



Australian Government

Australian Government response to the
Parliamentary Joint Committee on Intelligence and Security report:
Review of the Counter-Terrorism (Temporary Exclusion Orders)
Act 2019

November 2023

Recommendations

Recommendation 1: The Committee recommends that the Australian Government take into account the decisions of the High Court, in current relevant cases related to the counter-terrorism legislative framework and any associated impacts on the Temporary Exclusion Order regime, including but not limited to the question of whether the issuing authority be retained as a power of the Minister or the Regime be amended so that a Temporary Exclusion Order may only be issued by a Court on application by the Minister. If there was a High Court decision that impacted the Regime that would require additional legislative changes the Committee recommends that such legislation be referred to the Committee for inquiry.

*Response: The Government **accepts** this recommendation.*

If the outcome of a High Court decision has implications for the *Counter-Terrorism (Temporary Exclusion Order) Act 2019* (TEO Act), the Government will take this into account. If this necessitates legislative amendment, the Government agrees to refer any such legislation to the Committee for inquiry.

Recommendation 2: The Committee recommends that paragraph 10(2)(b) of the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* remain as currently in force.

*Response: The Government **accepts** this recommendation.*

The intent of paragraph 10(2)(b) of the TEO Act is to provide for the making of a temporary exclusion order based on a consistent assessment of terrorism threats by the Australian Security Intelligence Organisation (ASIO).

The Government acknowledges that the Committee has made this recommendation, per paragraph 3.16 of its report, for the avoidance of doubt, noting that it stands in contrast to recommendation 12 of the Committee's *Advisory report on the Counter-Terrorism (Temporary Exclusion Orders) Bill 2019* (Advisory Report), tabled in April 2019, which recommended deletion of the provision from the bill.

Recommendation 3: The Committee recommends that the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* be amended so that an assessment made by ASIO under paragraph 10(2)(b) of the Act, or the grounds upon which such an assessment was made, must be provided to the Minister.

*Response: The Government **accepts** this recommendation.*

As outlined by the submission of the Department of Home Affairs and ASIO, and as noted by the Committee in paragraph 3.18 of the report, security assessments relating to TEOs are already provided to the Minister as a matter of practice.

Recommendation 4: The Committee recommends that, for the avoidance of doubt and to assist the Inspector General of Intelligence and Security, the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* be amended so that it is clear that procedural fairness is not intended to apply to ASIO's assessments under paragraph 10(2)(b) of the Act.

This recommendation should be actioned in conjunction with the Office of the Inspector-General of Intelligence and Security to provide the clarity requested.

*Response: The Government **accepts** this recommendation.*

The Government agrees that action taken in response to this recommendation will necessarily involve the Office of the Inspector-General of Intelligence and Security.

Recommendation 5: The Committee notes that the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* expressly provides that service of Return Permits must be effected by personal service. However, in the event that personal service is not possible because it is not safe or practicable, the Committee recommends that *the Counter-Terrorism (Temporary Exclusion Orders) Act 2019* be amended so that return permits can be served via alternative means (including email or text message).

Further, the Committee recommends that service of a return permit on the individual may be made in person upon their arrival into Australia where all other means (including email and text) have been exhausted.

Any such amending language must take into account the offence provision in section 9 of the Act and must make clear the circumstances in which a person may legally convey a person to Australia where a TEO is in place and a return permit has not been served, but it is known that one will be lawfully served on the individual upon their arrival into Australia.

*Response: The Government **notes** this recommendation.*

The Government continually reviews Australia's national security laws and capabilities to ensure they remain fit for purpose. Current service requirements have been effective in all cases to date (as noted by the Committee in paragraph 3.26 of its report), and any potential changes to the current service requirements would need to fully consider the legal and operational implications.

Recommendation 6: The Committee recommends that section 29(1)(cc) of the *Intelligence Services Act 2001* be amended so that if the Committee resolves to do so—it may commence, three years following the tabling of this report, a review of the *Counter Terrorism (Temporary Exclusion Orders) Act 2019*.

*Response: The Government **accepts** this recommendation.*