

Supplementary Information

Independent Reviewer of Terrorism Laws Bill [No 2] 2008

Senate Legal and Constitutional Affairs Committee

23 September 2008

The Law Council of Australia (“Law Council”) is grateful for the invitation to provide supplementary information and respond to the questions taken on notice at the Senate Legal and Constitutional Affairs Committee (“the Committee”) hearing into the *Independent Reviewer of Terrorism Laws Bill [No 2] 2008* (“the Bill”) on 18 September 2008.

TABLING REPORTS OF INDEPENDENT REVIEWER ‘AS SOON AS PRACTICABLE’

The Law Council was asked in the course of the hearing about its position on whether the requirement in subsection 11(2) - that the Minister, on receiving a report of the Independent Reviewer must table that report in Parliament *as soon as possible* – is appropriate or whether some fixed time frame for tabling the report should be set.

Section 11(2) states that a Minister must, *as soon as practicable* after receiving a report of a review of terrorism laws by the Independent Reviewer, present to each House of Parliament a copy of that report.

Neither the Parliamentary Joint Committee on Intelligence and Security nor the Sheller Committee make reference in their reports to the timeframe in which the Minister must present to each House of Parliament a copy of the Independent Reviewer’s report.

Similarly, the United Kingdom legislation does not specify a timeframe in which the Independent Reviewer’s report must be laid before Parliament, simply stating that: “On receiving a report under subsection (4), the Secretary of State must lay a copy of it before Parliament.”¹ However, this section may imply that the Secretary of State must lay the report before Parliament immediately.

Many statutes establish a timeframe of “within 15 sitting days” to present a report to parliament that has been prepared by an independent body and handed to a Minister.² However, none of these sections are truly analogous to section 11(2) because that section imposes upon the Minister a duty to respond to that report at the time of its presentation to parliament.

Section 11(2)(b) states that in addition to presenting a copy of the Independent Reviewer’s report as soon as practicable to parliament, the Minister must also present a response to that report.

The response that must be provided by the Minister is clearly intended to allow the Minister an opportunity to formulate a detailed response to the issues and criticisms raised by the Independent Reviewer in its report. Such a response would provide a valuable contribution to the debate on terrorism laws, and may also present an opportunity for the Government to consider making appropriate amendments based on the Independent Reviewer’s recommendations. Assuming that the Minister in question takes the Independent Reviewer’s report seriously, formulating a response to each of the issues that the report raises would take time, and should not be rushed.

¹ Section 14(6) of the *Prevention of Terrorism Act 2005*.

² For example, s.327 *Proceed of Crime Act 2002* (independent review of operation of the Act), s. 61A *Australian Crime Commission Act 2002* (review of operation of the Act), s. 251 *Anti-Money Laundering and Counter Terror Financing Act 2006* (review of operation of the Act) s. 46 *Human Rights and Equal Opportunity Commission Act 1986*, s. 23 *YUK Crimes Act 1914*, and so forth.

As a result, the Law Council believes it would be inappropriate to establish a statutory timeframe in which the Minister must present a copy of the report to Parliament. Limiting the timeframe in which the Minister may present the report to Parliament would also limit the ability of the Minister to formulate a useful and detailed response to that report. The Law Council therefore recommends that the words “as soon as practicable” in s. 11(2) remain, as opposed to inserting a statutory timeframe to present the report, say, “within 15 sitting days”, as exists in certain other acts.

The Law Council also notes that the term “as soon as practicable” implies expeditiously in the particular circumstances outlined above and therefore should not lead to unreasonable delays.

RECOMMENDATIONS OF THE LAW COUNCIL OF AUSTRALIA

As indicated at the hearing of the Inquiry on 18 September 2008, the Law Council generally supports the recommendations made by the Gilbert and Tobin Centre of Public Law in its submission to the Inquiry.

In order to assist the Committee, the Law Council provides the following recommendations, drawn from our written submission dated 15 August 2008.

1. A statutory office of Independent Reviewer of Australia’s terrorism laws should be created
2. A sub-section should be added to section 8 of the *Independent Reviewer of Terrorism Bill [No 2] 2008* (‘the Bill’) stipulating matters which must be included in the annual report of the Independent Reviewer. Such matters should include a non-exhaustive list of:
 - a. Divisions 80, 101 to 105 of the *Criminal Code*,
 - b. Parts 1AA and 1C of the *Crimes Act 1914* ,
 - c. Division 3 Part III of the *ASIO Act 1979*
 - d. The *National Security (Civil and Criminal Proceedings) Act 2004*.

The discretion for the Independent Reviewer to also examine other matters, which are not specified in the list, should remain.

3. Section 8 should be amended to emphasize that the laws relating to terrorist acts are to be reviewed for their effectiveness in achieving national security, their continued necessity and their impact upon other relevant matters such as human rights, including Australia’s performance of its international human rights obligations and on common law rights.
4. Section 11 should be amended to provide that any report of the Independent Reviewer which has been requested by the Parliamentary Joint Committee on Intelligence and Security pursuant to clause 8 should be presented directly to that Committee.
5. Section 11 should be amended to provide that the report of the Independent Reviewer is presented to the Parliament in full.

6. A panel of Independent Reviewers should be established. However, if a single Independent Reviewer is appointed, the possibility of reappointment should be removed.
7. That the Government also give consideration to the appointment of a Public Advocate or Public Interest Monitor in relation to the control orders and preventive detention order regime.

Attachment A

Profile – Law Council of Australia

The Law Council of Australia is the peak national representative body of the Australian legal profession. The Law Council was established in 1933. It is the federal organisation representing approximately 50,000 Australian lawyers, through their representative bar associations and law societies (the “constituent bodies” of the Law Council).

The constituent bodies of the Law Council are, in alphabetical order:

- Australian Capital Territory Bar Association
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society of the Australian Capital Territory
- Law Society of the Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar Association
- The Victorian Bar Inc
- Western Australian Bar Association
- LLFG Limited (a corporation with large law firm members)

The Law Council speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

The Law Council is the most inclusive, on both geographical and professional bases, of all Australian legal professional organisations.