provided a submission to this inquiry. The AFP's submission will focus on our operational experience with the schemes to date.

## Threat environment

4. Although the National Terrorism Threat Level was lowered to POSSIBLE in November 2022, the threat of terrorism in Australia is increasingly diverse, enduring and complex. In 2023 to date, **four** individuals have been charged with alleged terrorism offences.
5. Two of these individuals were inspired by Ideologically Motivated Violent Extremism (IMVE). The AFP has observed the number of individuals adhering to IMVE – particularly ideologies associated with nationalist and racist violent extremism – continues to increase across Australia, particularly in rural and regional areas. This was particularly notable throughout the COVID-19 pandemic as individuals spent increased amounts of time online, often with an enhanced degree of exposure to extremism even on mainstreaming services. Ultimately, this has also been further compounded by more radical views through the broadcasting of conspiracy theories, anti-government sentiments, protests, and more, thereby 'normalising' these perspectives to the broader Australian public.
6. **One** of the individuals that was charged was inspired by Religiously Motivated Violent Extremism (RMVE). The threat of RMVE remains the predominant threat to Australia. It is enduring and, while many of these extremists appear to have limited genuine intent to act, some continue to aspire to undertake attacks in Australia. RMVE-linked terrorist groups remain a threat, albeit a diminished one. To date, the majority of terrorism offenders released into the community following the completion of their imprisonment, have held RMVE ideologies.
7. **One** individual also held a mixed or unclear ideology. The AFP has also observed a number of investigations where individuals have presented this way. Online connectivity has enabled like-minded individuals to connect, communicate and rapidly spread messages. As a result, the AFP is increasingly encountering individuals, particularly vulnerable young people, who are displaying an interest in a diverse range of extremist material. This has contributed to the adoption of mixed ideologies.

8. The AFP provided a comprehensive overview of the threat environment in its submission to the PJCIS review of the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023*, which continues to reflect the contemporary counter terrorism operating environment.

## Role of the AFP

9. The AFP's role in countering terrorism alongside our partners is the prevention, detection and disruption of acts in preparation, or acts of terrorism.
10. The management of persons of terrorism interest in the community, through either Control Orders or Extended Supervision Orders (ESO) are resource intensive.
11. The AFP plays a significant role in respect to individuals that pose an enduring risk to the community following the completion of a prison sentence. Whilst the applicant for an ESO and Continuing Detention Order (CDO) is the Attorney-General, the AFP is responsible for offender compliance and the enforcement of ESOs and CDOs. The AFP is also responsible for the application for a Control Order, with the Attorney-General's consent, in addition to ensuring the compliance of the individual with the order.
12. Further, the AFP plays a key role in utilising various tools and resources to assist in informing the assessment of risk posed by an individual and mitigation strategies from a law enforcement perspective.

## Control Order framework

13. Since their introduction in 2005, Control Orders have remained largely unchanged, yet they remain a necessary part of the AFP's counter terrorism response.
14. Control Orders support the AFP's management of individuals who present a terrorism risk to the Australian community, especially for those in respect of whom there is insufficient evidence or information to charge with terrorism offences, though there is otherwise evidence the person poses a terrorist threat to the community.
15. There are instances where Control Orders may be the only mechanism under the High Risk Terrorist Offender (HRTTO) framework available for offenders who are not eligible for consideration under an ESO or CDO. An example would be individuals who are under the age of 18 years, or those convicted of non-HRTTO offences (such as advocating terrorism).
16. The management and enforcement of Control Orders is highly resource intensive for the AFP but necessary to ensure those that pose a risk to the community are complying with their control order.

## Alignment of Control Orders and Extended Supervision Orders

17. Having seen an increased use of Control Orders in 2019, the AFP is aware of a number of issues with the framework, particularly as relates to the inflexibility of the controls available. Many of these concerns were actively considered and addressed when creating the ESO framework as introduced by the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021* (Cth).

18. The AFP has advocated for corresponding amendments to be made to Control Orders to enhance their utility, in line with the ESO framework, for a number of years. The amendments in the Bill will make it possible for the Federal Court to tailor conditions to the individual's circumstances that are reasonably necessary, reasonably appropriate and adapted for the purpose of protecting the community from the specific risk the HRTO offender or Interim Control Order (ICO) subject poses.
19. The AFP has observed risks that cannot be adequately controlled or managed by the controls currently available under the Control Order scheme because there is no applicable obligation, prohibition or restriction available.
20. Since 2005, the AFP, together with state and territory partners, have obtained 6 preventative control orders to manage the threat of CT persons of interest. An additional 22 control orders were granted to manage the risk of convicted terrorist offenders released in the community.
21. The proposed amendments will significantly assist the AFP's ability to manage such individuals in the community. The proposed amendments reflect that the management of persons of counter terrorism interest in the community is increasingly complex.

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#### **Case study – Operation ROSENDAEL-DRIMNAGH**

In late 2018, the NSW Joint Counter Terrorism Team (JCTT) commenced an investigation against a number of individuals who were suspected of engaging in terrorist related activities. In July 2019, an individual was arrested and charged with being a member of a terrorist organisation, an offence under section 102.8 of the Criminal Code. In December 2020, the individual was sentenced to 1 year and 2 months imprisonment with time served.

On 31 December 2020, the Federal Court issued an ICO against the individual, who was released from prison on 1 January 2021. During the first week of his release, he accessed material online that supported the carrying out of executions, beheadings and torture. He made no obvious attempts to conceal his online activity on the provided device.

The first of these breaches occurred four days after his release, where he electronically accessed material which discusses situations where it is permissible to kill a person, notably by beheading. Shortly after, the individual was arrested and charged with three counts of contravening a control order. An additional six charges were later identified and laid.

For this specific circumstance (and noting the short timeframes), the ability to impose conditions such as therapeutic conditions to assist with de-radicalisation (available under the proposed amendments) **may** have supported the individual to not breach their control order. The individual was sentenced in April 2022 to 1 year and 8 month's imprisonment.

The individual was released in September 2022 on a subsequent Control Order. There were no identified breaches to the order during its enforcement. As such, no successive order was sought and that Control Order expired in September 2023.

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#### ***Ability to vary by consent***

22. The Bill will introduce an ability for the AFP, or the controlee, to apply to a court to vary the Interim Control Order by consent. This can include adding new conditions to the order, or making variations to ensure it remains appropriate to addressing the risks posed by the controlee.
23. Such a provision is beneficial to both parties, and ensures orders have the flexibility to address emerging circumstances, such as previously unknown or new risk factors. From an operational perspective, this is important where there has been limited ability to assess a person's activity in the community or during custodial management.

## Extension of counter terrorism powers

24. The Bill proposes to extend the operation of *Crimes Act 1914* (Cth) police powers in relation to terrorism; and *Criminal Code* (Cth) Control Order and Preventative Detention Order schemes, for an additional three years.
25. The AFP acknowledges the PJCIS' previous recommendation to extend these powers. The lack of use of preventative detention orders thus far is not an indication of a lack of utility, rather it reflects the careful consideration that is undertaken in considering the use of these powers. Though the National Terrorism Threat Level was decreased to 'possible', intelligence partners have noted this does not equate to the threat of terrorism being extinguished.
26. The proposed extension ensures the AFP and relevant agencies continue to have the ability to protect the community through the use of these powers if the circumstance arises.

## Commonwealth secrecy provisions

27. The Bill proposes to extend the operation of the section 122.4 offence for unauthorised disclosure of information by current and former Commonwealth officers by 12 months. The AFP is responsible for investigating allegations of criminal conduct under these provisions.
28. The AFP is engaging with the Attorney-General's Department to support the Government review of Commonwealth secrecy provisions.

## Other amendments

29. Consistent with the PJCIS' previous recommendations, the Bill also proposes a number of new obligations for the AFP to notify certain bodies including: an obligation to notify the Commonwealth Ombudsman, the Independent National Security Legislation Monitor, and PJCIS of any declaration of a 'prescribed security zone'; and the requirement for an officer exercising section 3UD Crimes Act powers to inform the person searched of their right to make a complaint to the Commonwealth Ombudsman or relevant state or territory police oversight bodies.
30. The AFP also understands a proposed Government amendment will be introduced to give effect to the PJCIS recommendation for an 'ex post facto warrant' to be obtained following the use of emergency entry powers under section 3UEA(1) of the Crimes Act.
31. The AFP will adjust and update internal guidance and training mechanisms to incorporate these additional obligations.

## Conclusion

32. The proposed measures contained in the Bill will assist law enforcement in addressing the enduring, increasingly diverse, and complex counter terrorism environment within Australia. The implementation of previous PJCIS recommendations provide flexibility for courts to tailor the proposed controls of an ICO subject.

33. Such changes will further facilitate a more holistic approach and consideration to an individual's circumstances, whilst ensuring that the specific risk they pose to the community is mitigated.
34. The AFP welcomes the opportunity to engage further with the Committee to support its review of this Bill.