

# CHAPTER 2

## OVERVIEW OF THE BILL

2.1 This chapter sets out the main provisions of the Bill.

### **Part 1 – Preliminary**

#### ***Purpose of the Bill – proposed section 3***

2.2 Proposed section 3 provides that the purpose of the Bill is to appoint an independent person to ensure ongoing and integrated review of the operation, effectiveness and implications of laws in Australia relating to terrorism.

#### ***Definitions – proposed section 4***

2.3 Proposed section 4 sets out the definitions of terms used in the Bill as follows:

- 'terrorist act' is given the same meaning as in Part 5.3 of the *Criminal Code Act 1995* (Criminal Code);
- 'terrorism laws' means any law or part of a law directed to the prevention, detection or prosecution of a terrorist act.

2.4 The term 'terrorist act' is defined in Part 5.3 of the Criminal Code as an action or threat of action where:

- the action:
  - causes serious harm that is physical harm to a person; or
  - causes serious damage to property; or
  - causes a person's death; or
  - endangers a person's life, other than the life of the person taking the action; or
  - creates a serious risk to the health or safety of the public or a section of the public; or
  - seriously interferes with, seriously disrupts, or destroys, an electronic system, including but not limited to:
    - an information system; or
    - a telecommunications system; or
    - a financial system; or
    - a system used for the delivery of essential government services; or
    - a system used for, or by, an essential public utility; or
    - a system used for, or by, a transport system; and

- the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- the action is done or the threat is made with the intention of:
  - coercing, or influencing by intimidation, the government of the Commonwealth or a state, territory or foreign country, or of part of a state, territory or foreign country; or
  - intimidating the public or a section of the public.<sup>1</sup>

## **Part 2 – Independent Reviewer**

### ***Appointment of Independent Reviewer – proposed section 6***

2.5 Proposed subsection 6(2) provides that the Independent Reviewer must be appointed by the Governor-General.

2.6 Proposed subsection 6(3) states that, before a recommendation is made to the Governor-General for the appointment of a person as the Independent Reviewer, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives about the appointment.

### ***Appointment of Acting Independent Reviewer – proposed section 7***

2.7 Proposed subsection 7(1) provides that the Prime Minister may appoint a person to act as the Independent Reviewer in the following circumstances:

- during a vacancy in the office of the Independent Reviewer; or
- during any period, or during all periods, when the Independent Reviewer is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

2.8 However, a person appointed to act as the Independent Reviewer during a vacancy must not continue to act for more than 12 months.

2.9 Proposed subsection 7(2) states that, before appointing a person to act as the Independent Reviewer, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives about the appointment.

### ***Functions of Independent Reviewer – proposed section 8***

2.10 Proposed section 8 sets out the functions of the Independent Reviewer.

2.11 The functions of the Independent Reviewer are – at the request of the responsible Minister, the Parliamentary Joint Committee on Intelligence and Security,

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1 Note that a reference to any 'person' or 'property' is a reference to any person or property wherever situated, within or outside Australia; and a reference to 'the public' includes a reference to the public of a country other than Australia.

or on the Independent Reviewer's own motion – to review the operation, effectiveness and implications of laws relating to terrorist acts.

2.12 Proposed section 8 also provides that the Independent Reviewer is free to determine priorities as he or she thinks fit.

***Conduct of reviews – proposed section 9***

2.13 Proposed subsection 9(1) provides that the Independent Reviewer must inform the responsible Minister that he or she proposes to conduct a review, prior to the commencement of that review.

2.14 Proposed subsection 9(2) provides that the Independent Reviewer may obtain information – including information that is classified as confidential – from such persons as he or she thinks is necessary for the conduct of a review. The Independent Reviewer may also make such inquiries as he or she thinks is necessary for the conduct of a review.

2.15 Pursuant to proposed subsection 9(3), the Independent Reviewer must, before commencing a review of legislation, have regard to the functions of:

- the Inspector-General of Intelligence and Security;
- the Australian Security Intelligence Organisation;
- the Australian Federal Police;
- the Human Rights and Equal Opportunity Commission;<sup>2</sup>
- the Auditor-General;
- the Ombudsman; and
- the Privacy Commissioner,

in relation to that legislation, and may consult with all or any of them with respect to the review to ensure a cooperative and comprehensive approach, and to avoid inquiries being conducted unnecessarily by more than one of them.

***Power to obtain information and documents – proposed section 10***

2.16 Proposed subsection 10(1) provides that, where the Independent Reviewer believes that a person is capable of producing documents relevant to a review, he or she may, by notice in writing, require that person – within such period as is specified in the notice and which must be reasonable – to produce such documents to the Independent Reviewer.

2.17 Under proposed subsection 10(2), where documents are produced, the Independent Reviewer may take possession of, make copies of, or take extracts from

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2 On 4 September 2008, the Human Rights and Equal Opportunity Commission changed its name to the Australian Human Rights Commission.

such documents and may retain possession of them for such period as the Independent Reviewer considers necessary.

2.18 Proposed subsection 10(3) provides that, where the Independent Reviewer requires access to documents for the purpose of a review, and the documents have national security classification, the Independent Reviewer must make arrangements with relevant agencies for protection of the documents while they remain in the Independent Reviewer's control, and for the secure return of those documents.

2.19 Proposed subsection 10(4) provides that, where the Independent Reviewer takes possession, copies or extracts of documents, the documents will be held securely by the Independent Reviewer and will be destroyed within 6 months of the completion of the inquiry.

2.20 Pursuant to proposed subsection 10(5), where the Independent Reviewer believes that a person is capable of providing information relevant to the review being undertaken, the Independent Reviewer may, by notice in writing, require that person to attend before the Independent Reviewer to answer questions as relevant.

2.21 Proposed subsection 10(6) provides that a person is not liable to any penalty under the provisions of any other enactment by reason of his or her giving such information or producing such documents to the Independent Reviewer.

2.22 Proposed subsection 10(7) provides that, for the purposes of the *Privacy Act 1988*, the giving of such information or the production of such documents to the Independent Reviewer is taken to be authorised by law.

### ***Reports of Independent Reviewer – proposed section 11***

2.23 Under proposed subsection 11(1), the Independent Reviewer must report to the relevant Minister upon completion of each review.

2.24 Proposed subsection 11(2) provides that a Minister must, as soon as practicable after receiving a report by the Independent Reviewer:

- present to each House of Parliament a copy of the report, subject to the Independent Reviewer's certification that the report should be so presented, and the deletion of any part, the publication of which the Independent Reviewer certifies may adversely affect national security or should not be published on other compelling grounds; and
- present to each House of Parliament a response to the report, provided that a response to any report not certified for presentation, or any part the publication of which the Independent Reviewer has certified should be deleted, is made only to the Independent Reviewer.

2.25 Proposed subsection 11(3) states that, as soon as practicable after 30 June each year, the Independent Reviewer must provide to the Minister a report of the Independent Reviewer's activities during the preceding year. The Minister must, as

soon as practicable after receiving the report, present to each House of the Parliament a copy of the report – subject to the Independent Reviewer's certification that the report should be presented, and subject to deletion of any part of the report which the Independent Reviewer certifies may, if published, adversely affect national security or should not be published on other compelling grounds.

2.26 Proposed subsection 11(4) provides that a report of the Independent Reviewer that has been presented to the Parliament must be considered by the Parliamentary Joint Committee on Intelligence and Security, and included in its annual report to the Parliament.

### **Part 3 – Administrative Provisions**

#### ***Terms and conditions of appointment – proposed section 12***

2.27 Proposed subsection 12(1) provides that the Independent Reviewer will hold office for such period, not exceeding five years, as is specified in the instrument of appointment but, subject to subsection 12(2), is eligible for re-appointment.

2.28 Proposed subsection 12(2) provides that a person is not eligible to be appointed to the office of Independent Reviewer more than twice.

2.29 Under proposed subsection 12(3), the Independent Reviewer may be appointed on a full-time or part-time basis.

#### ***Resignation – proposed section 13***

2.30 Proposed section 13 states that a person appointed as Independent Reviewer may resign that office in writing, signed by the Independent Reviewer and delivered to the Governor-General.

#### ***Termination of appointment – proposed section 14***

2.31 Pursuant to proposed subsection 14(1), the Governor-General may terminate the appointment of the Independent Reviewer by reason of misbehaviour, or physical or mental incapacity.

2.32 Proposed subsection 14(2) provides that the Governor-General must terminate the appointment of the Independent Reviewer, if the Independent Reviewer:

- becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- is holding office on a full-time basis and
  - engages in paid employment outside the duties of his or her office, except with the approval of the Prime Minister; or
  - is absent from duty, except on leave, for 14 consecutive days or for 28 days in any period of 12 months; or

- fails, without reasonable excuse, to comply with proposed section 15.

***Disclosure of interests – proposed section 15***

2.33 Under proposed section 15, the Independent Reviewer must give written notice to the Prime Minister of all pecuniary or other interests that the Independent Reviewer has or acquires, and that could conflict with the proper performance of the Independent Reviewer's functions.