

Background

- 1.1 In mid 2002 the Commonwealth Parliament passed a package of security and counter terrorism legislation to strengthen Australia's capacity to respond to the threat of international terrorism.¹ This was the first phase of the Commonwealth's legislative response to the terrorist attacks on the World Trade Center and the Pentagon in the US on 11 September 2001.
- 1.2 The bills were passed subject to an agreement that a review of the operation, effectiveness and implications of the new laws would be conducted after three years. Provision was made for:
 - an independent committee of review to be initiated by the Commonwealth Attorney-General and to report to the Attorney-General and the Parliamentary Joint Committee on Intelligence and Security;² and,
 - Parliamentary Joint Committee on Intelligence and Security (PJCIS) to conduct a separate review on behalf of the Parliament.³

1 *Security Legislation Amendment (Terrorism) Act 2002; Suppression of the Financing of Terrorism Act 2002; Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002; Border Security Legislation Amendment Act 2002; Telecommunications Interception Legislation Amendment Act 2002; Criminal Code Amendment (Terrorism) Act 2003.*

2 Section 4 of the *Security Legislation Amendment (Terrorism) Act 2002*

3 Paragraph 29 (1) (ba) of the *Intelligence Services Act 2001*.

Security Legislation Review Committee

- 1.3 The Attorney-General established the independent Security Legislation Review Committee on 12 October 2005 under the Chairmanship of the Honourable Simon Sheller AO QC (the Sheller Committee). The Sheller Committee was made up of representatives of major stakeholder organisations. It conducted a public inquiry, receiving 29 submissions and taking evidence from 18 witnesses over 5 days of hearings in Melbourne, Sydney, Canberra and Perth.
- 1.4 On 21 April 2006 the Sheller Committee reported to the Attorney-General and the PJCIS. The report was tabled by the Attorney-General on 15 June 2006 and is available at: www.ag.gov.au/agd (the Sheller Report).

Review by the Parliamentary Committee on Intelligence and Security

- 1.5 Under paragraph 29(1)(ba) of the *Intelligence Services Act 2001 (Cth)* the PJCIS must review the operation, effectiveness and implications of the:
- *Security Legislation Amendment (Terrorism) Act 2002*;
 - *Border Security Legislation Amendment Act 2002*;
 - *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*;
 - *Suppression of the Financing of Terrorism Act 2002*.⁴
- 1.6 Subsection 4 (9) of the *Security Legislation Amendment (Terrorism) Act 2002* requires the PJCIS to take into account the Sheller Report. Consequently, the Sheller Report forms an important part of the evidence to this inquiry and reference is made to evidence submitted to that review and to parts of the report where it is appropriate to do so. However, the PJCIS is not limited by the content, recommendations or findings of the Sheller Report and has departed from it where appropriate.
- 1.7 It should also be noted that the PJCIS has a separate statutory obligation to review the operation, effectiveness and implications of the legislative provisions governing the listing of an organisation as a

4 The review mandate of the PJCIS did not include the *Telecommunications Interception Legislation Amendment Act 2002* or the *Criminal Code Amendment (Terrorism) Act 2003*.

'terrorist organisation' under the *Criminal Code Act 1995 (Criminal Code)*.⁵ The PJCIS's inquiry into the proscription process is scheduled to take place in early 2007. Consequently, the listing provisions do not form part of the current inquiry and are not dealt with in this report.

- 1.8 To avoid unnecessary duplication, the PJCIS decided to focus attention on the recommendations and findings of the Sheller Committee. On 16 June 2006 the PJCIS wrote to all organisations and individuals who participated in the Sheller Inquiry seeking comments on the recommendations of the Sheller Report. The PJCIS also wrote to two defence counsels with experience of Australia's terrorism laws. The review was announced on 20 June 2006 by press statement and via the Parliamentary website.
- 1.9 Twenty-five written submissions were received, one of them confidential. The Prime Minister and all relevant Ministers agreed, in accordance with Schedule 1 subclause 20(2) of the *Intelligence Services Act 2001*, that hearings should be conducted in public session. Thirteen witnesses were heard over one and a half days of public hearings held on 31 July and 1 August 2006 at Parliament House, Canberra. In addition, answers to questions on notice were received and are published as supplementary submissions.
- 1.10 The *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002* attracted no adverse comment during the Sheller Inquiry. The Act inserted Division 72 (international terrorist activities using explosive or lethal devices) into the *Criminal Code* to give effect to the International Convention for the Suppression of Terrorist Bombings. The Committee received no submissions on the Act and it is not discussed in this report.

5 Section 102.1A (2) of the *Criminal Code*.

