

Submission to Committee Secretary

Senate Legal and Constitutional Affairs Committee

Department of the Senate

PO Box 6100, Parliament House, Canberra ACT 2600 Australia

Concerning the INQUIRY INTO THE INDEPENDENT REVIEWER OF TERRORISM LAWS BILL
2008 (No 2)

From **CIVIL RIGHTS DEFENCE**

Civil Rights Defence is a group of citizens and activists who are concerned about the effect of anti-terrorism laws in Australia on civil rights.

Dear Secretary,

Civil Rights Defence advocates the repeal of Australia's anti-terrorism laws. We believe that the laws are dangerous and unnecessary and that the pre-existing criminal law is adequate. In that context we strongly support the *Independent Reviewer of Terrorism Laws Bill 2008 (No 2)* as a small step towards exposing and correcting undesirable aspects of the anti-terrorism laws.

We make the following comments and suggestions:

The phrase "...and for related purposes" in the description of the Bill is not explained. Civil Rights Defence believes that the phrase should cover reviewing the conduct of security agencies, including ASIO and the Federal Police, in relation to anti-terrorism laws, particularly the manner in which anti-terrorism laws are being implemented by the agencies. Although the agencies have other independent watchdogs, they are primarily concerned with whether the agencies act within the letter of the law. An Independent Reviewer of Terrorism Laws should be empowered to investigate the manner in which the agencies use anti-terror laws in a wider context including whether the use is effective in protecting Australians and whether it is aimed to achieve that objective or other objectives. Therefore we recommend that it be explicitly stated in the Bill that an Independent Reviewer of Terrorism Laws can also investigate the manner in which security agencies implement terrorism laws, perhaps by adding to the description "...and for related purposes, including the conduct of security agencies in relation to terrorism laws".

The Bill only proposes to appoint one independent person to perform the role of Reviewer. Civil Rights Defence suggests that it would be far preferable to appoint a committee of at least 3 independent people (or better still 5 or 6) to perform the role. The reason is that such a committee is more likely to be unbiased, truly independent and to come to reliable judgements. The saying “two heads are better than one” is relevant here. We share the concern of Glenn McGowan SC that “the effectiveness of the Act will depend entirely upon the quality and characteristics of the (single) Reviewer appointed.” The appointment of only one person runs the risk of a politically biased appointment or of unforeseen bias in a single individual, no matter how carefully appointed. Regardless, the risk of misjudgement is much greater with only one individual. A minimum of three individuals would provide a much greater surety of considered judgement, would reduce the risks associated with a single individual and would increase the value and importance of the findings and recommendations of Reviews. We therefore recommend that the Bill be so amended.

We also agree with Glenn McGowan SC that the Reviewer (or Reviewers) should be guided by international standards of human rights. This should be stated in the Bill.

Under 9. (3) it is stated that the Independent Reviewer must have regard to the functions of various individuals and bodies including ASIO and the Federal Police with a view to.....”avoiding inquiries being conducted unnecessarily by more than one of them.” Civil Rights Defence is concerned that this should not mean that because ASIO or the Federal Police were conducting their own investigation into terrorism laws related matters that the Independent Reviewer would then not investigate. It would be clearly inappropriate for agencies concerned with the enforcing of anti-terror laws to be themselves inquiring into the operation of those laws to the exclusion of an Independent Reviewer. We recommend that 9. (3) be reworded to make it clear that Independent Reviewer/s should not avoid inquiries in cases where security agencies involved in enforcing anti-terror laws are themselves conducting inquiries.

10 (3) refers to “documents with a national security classification”. It is not explicitly stated (though it may be implied) that these documents should be unedited and unaltered when supplied to the Reviewer. We recommend that it be made explicit in the Bill that original, unedited and unaltered documents must be supplied to the Reviewer.

Colin Mitchell

For CIVIL RIGHTS DEFENCE (member)

This submission was approved by a meeting of Civil Rights Defence on 9th Sept 08