
The Parliament of the Commonwealth of Australia

Review of Security and Counter Terrorism Legislation

Parliamentary Joint Committee on Intelligence and Security

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Canberra

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Foreword

I present the report of the Committee's review of the first package of anti-terrorism and security legislation passed by the Commonwealth Parliament in 2002.

On behalf of the Committee, I would like to express our particular gratitude to Mr Simon Sheller AO QC and the Sheller Committee, which reported on the legislation under review in April this year. The Sheller Report reflected the views of major stakeholders and has provided a valuable contribution to our own deliberations.

Since 2001, a series of terrorist events have served as a reminder of the risk and consequences of terrorist violence. Australia is not immune from these influences. Like the Sheller Committee, we have concluded that a special terrorism law regime is justifiable and forms an important, although not exclusive, tool in Australia's counter-terrorism strategy. Much of the report deals with the detail of legislative provisions. It proposes a series of modest refinements to improve specificity, clarity and fairness in a way that we believe is consistent with Australia's anti-terrorism objectives.

It is clear that Australia now has a highly developed legal framework and stronger institutional capacities to deal with the threat of terrorism. The terrorism law regime is, essentially, a preventive model, which differs in many respects from our earlier legal traditions. Bearing in mind the significance of these changes and the importance of terrorism policy into the future, we have recommended the appointment of an Independent Reviewer to provide comprehensive and ongoing oversight. The Independent Reviewer, if adopted, will provide valuable reporting to the Parliament and help to maintain public confidence in Australia's specialist terrorism laws.

I commend the report to the Government and the Parliament and thank my fellow Committee members and the Secretariat for their contributions, which have made the review possible.

The Hon David Jull MP
Chair



Membership of the Committee

Chair The Hon David Jull MP

Deputy Chair Mr Anthony Byrne MP

Members The Hon Duncan Kerr SC MP

Mr Stewart McArthur MP

Mr Steven Ciobo MP

Senator Alan Ferguson

Senator the Hon Robert Ray

Senator the Hon John Faulkner

Senator Fiona Nash

Committee Secretariat

Secretary Ms Margaret Swieringa

Inquiry Secretary Ms Jane Hearn

Administration Officer Mrs Donna Quintus-Bosz



Terms of reference

29 Functions of the Committee

- (1) The functions of the Committee are:
 - (ba) to review, as soon as possible after the third anniversary of the day on which the *Security Legislation Amendment (Terrorism) Act 2002* receives the Royal Assent, the operation, effectiveness and implications of amendments made by that Act and the following Acts:
 - (i) the *Border Security Legislation Amendment Act 2002*;
 - (ii) the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*;
 - (iii) the *Suppression of the Financing of Terrorism Act 2002*.



List of abbreviations

ADF	Australian Defence Forces
ADJR	Administrative Decision Judicial Review Act 1975
AFP	Australian Federal Police
AGD	Attorney-General's Department
ALRC	Australian Law Reform Commission
AMCRAN	Australian Muslim Civil Rights Network
ASIO	Australian Security Intelligence Organisation
ATA	Anti-Terrorism Act 2005 (No. 2) (<i>Cth</i>)
AUSTRAC	Australian Transaction Reports and Analysis Centre
BSLA	Border Security Legislation Amendment Act 2002
CDPP	Commonwealth Director of Public Prosecutions
COAG	Council of Australian Governments
COUNA	Charter of the United Nations Act 1945
DFAT	Department of Foreign Affairs and Trade
DIMA	Department of Immigration and Multicultural Affairs
EC	European Community

ECJ	European Court of Justice
EU	European Union
FATF	United Nations Financial Transaction Task Force
FBI	Federal Bureau of Investigation (United States of America)
GSMG	FN Herstal General Support Machine Gun
HREOC	Human Rights and Equal Opportunity Commission
ICRC	International Committee of the Red Cross
IGIS	Inspector-General of Intelligence and Security
IISCA	Islamic Information and Support Centre of Australia
ISYS	International Sikh Youth Federation
MCRG	Muslim Community Reference Group
MOU	Memorandum of Understanding
MRG	Muslim Reference Group
PAU	Passenger Analysis Unit
PJCIS	Parliamentary Joint Committee on Intelligence and Security
PNR	Passenger Name Record
POAC	Proscription of Organisations Appeals Commission
SFTA	Suppression of the Financing of Terrorism Act 2002
SLCLC	Senate Legal and Constitutional Legislation Committee
SLR	Security Legislation Review (the Sheller Report)
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution



List of recommendations

2 Rationale and Accountability

Recommendation 1

The Committee recommends that the Government support/sponsor a study into the causes of violent radicalisation in Australia to inform Australia's counter terrorism strategy.

Recommendation 2

The Committee recommends that:

- the Government appoint an independent person of high standing as an Independent Reviewer of terrorism law in Australia;
- the Independent Reviewer be free to set his or her own priorities and have access to all necessary information;
- the Independent Review report annually to the Parliament;
- the *Intelligence Services Act 2001* be amended to require the PJCIS to examine the reports of the Independent Review tabled in the Parliament.

3 Effectiveness and Implications: Impact on Arab and Muslim Australians

Recommendation 3

The Committee recommends that Australian police forces review their media policies to ensure that official statements do not prejudice the right to fair trial and are sensitive to the wider implications for the community.

Recommendation 4

The Committee recommends that AGD increase its effort to ensure that comprehensive information about the terrorism law regime is available to the public in appropriate community languages.

Recommendation 5

The Committee recommends that Australia's counter terrorism strategy encompass:

- a commitment to the rights of Muslims to live free from harassment and enjoy the same rights extended to all religious groups in Australia;
- wide dissemination of information about mechanisms for complaint or redress in relation to law enforcement, intelligence agencies and the media; and
- a statement on the importance of informed and balanced reporting to promote social cohesion.

4 Treason

Recommendation 6

The Committee recommends that:

- the offence of treason be restructured so that conduct constituting treason apply only to persons who owe allegiance to Australia or who have voluntarily placed themselves under Australian's protection;
- the conduct of others, which falls within the scope of paragraphs 80.1(1) (a)(b)(c), should be dealt with separately;
- the offence of assisting the enemy under paragraph 80.1 (e) and (f) be clarified to cover 'material assistance';
- paragraph 80.1 (f) be amended to require knowledge of the existence of armed hostilities.

5 International Terrorism

Recommendation 7

The Committee recommends that the requirement that the person intends to advance a political, religious or ideological cause be retained as part of the definition of terrorism.

Recommendation 8

The Committee recommends that the current exemption for advocacy, protest, dissent and industrial action be retained as part of the definition of terrorism.

Recommendation 9

The Committee recommends that psychological harm not be included in the definition of a terrorist act. Alternatively, that the Government consult with the States and Territories on this issue and give consideration to the question in light of other amendments to the definition.

Recommendation 10

The Committee recommends that 'threat' of terrorist acts be removed from the definition of terrorism and be dealt with as a separate offence.

Recommendation 11

The Committee recommends that the definition of terrorism recognise that international organisations may be the target of terrorist violence.

Recommendation 12

The Committee recommends that to remove doubt the definition of terrorism be amended to include a provision or a note that expressly excludes conduct regulated by the law of armed conflict.

Recommendation 13

The Committee recommends that a separate hoax offence be adopted but that penalties reflect the less serious nature of a hoax as compared to a threat of terrorism.

Recommendation 14

The Committee does not recommend the repeal of 'advocacy' as a basis for listing an organisation as a terrorist organisation but recommends that this issue be subject to further review.

The Committee recommends that 'risk' be amended to 'substantial risk'.

Recommendation 15

The Committee recommends that the Government consider:

- replacing the membership offence with an offence of participation in a terrorist organisation; and
- whether 'participation' should be expressly linked to the purpose of furthering the terrorist aims of the organisation.

Recommendation 16

The Committee recommends that the training offence be redrafted to define more carefully the type of training targeted by the offence. Alternatively, that the offence be amended to require that the training could reasonably prepare the individual or the organisation to engage in, or assist with, a terrorist act.

Recommendation 17

The Committee recommends that:

- it be a defence to the offence of receiving funds from a terrorist organisation that those funds were received solely for the purpose of the provision of representation in legal proceedings; and
- that the legal burden be reduced to an evidential burden.

Recommendation 18

The Committee recommends that the offence of providing support to a terrorist organisation be amended to 'material support' to remove ambiguity.

Recommendation 19

The Committee recommends that the offence of 'associating with a terrorist organisation' be re-examined taking into account the recommendations of the Sheller Committee.

Recommendation 20

The Committee recommends that strict liability provisions applied to serious criminal offences that attract the penalty of imprisonment be reduced to an evidential burden.

6 Suppression of the Financing of Terrorism

Recommendation 21

The Committee recommends that:

- section 103.1 be amended by inserting 'intentionally' after 'the person' in paragraph (a) and removing the note;
- that recklessness be replaced with knowledge in paragraph (b).

The Committee recommends that paragraph 103.2(1)(b) be redrafted to make clear that the intended recipient of the funds be a terrorist.

Recommendation 22

The Committee recommends that:

- external merit review of a decision to list a person, entity or asset under section 15 of the COUNA should be made available in the Administrative Appeal Tribunal;
- section 15 and regulation 6 be amended so that the Minister must be satisfied on reasonable grounds that the person, entity, asset or class of assets falls within the scope of UNSCR 1373;
- COUNA should be amended to provide that a person or entity listed by regulation is entitled to seek review as a step in the process of review by the Sanctions Committee.

7 Border Security

Recommendation 23

That the Customs Act be amended to specify that access to passenger information for the purpose of another law of the Commonwealth is limited to the investigation of serious crimes prescribed by regulation.

Recommendation 24

The Committee recommends that:

- the Customs Act be amended to specify that retention of passenger information be permitted for a limited time in order to conduct analysis;
- that the Minister for Customs report to the Parliament on the status of negotiations with European States in relation to passenger information.

Recommendation 25

The Committee recommends that the Privacy Commissioner retain an ongoing oversight role in relation to passenger name records, which includes biannual monitoring of the Passenger Analysis Unit.

Recommendation 26

The Committee recommends that:

- the subject of a seizure warrant involving entry to premises should be provided with a statement of rights and obligations;
- that Customs bear the onus of proving the basis of the seizure.

