

ATTACHMENT G

DETAILS AND PROCESS FOR COUNCIL OF AUSTRALIAN GOVERNMENTS' (COAG) REVIEW OF COUNTER-TERRORISM LEGISLATION

Structure and Form of the Review

The review should be conducted by a small committee, supported by a secretariat.

The size of the committee should be six members including the chair.

Secretariat support should be provided by the Commonwealth Attorney-General's Department, with appropriate State and Territory representation, and the secretariat should work in close consultation with all jurisdictions.

Membership of the Committee

Although there should be a balance between Commonwealth and State and Territory members, there should be sufficient flexibility in determining the final mix at the time of the review to take into account the experience and availability of the individual members to be appointed.

The chair should be an independent person with extensive knowledge of, and experience in, the administration of criminal justice (for example, a retired judge or the current chair of an Australian law reform commission).

Although the remaining members should be drawn from the following sets of expertise, there should again be sufficient flexibility in determining the final mix at the time of the review to take into account the experience and availability of the individual members to be appointed:

- two accountability members (for example, drawn from the Inspector-General of Intelligence and Security, an ombudsman, human rights commissioner, privacy commissioner or someone with expertise in law reform);
- two law enforcement members (one from the Australian Federal Police and one from a state or territory police force); and
- a prosecutorial member.

The Prime Minister, Premiers and Chief Ministers will settle the individual appointments closer to the time of the review.

Purpose and Scope of the Review

In broad terms, the committee should review and evaluate the operation, effectiveness and implications of the relevant amendments in each jurisdiction.

In conducting the review, the committee should take into account the agreement of COAG leaders at the Special Meeting on Counter-Terrorism on 27 September 2005,

that any strengthened counter-terrorism laws must be necessary, effective against terrorism and contain appropriate safeguards against abuse, such as parliamentary and judicial review, and be exercised in a way that is evidence-based, intelligence-led and proportionate.

It should be clear that the legislation to be covered by the review includes:

- Schedule 1 of the Anti-Terrorism Act 2005 (Cth);
- Schedules 1, 3, 4 and 5 of the Anti-Terrorism Act 2005 (No.2) (Cth);
- State and Territory legislation enacted to provide for preventative detention;
- State and Territory legislation enacted to provide for or enhance stop, question and search powers in areas such as transport hubs and places of mass gatherings (including laws already enacted prior to the COAG agreement made on 27 September 2005); and
- further amendments made to the Commonwealth, State and Territory legislation described above.

The committee should take into account the outcome of reviews or monitoring activities conducted in accordance with individual state and territory legislation.

In conducting the review, the committee should provide for public submissions and public hearings.

Reporting Requirements including Timeframes

The committee should commence the review in December 2010. To facilitate this deadline, consideration of the appointment of individual members and other necessary arrangements should commence in June 2010.

The committee should provide a written report to COAG within six months of commencing the review.

COAG should be able to release the report for public scrutiny. If it is necessary for the committee to include sensitive or classified information in its report, then the committee should provide an additional unclassified report to COAG for public release.

Funding Arrangements

In recognition of the fact that the review will cover both Commonwealth and State and Territory legislation, the cost of the review, including secretariat support, should be shared between the Commonwealth and the States and Territories.

The Commonwealth should contribute 50 per cent and the States and Territories should contribute 50 per cent pro rata on a per population basis.

The budget for the cost of the review, including secretariat support, should be agreed between the Prime Minister, Premiers and Chief Ministers closer to the time of the COAG review.