

TERMS OF REFERENCE

COUNCIL OF AUSTRALIAN GOVERNMENTS' (COAG) REVIEW OF COUNTER-TERRORISM LEGISLATION

Origins of the Review

Following the September 11, 2001 terrorist attacks in the United States and subsequent attacks in various places overseas, the Commonwealth, State and Territory Governments enacted a series of laws intended to provide authorities with necessary emergency powers to prevent, or respond to, a terrorist act.

An Intergovernmental Agreement (IGA) on counter-terrorism laws was agreed at the June 2004 COAG meeting. This IGA provided for consultation between the Commonwealth and State and Territory Governments on amendments to federal terrorism offences and on the proscription of terrorist organisations.

Subsequent to the 2004 IGA, new counter-terrorism legislation was enacted in the Commonwealth and each State and Territory to provide for enhanced police powers in dealing with terrorism.

At the Special Meeting on Counter-Terrorism on 27 September 2005, COAG agreed that it was appropriate for these laws to be formally reviewed after a period of five years.

Committee and Secretariat Arrangements

The Review should be conducted by a small Committee, supported by a Secretariat.

The size of the Committee should be six members including the chair.

The Chair should be an independent person with extensive knowledge of, and experience in, the administration of criminal justice (for example, a retired judge or the current chair of an Australian law reform commission).

Although there should be a balance between Commonwealth and State and Territory members, there should be sufficient flexibility in determining the final mix at the time of the Review to take into account the experience and availability of the individual members to be appointed.

Although the remaining members should be drawn from the following sets of expertise, there should again be sufficient flexibility in determining the final mix at the time of the Review to take into account the experience and availability of the individual members to be appointed:

- two accountability members (for example, drawn from the Inspector-General of Intelligence and Security, an ombudsman, human rights commissioner, privacy commissioner or someone with expertise in law reform);
- two law enforcement members (one from the Australian Federal Police and one from a State or Territory police force); and
- a prosecutorial member.

Selection of Committee Members

The Prime Minister, Premiers and Chief Ministers will settle the individual appointments.

In conducting the Review, the Committee should provide for public submissions and public hearings.

Secretariat support should be provided by the Commonwealth Attorney-General's Department, with appropriate State and Territory representation, and the Secretariat should work in close consultation with all jurisdictions.

Scope of the Review

The legislation to be covered by the Review is:

- Sections 100.1, 101.2, 101.4, 101.5, 101.6, 102.1, 102.5, 102.6, 102.8, 103.1, 103.2, 103.3, 106.2, 106.3, and Divisions 104 and 105 of the *Criminal Code Act 1995* (Cth)
- Section 6 of the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth)
- Sections 3C, 3D and Division 3A of the *Crimes Act 1914* (Cth)
- Section 16 of the *Financial Transaction Reports Act 1988* (Cth)
- Schedule 1 (dab) and (dac) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth)
- *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT)
- Division 3.2 of the *Major Events Security Act 2000* (ACT)
- Parts 2 and 2A (and Parts 1, 4 and Schedule 1 insofar as they apply to Parts 2 and 2A) of the *Terrorism (Police Powers) Act 2002* (NSW)
- *Terrorism (Emergency Powers) Act 2006* (NT)
- *Terrorism (Preventative Detention) Act 2005* (Qld)
- Chapter 19, Part 2 of the *Police Powers and Responsibilities Act 2000* (Special Events) (Qld)
- Part 2A of the *Public Safety Preservation Act 1986* (terrorist emergency powers) (Qld)
- *Terrorism (Preventative Detention) Act 2005* (SA)
- *Terrorism (Police Powers) Act 2005* (SA)
- *Terrorism (Preventative Detention) Act 2005* (Tas)
- *Police Powers (Public Safety) Act 2002* (Tas)
- Parts 2A and 3A of the *Terrorism (Community Protection) Act 2003* (Vic)
- *Terrorism (Preventative Detention) Act 2006* (WA), and
- *Terrorism (Extraordinary Powers) Act 2005* (WA).

In undertaking the Review, the Committee should take into account the outcome of reviews or monitoring activities conducted in accordance with the legislation of individual jurisdictions.

The Committee should also recognise that the Independent National Security Legislation Monitor has been appointed and will have an ongoing review function in relation to the relevant Commonwealth legislation.

Purpose of the Review

The Committee should review and evaluate the operation, effectiveness and implications of the relevant amendments in each jurisdiction.

The goals of this Review include recommendations by the Committee as to whether the laws the subject of the Review:

- are necessary and proportionate
- are effective against terrorism by providing law enforcement, intelligence and security agencies with adequate tools to prevent, detect and respond to acts of terrorism
- are being exercised in a way that is evidence-based, intelligence-led and proportionate, and
- contain appropriate safeguards against abuse.

Reporting Requirements

The Committee should provide a written report to COAG within six months of commencing the Review.

COAG should be able to release the report for public scrutiny. If it is necessary for the Committee to include sensitive or classified information in its report, the Committee should provide an additional unclassified report to COAG suitable for public release.