

RECOMMENDATIONS

Recommendation 1

2.19 The committee recommends that the Government continue to fund its terrorism related information campaign directed at the Australian community and, further, that the Government also develop and fund a specific information campaign – in conjunction with leaders of the Australian Muslim community – which is directed at informing that community of the rationale for and requirements of Australia's terrorism legislation.

Recommendation 2

3.152 The committee recommends that proposed section 105.12 be amended, or a new provision inserted into the Bill, to provide a detainee with an express statutory right to present information to the independent issuing authority for a continued preventative detention order, to be legally represented and to obtain the published reasons for the issuing authority's decision.

Recommendation 3

3.153 The committee recommends that:

- (i)** the Bill be amended to expressly require that young people between the ages of 16 and 18 years of age must not be detained with adults while in police custody;
- (ii)** proposed section 105.27 be amended to require the segregation of minors from adults in State and Territory facilities; and
- (iii)** proposed section 105.33 be amended to expressly require that minors must be treated in a manner that is consistent with their status as minors who are not arrested on a criminal charge.

Recommendation 4

3.154 The committee recommends that proposed section 105.28 be amended to place an obligation on police officers to ensure access to a detainee by a lawyer and an interpreter, as necessary, in cases where there are reasonable grounds to believe that the detainee is unable to understand fully the effect of the preventative detention order because of inadequate knowledge of the English language or a mental or physical disability.

Recommendation 5

3.155 The committee recommends that proposed sections 105.28 and 105.29 be amended to expressly require that detainees be advised that they can make representations to the nominated senior AFP member concerning revocation of the preventative detention order.

Recommendation 6

3.156 The committee recommends that proposed section 105.28 be amended to expressly require that the detainee be advised that he or she can contact the family members referred to in proposed section 105.35.

Recommendation 7

3.157 The committee recommends that proposed section 105.32 be amended to provide that the detainee shall be provided with a copy of the order and the reasons for the decision, including the materials on which the order is based, subject to any redactions or omissions made by the issuing authority on the basis that disclosure of the information concerned is 'likely to prejudice on national security' (as defined in the *National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth)*).

Recommendation 8

3.158 The committee recommends that proposed sections 105.15 and 105.16 be amended to elaborate the grounds for a prohibited contact order. The committee also recommends that these grounds be equivalent to those provided in the UK terrorism legislation, namely:

- (i)** interference with or harm to evidence of a terrorism related offence;
- (ii)** interference with or physical injury to any person;
- (iii)** alerting of persons suspected of a terrorism related offence who have not been arrested;
- (iv)** hindering recovery of property obtained as a result of a terrorism related offence;
- (v)** interference with gathering information about the commission, preparation or instigation of acts of terrorism; and
- (vi)** alerting a person and thereby making it more difficult to prevent an act of terrorism.

Recommendation 9

3.159 The committee recommends that the Bill be amended to:

- (i)** authorise oversight by the Commonwealth Ombudsman of the preventative detention regime, including conferral of a statutory right for the Ombudsman to enter any place used for detention under a preventative detention order; and
- (ii)** require the nominated senior AFP officer - in circumstances when a legal adviser is not available to the detainee - to notify the Ombudsman when a preventative detention order and a prohibited contact order is made and to provide the Ombudsman with a copy of any such order and reasons for those orders.

Recommendation 10

3.160 The committee recommends that the Bill be amended to require the Minister - in consultation with HREOC, the Ombudsman and the Inspector-General for Intelligence and Security – to develop a Protocol governing the minimum conditions of detention and standards of treatment applicable to any person who is the subject of a preventative detention order.

Recommendation 11

3.161 The committee recommends that proposed paragraph 105.41(3)(c) be amended to refer to the persons whom the detainee has a right to contact instead of persons with whom the detainee has had contact.

Recommendation 12

3.162 The committee recommends that proposed subsection 105.42(1) be amended to require that any questioning which takes place during the period of the preventative detention order be videotaped and generally occur in the presence of the detainee's lawyer.

Recommendation 13

3.163 The committee recommends that the Bill be amended to remove the restrictions on lawyer/client communications and to allow a legal representative to advise his/her client on any matter. The committee also recommends that proposed section 105.37 be amended to affirm the right of a detainee, subject to a prohibited contact order, to contact their lawyer of choice and to consult their lawyer at any time and in privately.

Recommendation 14

3.164 The committee recommends that proposed section 105.38 be amended to permit monitoring of detainees' consultation with their lawyers only where the nominated AFP officer has reasonable grounds to believe that the consultation will interfere with the purpose of the order.

Recommendation 15

3.165 The committee recommends that the Bill be amended to prohibit reliance on hearsay evidence in proceedings for the issue of a continued preventative detention order.

Recommendation 16

3.166 The committee recommends that proposed section 105.47 be amended to require the Attorney General to report on Commonwealth preventative detention orders on a six monthly basis and that, in addition to the matters currently set out in that provision, the information should include the number of orders voided or set aside by the AAT.

Recommendation 17

3.167 The committee recommends that the Bill be amended to include an express requirement for a public and independent five year review of the operation of Division 105 adopting the same mechanism and similar terms as that provided by section 4 of the *Security Legislation Amendment (Terrorism) Act 2002* (Cth), which established the Sheller Committee.

Recommendation 18

3.168 The committee recommends that proposed section 105.53 be amended to include a sunset clause of five years applicable to Schedule 4.

Recommendation 19

4.56 The committee recommends that proposed sections 104.2, 104.4, 104.7-9 and 104.14 be amended to include a requirement that the AFP officer, the Attorney General and the issuing Court each be satisfied that the application and making of the control order and the terms in which it is sought and issued is the least restrictive means of achieving the purpose of the order.

Recommendation 20

4.57 The committee recommends that proposed section 104.5 be amended to require that the day of the hearing to confirm, vary or revoke the order must be set as soon as is reasonably practicable after the making of the order.

Recommendation 21

4.58 The committee recommends that proposed section 104.12 be amended to require police officers to arrange access to a detainee by a lawyer and an interpreter, as necessary, in cases where there are reasonable grounds to believe that the detainee is unable to understand fully the effect of control order because of an inadequate knowledge of the English language or a mental or physical disability.

Recommendation 22

4.59 The committee recommends that the Bill be amended to prohibit reliance on hearsay evidence in a proceeding for the grant of continued control order.

Recommendation 23

4.60 The committee recommends that proposed section 104.12 be amended to provide that the detainee shall be provided with a copy of the order and the reasons for the decision, including the materials on which the order is based, subject to any redactions or omissions made by the issuing authority on the basis that disclosure of the information concerned is 'likely to prejudice on national security' (as defined in the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth))

Recommendation 24

4.61 The committee recommends that proposed section 104.29 be amended to require the Attorney-General to report to the Parliament on control orders on a six monthly basis.

Recommendation 25

4.62 The committee recommends that the Bill be amended by inserting an express requirement for a public and independent 5 year review of the operation of Division 104, adopting the same mechanism and similar terms to that provided by section 4 of the *Security Legislation Amendment (Terrorism) Act 2002* (Cth), which established the Sheller Committee.

Recommendation 26

4.63 The committee recommends that proposed section 104.32 be amended to provide a sunset period of five years.

Recommendation 27

5.173 The committee recommends that Schedule 7 be removed from the Bill in its entirety.

Recommendation 28

5.174 The committee recommends that the Australian Law Reform Commission conduct a public inquiry into the appropriate legislative vehicle for addressing the issue of incitement to terrorism. This review should examine, among other matters, the need for sedition provisions such as those contained in Schedule 7, as well as the existing offences against the government and Constitution in Part II and Part IIA of the *Crimes Act 1914*.

Recommendation 29

5.176 If the above recommendation to remove Schedule 7 from the Bill is not accepted, the committee recommends that:

- proposed subsections 80.2(7) and 80.2(8) in Schedule 7 be amended to require a link to force or violence and to remove the phrase 'by any means whatever';
- all offences in proposed section 80.2 in Schedule 7 be amended to expressly require intentional urging; and
- proposed section 80.3 (the defence for acts done 'in good faith') in Schedule 7 be amended to remove the words 'in good faith' and extend the defence to include statements for journalistic, educational, artistic, scientific, religious or public interest purposes (along the lines of the defence in section 18D of the *Racial Discrimination Act 1975*).

Recommendation 30

5.233 The committee recommends that the amendments in Schedule 1 of the Bill, relating to advocacy of terrorism, be included in the proposed review by the Australian Law Reform Commission as recommended above in relation to Schedule 7.

Recommendation 31

5.236 The committee recommends that proposed paragraph (c) of the definition of 'advocates' in Item 9 of Schedule 1 be amended to require that the praise be made with the intention, or in circumstances where it is likely to have the effect, of creating a substantial risk of a terrorist act occurring.

Recommendation 32

5.239 The committee recommends that the proposed definition of 'advocates' in Item 9 of Schedule 1 be amended to include criteria to clarify the circumstances to be taken into account in determining whether an 'organisation' may be considered to 'advocate terrorism'. This criteria could include, for example, that the statements advocating terrorism are made by the acknowledged leader of the organisation; are made on official material distributed or speeches given by the leader or organisation; and the statements are made on multiple occasions.

Recommendation 33

6.66 The committee recommends that all police who exercise the new stop, question, detain, search and seizure powers under Schedule 5 of the Bill be required to undergo comprehensive training as to their obligations under Commonwealth and state and territory discrimination legislation.

Recommendation 34

6.67 The committee recommends that proposed section 3UD of Schedule 5 of the Bill be amended to include a requirement that, as far as possible, body searches are to be conducted in private.

Recommendation 35

6.68 The committee recommends that proposed section 3UD of Schedule 5 of the Bill be amended to include a requirement that body searches be carried out by police officers of the same sex as the person being searched.

Recommendation 36

6.69 The committee recommends that Schedule 5 of the Bill be amended to include a requirement that all police forces keep comprehensive records in relation to any exercise of the proposed stop, question, detain, search and seizure powers in Schedule 5.

Recommendation 37

6.70 The committee recommends that the Commonwealth Ombudsman be tasked with comprehensive oversight of the use of the proposed stop, question, detain, search and seizure powers under Schedule 5 of the Bill.

Recommendation 38

6.71 The committee recommends that the sunset clause applicable to Schedule 5 be amended to apply for a period of five years.

Recommendation 39

6.72 The committee recommends that the Bill be amended by inserting an express requirement for a public and independent five year review of the operation of Schedule 5.

Recommendation 40

6.145 The committee recommends that proposed section 3ZQR of Schedule 6 of the Bill be amended to preserve absolutely legal professional privilege and other duties of confidence, including the duty of journalists not to reveal their sources, in respect of any documents or information sought under the notice to produce regime in Schedule 6.

Recommendation 41

6.146 The committee recommends that proposed section 3ZQO of Schedule 6 of the Bill be amended to better protect the capture of extraneous and possibly sensitive information from the scope of the notice to produce regime for serious (non-terrorism) offences. That is:

- proposed section 3ZQO be amended to include the capacity for a notice to require the production of either 'information' or of 'documents';
- proposed subsection 3ZQO(2) be amended to specifically require Federal Magistrates to consider also whether:
 - it is appropriate that the notice require the production of 'documents' rather than 'information'; and
 - in cases where documents are sought, whether the source and documents nominated are the most appropriate ones for obtaining the information of relevance to the investigation.

Recommendation 42

6.147 The committee recommends that a set of best practice procedures and guidelines be developed in consultation with the Office of the Privacy Commissioner to govern the collection, use, handling, retention and disposal of personal information acquired under the powers in Schedules 5, 6 and 8 of the Bill.

Recommendation 43

6.148 The committee recommends that the Bill be amended to include a sunset clause of five years applicable to Schedule 6.

Recommendation 44

6.149 The committee recommends that the Bill be amended by inserting an express requirement for a public and independent five year review of the operation of Schedule 6.

Recommendation 45

6.187 The committee recommends that Items 12 and 16-20 of Schedule 10 of the Bill be amended to limit the provisions extending the time periods for validity of search warrants to ASIO investigations specifically relating to suspected terrorist activities and terrorism offences only.

Recommendation 46

6.188 The committee recommends that Items 23 and 24 of Schedule 10 of the Bill be amended to clarify that the power allowing for the removal and retention of material found during the execution of an ASIO search warrant, for 'such time as is reasonable' unless its return would be 'prejudicial to security', does not encompass a power to confiscate the material absolutely.

Recommendation 47

6.189 The committee recommends that ASIO, in consultation with the Inspector-General of Intelligence and Security, develop a set of best practice procedures and guidelines to govern the collection, use, handling, retention and disposal of personal information acquired under its expanded powers in Schedule 10 of the Bill.

Recommendation 48

6.190 The committee recommends that the Bill be amended to include a sunset clause of five years applicable to Schedule 10.

Recommendation 49

6.191 The committee recommends that the Bill be amended by inserting an express requirement for a public and independent five year review of the operation of Schedule 10.

Recommendation 50

7.45 The committee recommends that clause 2 of the Bill be amended to provide that Schedule 9 of the Bill shall commence on 'a date to be proclaimed'.

Recommendation 51

7.73 The committee recommends that the Bill be amended to provide that Schedule 3 of the Bill shall be subject to a public and independent five year review.

Recommendation 52

7.74 Subject to the above recommendations, the committee recommends that the Senate pass the Bill.