



Australian Government

Attorney-General's Department

Security and Critical
Infrastructure Division

08/6308

26 September 2008

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

Inquiry into the Independent Reviewer of Terrorism Laws Bill 2008 [No.2]

Thank you for the opportunity to address the Committee at the public hearing on 18 September 2008 at which we undertook to provide further information to the Committee.

To reiterate submissions made by myself and Ms Willing at the hearing, the Attorney-General's Department is not opposed to the idea of an independent review mechanism for the counter-terrorism laws. The oral and written submissions made to the Committee reflect the differing approaches to establishing an independent review function in Australia's counter-terrorism framework. As the Committee is aware, both the Security Legislation Review Committee (Sheller Committee) and the Parliamentary Joint Committee on Intelligence and Security recommended that the Government establish a model for the independent review of Australia's security and counter-terrorism legislation.

The Department acknowledges that there are a variety of ways in which a review model could be implemented ranging from integrating it into an existing review mechanism, using an existing statutory office holder, extending the mandate of an existing parliamentary committee, or establishing a new statutory office.

All potential models need to be carefully examined in light of key underlying requirements that any reviewer be sufficiently independent, appropriately qualified and properly resourced so as to ensure effective review of the legislation. In addition, the Department considers it important to examine international approaches to see if similar models could be adopted in whole or in part in the Australian context such as the role of Lord Carlile QC in the United Kingdom.

Whatever review model is chosen, consideration would need to be given to the mandate of the independent reviewer, the compatibility of the chosen model with existing oversight mechanisms and costs and resourcing associated with setting up a new office or extending the functions of an existing office.

As highlighted by several submissions to the Committee, consideration would need to be given as to which laws would be subject to review by the independent reviewer. As has been suggested to the Committee, it may be desirable to include a list of legislation when defining the role of the

independent reviewer. In formulating that list, one approach may be for the independent reviewer to focus on the laws specifically enacted for the purposes of terrorism, including, but not limited to Part 5.3 of the *Criminal Code* (which includes the terrorist act offences, control orders and preventative detention orders), Division 3, Part III of the *Australian Security Intelligence Organisation Act 1979* (questioning and detention powers) and sections 23CA, 23CB and 23DA within Part IC of the *Crimes Act 1914* (dead time provisions specific to terrorism investigations).

Regardless of which laws are the subject of review by the independent reviewer, the Department considers it important to emphasise that it would be desirable for the independent reviewer to focus on those laws which have had practical application. Practical application of the laws would give an independent reviewer the opportunity to examine the effectiveness and implications of the laws, including any human rights implications. The Department therefore suggested in its earlier submission to the Committee that the independent reviewer examine and report on those counter-terrorism laws which have been used in the reporting year. It is also important that the role of an independent reviewer support and complement existing review and oversight mechanisms in the counter-terrorism laws.

If a review model is established, the Department considers that it is appropriate that the independent reviewer be required to report annually to the relevant minister (whether to the Attorney-General or the Prime Minister) who would be required to table the report in Parliament. Consideration would need to be given to ensuring that classified material was not included in any such report and it would be appropriate that the independent reviewer sought the advice of the Attorney-General in relation to that matter in a manner similar to the process provided for in the *Intelligence Services Act 2001*.

We have given careful consideration to the Committee's question about whether the Department can further indicate its views on some of the specific issues. Our view is that to do so would involve giving opinions on matters of policy. In addition, we have consulted the Attorney-General and he has advised that it would not be appropriate for him to pre-empt any Government decisions on this matter.

In response to Senator Ludlam's question, the Attorney-General advises that the Government is and remains committed to ensuring that the counter-terrorism laws include appropriate mechanisms to promote accountability and transparency which reflect international standards for human rights.

Yours sincerely



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Security and Critical Infrastructure Division