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

**By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)**

Dear Sir/Madam,

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

I am writing to you on behalf of the Law Society's Human Rights Committee.

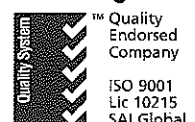
The Committee notes that the Federal Parliament has passed more than 40 separate pieces of legislation dealing with terrorism since September 2001. It further notes that much of the legislation deals with the fundamental rights of accused persons and was introduced with relative speed and sometimes in a fevered atmosphere in the aftermath, or in advance, of perceived threats.

Very little of the legislation passed has been later amended, even after reviews of some of the new laws have recommended changes.

The legislation often restricts the rights of accused persons in circumstances unprecedented over the previous century and it is therefore appropriate that a continuous or at least a periodic review mechanism be introduced. Such a mechanism would ensure that all security legislation undergoes a comprehensive review after any initial urgency allegedly justifying its introduction has receded and thereafter at least at periodic intervals.

It is also relevant that substantial parts of the new security legislation have received widespread adverse criticism as being unnecessarily extreme. Examples are as follows:

1. In 2002 the law of treason was amended and in its "Fighting Words" report reviewing the sedition laws in 2006, the ALRC criticised the treason amendments as allowing treason to be committed by a strong dissenting statement.



2. In 2003, ASIO was given a power to detain non-suspects for up to 7 days for compulsory interrogation, should such persons have information important to an investigation of a terrorism offence. Such terrorism offences could be as minor as a small donation to a controversial organisation such as Hamas.
3. In 2004, the Crimes Act provisions allowing extension of the time in which a suspect can be held after arrest but before s/he was charged were extended indefinitely. As is well known, Dr Mohammed Haneef was held under these provisions for 12 days between the time of arrest and the time of charge.
4. Later in 2004, the National Security Information (Criminal and Civil Proceedings) Act 2004 was passed. It allows the Attorney-General to certify a piece of evidence in a terrorism trial as prejudicial to national security. A Judge hearing such a trial must, in coming to his decision as to whether to exclude the evidence, give the certificate greater weight than the accused's right to a fair trial, which is in part a constitutional right.
5. In 2005, provisions were introduced allowing for control orders which, at their most extreme, allow a non-suspect to be held under house arrest for up to 12 months.
6. Also in 2005, new sedition laws were passed which, like the treason amendments, were criticised by the ALRC in the "Fighting Words" report as being able to be committed by strong dissenting statement.
7. In 2006, the ASIO detention and interrogation provisions referred to above were extended for a further 10 years even though they had initially been subject to a sunset clause of 3 years only.

Significantly, of the above provisions, only the treason and sedition amendments have been the subject of independent review and the reviewer's recommendations for reform have not been implemented even though there was little or no public criticism of the review recommendations.

In June 2006 the Security Legislation Review Committee (the Sheller Committee) reviewed the bulk of the remaining terrorism legislation passed to that time, apart from the laws referred to in the numbered paragraphs above. It recommended 20 changes to those laws and, once again, those changes have not been implemented.

In light of that experience, one must question the efficacy of one-off reviews. At the least, regular periodic reviews seem necessary.

The Bill currently before the Parliament, which recommends the appointment of an Independent Reviewer has the advantage that it would allow an individual to continuously review such laws.

However, such a position would have at least 2 disadvantages. It would involve the appointment of only one person who may not be as independent as the legislation intends because even a 5 year renewable term could attract a person interested in reappointment and therefore less interested in providing robust recommendations to a government likely to re-appoint.

Further, it may be preferable to appoint a committee such as the Sheller Committee to review such laws, noting the Sheller Committee was composed of a number of high-ranking statutory office holders who collectively seem more likely to be independent than a single individual.

The Committee notes that the Sheller committee recommended that the government establish a legislation-based timetable for continuing review of the security legislation by an independent body, the first review to take place within the 3 years commencing in June 2006.

The Committee believes that this recommended review should take place and that a periodic review every 3 years thereafter, of all security legislation affecting terrorism, by a committee similar to the Sheller Committee, should be instituted. If this recommendation is not accepted, at the least, a single independent reviewer appointed for a 5 year renewable period would be a good alternative.

However, the Committee further believes that the need for any independent review would be minimised if a Charter of Rights was introduced which would allow for continuous review of such legislation by truly independent bodies, the Courts established under Chapter III of the federal Constitution.

Thank you for the opportunity to comment on this Inquiry.

Yours sincerely



**Hugh Macken**  
President