

CHAPTER 1

INTRODUCTION

Introduction

1.1 On 2 September 2008, the Senate referred the Independent Reviewer of Terrorism Laws Bill 2008 [No. 2] (Bill) to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 24 September 2008. On 22 September 2008, the Senate agreed to extend the reporting date until 14 October 2008.

1.2 The Bill, a private Senators' bill co-sponsored by Senators Judith Troeth and Gary Humphries, was introduced into the Senate on 23 June 2008. The Bill seeks to establish an 'Independent Reviewer of Terrorism Laws' (Independent Reviewer) to ensure ongoing and integrated review of the operation, effectiveness and implications of laws in Australia relating to terrorism.

1.3 In summary, the Bill sets out:

- the functions of the Independent Reviewer, the process for conducting a review, and reporting requirements; and
- the terms and conditions of appointment of the Independent Reviewer, the basis for termination of appointment, and requirements in respect of the disclosure of interests that the Independent Reviewer has or acquires.

Background

1.4 The Bill is identical to the Independent Reviewer of Terrorism Laws Bill 2008 which was introduced into the House of Representatives by Mr Petro Georgiou MP on 17 March 2008. Mr Georgiou has been a vocal proponent of continuous independent review of Australia's counter-terrorism laws.¹ In her Second Reading Speech, Senator Troeth expressed her indebtedness to Mr Georgiou for providing her with 'much of the detailed information' for that speech.²

1.5 Senator Troeth explained the rationale for the Bill as follows:

Some have expressed views that aspects of the current regime are draconian. Obviously, our response to the threat of terrorism cannot simply be more and more stringent laws, more police and more intelligence personnel. Rather, we need to provide adequate safeguards to ensure

1 See, for example, Independent Reviewer of Terrorism Laws Bill 2008, Second Reading Speech, *House of Representatives Hansard*, 17 March 2008, pp 1951-1952; 'Guarding us from the laws that guard us', *The Age*, 17 March 2008; 'Our terrorism laws need extra vigilance', *Lawyers Weekly*, 15 April 2008, available at http://www.lawyersweekly.com.au/articles/Our-terrorism-laws-need-extra-vigilance_z169950.htm (accessed 9 September 2008).

2 Senator Troeth, *Senate Hansard*, 23 June 2008, p. 3040.

scrutiny, accountability and transparency. This point was made by the European Commissioner for Justice, Freedom and Security, Mr Franco Frattini in speech to the EU Conference on Public Security, Privacy and Technology on 20 November 2007.

The challenges of protecting security without undermining fundamental rights requires constant vigilance. In an effort to address this, when Parliament passed the Security Legislation Amendment (Terrorism) Act of 2002, the then Opposition instigated a requirement that the Attorney-General establish a one-off public and independent review of the operation of a number of counter terrorism laws.³

1.6 This led to the establishment of the Security Legislation Review Committee (SLRC), chaired by the Hon Simon Sheller AO QC. The SLRC tabled its report in June 2006. Its first recommendation was that the government should establish a legislative-based timetable for continuing review of Australia's security legislation by an independent body:

It is important that the ongoing operation of the provisions, including the views taken of particular provisions by the courts, be closely monitored and that Australian governments have an independent source of expert commentary on the legislation. Either an independent reviewer should be appointed, or a further review by an independent body such as the SLRC should be conducted in three years.⁴

1.7 A permanent mechanism for independent review was also examined in detail and endorsed by the Parliamentary Joint Committee on Intelligence and Security:⁵

The joint committee's recommendation for a position of an independent reviewer of terrorism laws to be created was first made in 2006 and reiterated in 2007. The former government did not respond to the unanimous and emphatic recommendation, and so far Attorney-General McClelland has not commented on the proposal and has simply advised that the Rudd Government is considering a number of useful recommendations made by the Parliamentary Joint Committee as well as the Sheller committee and the Australian Law Reform Commission.⁶

3 Senator Troeth, *Senate Hansard*, 23 June 2008, p. 3039.

4 *Report of the Security Legislation Review Committee*, June 2006, p. 6, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(03995EABC73F94816C2AF4AA2645824B\)~SLRC+Report+Version+for+15+June+2006\[1\].pdf/\\$file/SLRC+Report+Version+for+15+June+2006\[1\].pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(03995EABC73F94816C2AF4AA2645824B)~SLRC+Report+Version+for+15+June+2006[1].pdf/$file/SLRC+Report+Version+for+15+June+2006[1].pdf) (accessed 9 September 2008).

5 Parliamentary Joint Committee on Intelligence and Security, *Review of Security and Counter Terrorism Legislation*, December 2006, p. 22, available at <http://www.aph.gov.au/house/committee/pjcis/securityleg/report/report.pdf> (accessed 9 September 2008); Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, p. 53, available at <http://www.aph.gov.au/house/committee/pjcis/proscription/report/report.pdf> (accessed 9 September 2008).

6 Senator Troeth, *Senate Hansard*, 23 June 2008, p. 3039.

1.8 Senator Troeth informed the Senate that the Bill 'is essential to ensure the reviewer's independence and to give [the reviewer] the powers needed to do the job well'. She also stated that it is 'regrettable that the Labor Government, which had strongly supported the creation of this position when in Opposition, used its numbers in the House to prevent any discussion of the bill without giving a reason'.⁷

Conduct of the inquiry

1.9 The committee advertised the inquiry in *The Australian* newspaper on 10 September 2008, and invited submissions by 12 September 2008. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 30 organisations and individuals.

1.10 The committee received 22 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.11 The committee held a public hearing in Canberra on 18 September 2008. A list of witnesses who appeared at the hearings is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.12 The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.13 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

7 Senator Troeth, *Senate Hansard*, 23 June 2008, p. 3040.