



**ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP**

NEWS RELEASE

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COMPREHENSIVE RESPONSE TO NATIONAL SECURITY LEGISLATION REVIEWS

Attorney-General Robert McClelland today tabled in Parliament the Rudd Government's comprehensive response to outstanding reviews of national security legislation from the term of the former Government.

At the same time, Mr McClelland tabled in Parliament the public report of the Inquiry by the Hon. John Clarke QC into the case of Dr Mohamed Haneef and the Government's response to that report.

"At the last election, the Rudd Government gave a commitment to ensure Australia has strong counter-terrorism laws that protect the security of Australians while preserving the values and freedoms that are part of the Australian way of life," Mr McClelland said.

"The measures announced today deliver on that commitment."

"They are designed to give the Australian community confidence that our law enforcement and security agencies have the tools they need to fight terrorism, while ensuring the laws and powers are balanced by appropriate safeguards."

"The focus of the laws will remain on preventing a terrorist attack from occurring in the first place – not just waiting to punish those who would commit such heinous crimes until after they occur."

"And the measures are a comprehensive response to recommendations made by bipartisan parliamentary committees and independent reviews of Australia's counter-terrorism laws over the past three years."

Consistent with its commitment to a bipartisan approach to national security, the Rudd Government will develop this legislation in a careful, transparent and consultative manner. The Government will prepare a discussion paper and exposure draft of the legislation for release in the first half of 2009.

Some national security legislation is underpinned by a referral of legislative power from the States. In accordance with the intergovernmental agreement which supports this referral of power, the Commonwealth will also consult with State and Territory Governments in the development of the proposals.

Key aspects of the proposals are:

1. Improvements to counter-terrorism offences

The Government will make improvements to the counter-terrorism offences, including ensuring they cover psychological as well as physical harm, ensuring they apply clearly to threats of terrorist action, recognising that international organisations (such as the United Nations) can be the target of terrorist violence, and creating a new offence covering terrorist-related hoaxes committed without the use of the post or a telecommunications network.

2. National Security Legislation Monitor

The Government will establish a National Security Legislation Monitor to review the practical operation of counter-terrorism legislation on an annual basis. The Monitor will be an independent statutory office within the Prime Minister's portfolio and will report to Parliament. An independent review mechanism was recommended by the Sheller Committee in April 2006, the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in December 2006, and most recently Mr Clarke. The Government will progress this proposal as a priority.

To implement bipartisan recommendations of the PJCIS, the Government will refer two particular aspects of the counter-terrorism legislation to the Monitor once the office is established. These will be the offence of associating with a terrorist organisation, and strict liability aspects of other terrorism offences.

3. Parliamentary oversight of the Australian Federal Police

The Government will establish a Parliamentary Joint Committee on Law Enforcement to extend parliamentary oversight to include the Australian Federal Police. This implements a bipartisan recommendation of the Parliamentary Joint Committee on the Australian Crime Commission in November 2005.

The Government will also establish a mechanism to enable the PJCIS, which oversees security and intelligence agencies, to extend inquiries to include the Australian Federal Police with the Attorney-General's consent. This will occur where a security or intelligence issue can only satisfactorily be examined by going beyond the Australian Intelligence Community.

4. Extended mandate of Inspector-General of Intelligence and Security

The Government will also extend the mandate of the Inspector-General of Intelligence and Security (IGIS) to enable the IGIS, by direction of the Prime Minister, to extend inquiries to cover other agencies. Again, this will occur where a security or intelligence issue can only be adequately examined by looking beyond the Australian Intelligence Community.

5. Implementation of ALRC recommendations on sedition

The Government will honour its election commitment to implement the recommendations of the Australian Law Reform Commission in July 2006 on federal sedition laws. These include changing the title of the offence from “sedition” to “urging violence”, clarifying and modernising the elements of the offence, and repealing obsolete and never-used provisions enacted in the 1920s for the proscription of “unlawful associations”. It will also ensure there is an offence of urging violence against a group or individual on the basis of race, religion, nationality, national origin or political opinion.

6. Implementation of the recommendations of the Clarke Inquiry

The Government has accepted and will implement all 10 recommendations made by Mr Clarke, to improve the operation of relevant legislation and promote cooperation and information sharing between government departments and agencies in counter-terrorism matters.

This includes reviewing the operation of the police investigative detention powers for counter-terrorism offences. The Government’s proposals will be included in the discussion paper that will accompany the exposure draft legislation in the first half of 2009.

“The report represents 7 months of detailed examination and analysis by Mr Clarke and his staff into the issues raised by his terms of reference,” Mr McClelland said.

“The report is balanced, thorough and constructive. Most importantly, it will assist the Government in ensuring Australia’s security agencies are working as well as they can – individually and collectively.”

The completion of the Clarke Inquiry honours another election commitment of the Rudd Government.

Copies of Mr Clarke’s public report, as tabled in Parliament, can be accessed at www.haneefcaseinquiry.gov.au.

Copies of the Government’s responses to the following reviews can be accessed at www.ag.gov.au:

- Parliamentary Joint Committee on Intelligence and Security, *Review of Security and Counter-Terrorism Legislation* (December 2006) (which took into account recommendations made by the Security Legislation Review Committee (the Sheller Committee) in April 2006)
- Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia* (July 2006)

- Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code* (September 2007)
- Clarke Inquiry into the Case of Dr Mohamed Haneef (November 2008)

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ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

*Statement on the tabling of the Government's response
to reviews of national security legislation and the
public report of the Inquiry by the Hon. John Clarke
QC into the case of Dr Mohamed Haneef*
Commonwealth Parliamentary Offices, Sydney
23 December 2008, 11.00am

CHECK AGAINST DELIVERY

[Introduction]

- 1. Today the Government tabled in Parliament its comprehensive response to outstanding reviews of national security legislation from the term of the former Government.**
- 2. At the same time, the Government has tabled in Parliament the public report of the Inquiry by the Hon. John Clarke QC into the case of Dr Mohamed Haneef, and the Government's response to that report. This has been made possible by the conclusion of terrorism trials in**

the United Kingdom arising from the attempted terrorist attacks in London and Glasgow in June 2006.

[Mr Clarke's Report]

- 3. I will first address Mr Clarke's Report.**
- 4. It is not my intention to provide a narrative or commentary on the Report – the Report speaks for itself in respect to the matters concerning the arrest, detention and charging of Dr Haneef as well as the cancellation of his visa and the issuing of a criminal justice stay certificate.**
- 5. More broadly, when I announced the Clarke Inquiry I made it clear that the Government's primary objective was to get the facts of the case, and to ensure Australia's security agencies are functioning as well as they possibly can, both individually and collectively.**
- 6. Mr Clarke has acknowledged that agencies have been working to establish greater cooperation and interoperability consistent with the**

recommendations of the Street Review that were published in March of this year.

- 7. In addition, Mr Clarke has made further recommendations for ensuring a whole-of-government approach to national security and law enforcement.**
- 8. The report represents 7 months of detailed examination and analysis by Mr Clarke and his staff.**
- 9. I thank them for their dedication. They have produced a Report which is balanced, thorough and constructive.**
- 10. The Government has accepted all 10 of Mr Clarke's recommendations and is moving to implement them.**
- 11. The details of the Government's response are summarised in the document tabled in Parliament today.**

[Other reforms]

- 12. Next I would like to turn to the other reforms tabled in Parliament today.**
- 13. The documents which have been tabled provide comprehensive responses to recommendations made by bipartisan parliamentary committees and independent reviews of Australia's counter-terrorism laws over the past three years, in particular the:**
- *Review of Sedition Laws in Australia* by the Australian Law Reform Commission in July 2006;**
 - *Review of Security and Counter-Terrorism Legislation* by the Parliamentary Joint Committee on Intelligence and Security in December 2006 (which took into account the recommendations of the Sheller Committee from April 2006);**
 - *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code* by the Parliamentary Joint Committee on**

Intelligence and Security in September 2007; and the

- *Inquiry by the Hon. John Clarke QC into the case of Dr Mohamed Haneef in November 2008.*

14. The Government's response adopts most of the recommendations made by these reviews.

Significant aspects of the proposals announced today include:

15. *Firstly, improvements to counter-terrorism offences:* The Government will make improvements to the counter-terrorism offences, including ensuring they cover psychological as well as physical harm, ensuring they apply clearly to threats of terrorism, recognising that international organisations (such as the United Nations) can be the target of terrorist violence, and creating a new offence covering terrorist-related hoaxes committed without the use of the post or a telecommunications network.

16. *Secondly, a National Security Legislation Monitor:* The Government will establish a

National Security Legislation Monitor to review the practical operation of counter-terrorism legislation on an annual basis or as required in respect to a particular case or event.

- 17. *Thirdly, Parliamentary oversight of the Australian Federal Police:* The Government will establish a Parliamentary Joint Committee on Law Enforcement to extend parliamentary oversight to include the Australian Federal Police. The Government will also establish a mechanism to enable the Parliamentary Joint Committee on Intelligence and Security, which oversees security and intelligence agencies, to extend inquiries to include the Australian Federal Police with the agreement of the Attorney-General. This will occur where a security or intelligence issue can only satisfactorily be examined by going beyond the Australian Intelligence Community.**

- 18. *Fourthly, an extended mandate for the Inspector-General of Intelligence and Security:***

The Government will extend the mandate of the Inspector-General of Intelligence and Security (IGIS) to enable the IGIS, by direction of the Prime Minister, to extend inquiries to cover other agencies. Again, this will occur where a security or intelligence issue can only be adequately examined by looking beyond the Australian Intelligence Community.

19. *Fifthly, implementation of the Australian Law Reform Commission recommendations on sedition:*

The Government will honour its election commitment to implement the recommendations of the Australian Law Reform Commission in July 2006 on federal sedition laws. These include changing the title of the offence from “sedition” to “urging violence”, clarifying and modernising the elements of the offence, and repealing obsolete and never-used provisions enacted in the 1920s. It will also ensure there is an offence of urging violence against a group or individual on the basis of race, religion, nationality, national

origin or political opinion. (This covers a situation that is not mere vilification but rather applies to the urging of actual violence.)

- 20. The Government will prepare a discussion paper and exposure draft of the legislation for release in the first half of 2009. This will facilitate extensive consultation and feedback on the proposed changes.**
- 21. We will also be undertaking consultation with the States and Territories in the development of the proposals.**
- 22. The discussion paper and exposure draft legislation that will be circulated will also include proposals to refine the operation of counter-terrorism laws in light of operational experience. Those amendments will largely clarify and simply the operation of existing laws.**
- 23. By and large these reforms provide clarification and in some cases additional safeguards to the exercise of quite significant law enforcement and investigatory powers.**

24. Essentially, however, the focus of these powers will remain on preventing a terrorist attack from occurring in the first place – not just waiting to punish those who would commit such heinous crimes until after they occur.

[Conclusion]

25. In conclusion, the measures announced today by the Government are a comprehensive response both to bipartisan and independent reviews of our national security legislation over the past three years, as well as Mr Clarke's recommendations.

26. I am confident that the measures will result in greater community confidence that Australia has an appropriate and comprehensive whole-of-government approach to national security.

ENDS

Parliamentary Joint Committee on Intelligence and Security

Review of Security and Counter-Terrorism Legislation

Tabled 4 December 2006

(Note: This Review took into account recommendations made by the Security Legislation Review Committee (Sheller Committee))

Government response to recommendations

(Note: Any legislative amendments to Part 5.3 of the Criminal Code require the approval of the majority of the States and Territories in accordance with the Inter-Governmental Agreement on the Counter-Terrorism Laws.)

Recommendation	Response
<p>Rationale / Community education and publicity</p> <p>1. The Committee recommends that the Government support/sponsor a study into the causes of violent radicalisation in Australia to inform Australia's counter terrorism strategy.</p>	<p>The Government supports this recommendation.</p> <p>The Government recognises that communities have an important role to play in protecting our national security and is committed to engaging the community on a range of national security matters. Considerable research has already been undertaken by Australian and overseas universities and think tanks on the causes of violent radicalisation. The Government is actively considering how best to take this forward in the Australian context. Several jurisdictions have already undertaken relevant studies and begun specifically targeted programs.</p> <p>In addition, as an ongoing task, the Attorney-General's Department (the Department) has undertaken considerable work to educate communities and create public awareness of the counter-terrorism laws. This has included the distribution of pamphlets in eight different languages spoken in Australia and has involved Departmental officers speaking at public forums. Future activities could involve extending the range of languages in which information pamphlets are produced (depending on community needs), preparing supplementary explanatory material where a significant change to the counter-terrorism laws is introduced and providing presentations to a range of community groups and stakeholders about impending key amendments to counter-terrorism legislation. In order to enhance the effectiveness of existing education and public awareness programs, attention will be directed towards extending counter-terrorism public information arrangements.</p>

<p>Further reviews</p> <p>2. The Committee recommends that:</p> <p>(a) the Government appoint an independent person of high standing as an Independent Reviewer of terrorism law in Australia.</p> <p>(b) the Independent Reviewer be free to set his or her own priorities and have access to all necessary information;</p> <p>(c) the Independent Reviewer report annually to Parliament</p> <p>(d) the <i>Intelligence Services Act 2001</i> be amended to require the PJCIS to examine the reports of the Independent Review tabled in the Parliament.</p>	<p>The Government supports the development of a framework for the regular reviewing of the counter-terrorism legislation through the establishment of a new statutory office in the Prime Minister’s Portfolio, to be known as the National Security Legislation Monitor, reporting to Parliament.</p> <p>Ongoing review of the counter-terrorism legislation is consistent with the Government’s policy imperative to ensure the laws operate in an effective and accountable manner.</p> <p>The National Security Legislation Monitor will bring a more consolidated approach to ongoing review of the laws. This will avoid the past practice of ad hoc reviews on particular aspects which has resulted in a less holistic approach and can be resource-intensive for both the reviewing body and the relevant agencies involved in the review.</p> <p>It is only after there has been experience with the legislation that its practical operation and effectiveness, and implications for national security and human rights can be fully assessed. A formal mechanism for regularly examining the use of the laws and drawing out lessons from their practical operation would ensure ongoing improvement of those laws.</p>
<p>Effectiveness and Implications: Impact on Arab and Muslim Australians</p> <p>3. The committee recommends that Australian police forces review their media policies to ensure that official statements do not prejudice the right to fair trial and are sensitive to the wider implications for the community</p>	<p>The Government supports this recommendation.</p> <p>See discussion for recommendation 1.</p>
<p>4. The Committee recommends that AGD increase its efforts to ensure comprehensive information about the terrorism law regime is available to the public in appropriate community languages.</p>	<p>The Government supports this recommendation.</p> <p>See discussion for recommendations 1 and 3.</p>

<p>5. The Committee recommends that Australia’s counter terrorism strategy encompass:</p> <p>(a) a commitment to the rights of Muslims to live free from harassment and enjoy the same rights extended to all religious groups in Australia;</p> <p>(b) wide dissemination of information about mechanisms for complaint or redress in relation to law enforcement, intelligence agencies and the media; and</p> <p>(c) a statement on the importance of informed and balanced reporting to promote social cohesion.</p>	<p>The Government supports this recommendation.</p> <p>See discussion for recommendation 1.</p>
<p>Treason</p> <p>6. The Committee recommends that:</p> <p>(a) the offence of treason be restructured so that conduct constituting treason apply only to persons who owe allegiance to Australia or who have voluntarily placed themselves under Australia’s protection;</p> <p>(b) the conduct of others, which falls within the scope of paragraphs 80.1(1)(a)(b)(c), should be dealt with separately;</p> <p>(c) the offence of assisting the enemy under paragraph 80.1(e) and (f) be clarified to cover ‘material assistance’;</p> <p>(d) paragraph 80.1(f) be amended to require knowledge of the existence of armed hostilities.</p>	<p>The Government supports in part recommendation 6.</p> <p>The Government <u>supports sub-recommendation (a)</u> in relation to providing an allegiance or duty requirement within the treason offence. Historically, it was always intended that the treason offence contain an allegiance element. Therefore, it is important that the provision expressly state this so it is clear that the presence of a betrayal of an allegiance or duty to the state is integral to the operation of the treason offence.</p> <p>The Government <u>supports sub-recommendation (c)</u>. The offence already requires that assistance provided to the enemy be real or concrete and not mere rhetoric or expressions of dissent. Clarifying the conduct standard as one of ‘material assistance’ is reflective of how the offence is intended to operate. The ALRC made similar recommendations in its Report entitled <i>Fighting Words: A Review of Seditious Laws in Australia</i> (ALRC 104) (see recommendation 11-2)</p> <p>The Government <u>does not support sub-recommendations 6(b) and 6(d)</u>. In recommendation 6(b), the PJCIS recommends that the types of treasonable conduct set out in subsections 80.1(a)-(c) be separated. Implementation of the recommendation would not serve to improve the operation of the offence.</p>

	<p>Recommendation 6(d) proposes amending the fault elements of the treason offence. This is not supported as it would confine the scope of the offence to those circumstances where the defendant knew about the existence of armed hostilities. The offence in section 80.1(f) currently requires that a person <i>intentionally</i> engage in conduct which is <i>intended</i> to assist an enemy (either country or organisation) which is engaged in armed hostilities against the Australian Defence Force. In proving that a person intended to assist the enemy, the prosecution would be required to prove that the defendant was aware that the ADF was engaged in armed hostilities against the enemy and provided assistance regardless. The defence of ‘good faith’ applies to the treason offence.</p>
<p>Definition of Terrorist Act</p> <p>7. The Committee recommends that the requirement that the person intends to advance a political, religious or ideological cause be retained as part of the definition of terrorism.</p>	<p>The Government supports recommendation 7 in relation to retaining the element ‘intention to advance a political, religious or ideological cause’ as part of the definition of terrorist act. The definition of terrorist act focuses on the motive associated with a terrorist act that distinguishes such violence from other non-terrorist acts.</p>
<p>Advocacy</p> <p>8. The Committee recommends that the current exemption for advocacy, protest, dissent and industrial action be retained as part of the definition of terrorism.</p>	<p>The Government supports recommendation 8 in relation to retaining the current exemption for advocacy, protest, dissent and industrial action within the definition of terrorist act. The policy objective in introducing this qualification was to distinguish terrorism from acts of legitimate political protest or unlawful civil protest with no ‘terrorist act’ connection.</p>
<p>Psychological harm</p> <p>9. The Committee recommends that psychological harm not be included in the definition of a terrorist act. Alternatively, that the Government consult with the States and Territories on this issue and give consideration to the question in light of other amendments to the definition.</p>	<p>The Government supports the alternative option in this recommendation to consult the States and Territories to give consideration to including psychological harm within the definition of terrorist act.</p> <p>The general definition of <i>harm</i> in the Criminal Code includes harm to a person’s mental health, whether temporary or permanent. In order to ensure consistency within the Criminal Code, the notion of harm which applies to the definition of ‘terrorist act’ in section 100.1(2)(a) (being serious harm that is physical harm) could be expanded to include psychological harm. Psychological harm can be just as damaging as physical harm. Fear associated with the</p>

	<p>threat of terrorism or the implications associated with the commission of a terrorist act manifest beyond tangible physical harm.</p> <p>Amendment to the definition would be consistent with the recommendations made by the Sheller Committee and the submissions made to the PJCIS by bodies such as the Law Institute of Victoria and the Gilbert & Tobin Centre of Public Law.</p>
<p>Threat of a terrorist act</p> <p>10. The Committee recommends that ‘threat’ of terrorist act be removed from the definition of terrorism and be dealt with as a separate offence.</p>	<p>The Government supports in principle recommendation 10, and will consult the States and Territories on clarifying the application of ‘threat of action’ within the definition of terrorist act.</p> <p>As the Sheller Review and PJCIS review both raised issues in relation to the concept of threat within the definition, a clarification to the definition would assist in making it clear that the threats of action relate to damage which is likely to be caused as a result of the terrorist threat as opposed to damage which is actually caused by a terrorist act.</p>
<p>International organisations</p> <p>11. The Committee recommends that the definition of terrorism recognise that international organisations may be the target of terrorist violence.</p>	<p>The Government supports recommendation 11 to recognise that international organisations, such as the United Nations, may be the target of terrorist violence.</p>
<p>Law of armed conflict</p> <p>12. The Committee recommends that to remove doubt the definition of terrorism be amended to include a provision or a note that expressly excludes conduct regulated by the law of armed conflict.</p>	<p>The Government does not support recommendation 12.</p> <p>Acts of terrorism may still occur during armed conflict; therefore the unqualified exclusion of armed conflict will encourage misapplication of the principles of public international law. The express exclusion of conduct regulated by the law of armed conflict from the definition of terrorist act would neither add to nor detract from Australia’s international obligations and is unlikely to add clarity to the operation of relevant Criminal Code provisions.</p>
<p>Hoax offence</p> <p>13. The Committee recommends that a separate hoax offence be adopted but that penalties reflect the less serious nature of a hoax as</p>	<p>The Government supports recommendation 13.</p> <p>The Criminal Code currently contains offences for the commission of hoaxes that are made either via the post or a telecommunications network. However, if a terrorist-related hoax is committed without the use of</p>

<p>compared to a threat of terrorism.</p>	<p>the post or a telecommunications network, it will not be captured by the offence. Given the potential for a terrorist-related hoax to cause significant alarm to the community and to divert valuable law enforcement and emergency services, the creation of a terrorist-related hoax offence is warranted.</p>
<p>14. Advocacy as basis for listing terrorist organisation</p> <p>(a) The Committee does not recommend the repeal of ‘advocacy’ as a basis for listing an organisation as a terrorist organisation but recommends that this issue be subject to further review.</p> <p>(b) The Committee recommends that ‘risk’ be amended to ‘substantial risk.’</p>	<p>The Government supports recommendation 14.</p> <p>The advocacy criteria will be reviewed by the 2010 COAG review.</p> <p>Recommendation 14(b) provides that section 102.1 (1A) (the definition of advocacy) be amended so as to require there to be a ‘substantial’ risk that a person be led by the statement/praise to engage in a terrorist act as opposed to a ‘risk’.</p> <p>It has always been intended that the risk threshold associated with an organisation directly praising the doing of a terrorist act be real and apparent on the evidence presented and not fanciful or speculative. Accordingly, the inclusion of the word ‘substantial’ would expressly confirm that the level of risk associated with advocacy is not mere risk but heightened risk. Such an amendment would also be consistent with the language of the Criminal Code in relation to the concept of risk, for example, substantial risk in the definition of recklessness.</p>
<p>Terrorist organisations</p> <p>15. The Committee recommends that the Government consider:</p> <p>(a) replacing the membership offence with an offence of participation in a terrorist organisation; and</p> <p>(b) whether ‘participation’ should be expressly linked to the purpose of furthering the terrorist aims of the organisation.</p>	<p>The Government does not support this recommendation.</p> <p>The concept of ‘participation’ is less formal than the concept of membership in an organisation and therefore has the propensity to introduce a level of ambiguity if included as an offence provision.</p>

<p>Training</p> <p>16. The Committee recommends that the training offence be redrafted to define more carefully the type of training targeted by the offence. Alternatively, that the offence be amended to require that the training could reasonably prepare the individual or the organisation to engage in, or assist with, a terrorist act.</p>	<p>The Government supports in part recommendation 16 in relation to clarifying that the offence does not capture legitimate activities (such as those provided by humanitarian aid organisations).</p> <p>The purpose of the terrorist organisation offences is to ensure that terrorist organisations are disbanded. In order to achieve this, it is appropriate that providing training to, or receiving training from, such organisations is an offence without the training itself having to be connected to a terrorist act.</p>
<p>Terrorist financing</p> <p>17. The Committee recommends that:</p> <p>(a) it be a defence to the offence of receiving funds from a terrorist organisation that those funds were received solely for the purpose of the provision of representation in legal proceedings; and</p> <p>(b) that the legal burden be reduced to an evidential burden.</p>	<p>The Government does not support recommendation 17.</p> <p>The Government does not support recommendation 17(a) as section 102.6(3) already provides that if funds are received for the sole purpose of funding legal representation, then the transaction does not fall within the ambit of the offence with the defendant bearing a legal burden of proof. This subsection effectively operates as a defence and as such recommendation 17(a) is already accommodated within the legislative framework.</p> <p>Further, the Government does not support recommendation 17(b). This legal burden requires the defendant to prove on the balance of probabilities that the funds were received solely for the purposes of legal representation. It is preferable that the defendant be required to prove the issue on the balance of probabilities as opposed to merely pointing to evidence which suggests that a reasonable possibility exists (evidential burden) because the evidence concerned will be readily available to the defendant but not the prosecution.</p>
<p>Support to a terrorist organisation</p> <p>18. The Committee recommends that the offence of providing support to a terrorist organisation be amended to ‘material support’ to remove ambiguity.</p>	<p>The Government supports recommendation 18.</p> <p>Describing the type of support which will qualify for the purpose of the offence as ‘material support’ does not represent an elevation of the conduct standard because the level of support which must be proven needs to be real and concrete. This amendment will serve to clarify that the level of support required goes beyond ‘mere support’.</p>

<p>Association offence</p> <p>19. The Committee recommends that the offence of ‘associating with a terrorist organisation’ be re-examined taking into account the recommendations of the Sheller Committee.</p>	<p>The Government supports recommendation 19. The Government will refer the matter for examination by the new National Security Legislation Monitor once appointed.</p>
<p>Strict liability</p> <p>20. The Committee recommends that strict liability provisions applied to serious criminal offences that attract the penalty of imprisonment be reduced to an evidential burden.</p>	<p>The Government notes recommendation 20. The Government will refer the matter for examination by the new National Security Legislation Monitor once appointed.</p>
<p>Financing of terrorism</p> <p>21. The Committee recommends that:</p> <p>(a) section 103.1 be amended by inserting ‘intentionally’ after ‘the person’ in paragraph (a) and removing the note;</p> <p>(b) that recklessness be replaced with knowledge in paragraph (b).</p> <p>(c) the Committee recommends that paragraph 103.2(1)(b) be redrafted to make clear that the intended recipient of the funds be a terrorist.</p>	<p>The Government does not support recommendation 21. The note within the offence makes it clear that the fault element in paragraph 103.1(a) of the terrorist financing offence is intention by virtue of the application of section 5.6 of the Criminal Code.</p> <p>Further, elevating the standard of proof from recklessness to knowledge would be contrary to the standard Criminal Code fault element for a circumstance which is recklessness.</p> <p>The PJCIS suggests that further clarity can be achieved by amending s 103.2(1)(b) to specify that the intended recipient of the funds is a ‘terrorist’. The inclusion of this term has no definitional point of reference as the term ‘terrorist’ is not used in the Criminal Code. Also, the use of the term ‘terrorist’ instead of ‘person’ in the offence would pre-emptively suggest that it has already been established that the person the subject of the offence is a person who has engaged in a terrorist act.</p>
<p>Charter of the United Nations Act</p> <p>22. The Committee recommends that:</p> <p>(a) external merit review of a decision to list a person, entity or asset under section 15 of the COUNA should be made</p>	<p>The Government supports in part recommendation 22.</p> <p>(a) The Government does not support recommendation 22(a) but supports amendment of COUNA to incorporate a periodic review mechanism. As noted by the PJCIS, judicial review of decisions by the Minister for Foreign Affairs to list a person, entity or asset under section 15 of the COUNA is available</p>

<p>available in the Administrative Appeals Tribunal;</p> <p>(b) section 15 and regulation 6 be amended so that the Minister must be satisfied on reasonable grounds that the person, entity, asset or class of assets fall within the scope of UNSCR 1373;</p> <p>(c) COUNA should be amended to provide that a person or entity listed by regulation is entitled to seek review as a step in the process of review by the Sanctions Committee.</p>	<p>under the ADJR Act. There is also a mechanism in COUNA under which a person or entity listed by the Minister for Foreign Affairs under section 15 may apply to the Minister to have the listing revoked (see section 17 of the COUNA).</p> <p>(b) The Government supports recommendation 22(b) but notes that the legislation has been amended since the publication of the PJCIS report and section references in that report are now outdated. Regulation 6 referred to in the first PJCIS report no longer exists. Pursuant to changes introduced in the <i>International Trade Integrity Act 2008</i>, the relevant regulation is now regulation 20. The Government agrees that section 15 and regulation 20 should be amended to replace the word ‘satisfied’ with ‘satisfied on reasonable grounds’. This would bring Australia in line with international best practice which is reflected in the guidelines produced by the UN Counter-Terrorism Directorate and the Financial Action Task Force.</p> <p>(c) The Government does not support recommendation 22(c). All designations by the UN Al-Qaida and Taliban Sanctions Committee established pursuant to UNSCR 1267 are given effect through incorporation by reference in regulations made under section 6 of the COUNA. This is in accordance with Australia’s international obligations and Australia has no discretion in relation to individuals and entities listed or de-listed by this Committee. It is therefore inappropriate to provide for a review mechanism under COUNA.</p>
<p>Customs</p> <p>23. That the Customs Act be amended to specify that access to passenger information for the purpose of another law of the Commonwealth is limited to the investigation of serious crimes proscribed by regulation.</p>	<p>The Government does not support recommendation 23.</p> <p>Adopting this recommendation would limit Customs’ ability to access passenger information for legitimate border security purposes other than the investigation of serious crimes.</p>
<p>Customs</p> <p>24. The Committee recommends that:</p>	<p>The Government supports in principle recommendation 24.</p> <p>(a) The Customs Act currently allows the Australian Customs Service to retain data which is operationally</p>

<p>(a) the Customs Act be amended to specify that retention of passenger information be permitted for a limited time in order to conduct analysis;</p> <p>(b) that the Minister for Customs report to the Parliament on the status of negotiations with European States in relation to passenger information.</p>	<p>necessary to perform its border security function. However, the Government agrees that it is important that strict privacy principles are followed when data is retained by law enforcement and security agencies. The Privacy Commissioner conducts regular audits of Customs' records to ensure privacy principles of storage, handling and retention of data are strictly followed.</p> <p>(b) The <i>European Union – Australia Passenger Name Record Agreement</i> was signed on 30 June 2008. The Agreement has been presented to Parliament through the Joint Standing Committee on Treaties.</p>
<p>Customs</p> <p>25. The Committee recommends that the Privacy Commissioner retain an ongoing oversight role in relation to passenger name records, which includes biannual monitoring of the Passenger Analysis Unit.</p>	<p>The Government supports recommendation 25 in relation to the oversight role of the Privacy Commissioner.</p> <p>The Privacy Commissioner and Customs have entered into an agreement to establish a rolling PAU privacy compliance audit program. Under the agreement, the Office of the Privacy Commissioner will perform a privacy audit of the Passenger Analysis Unit biennially.</p>
<p>26. The Committee recommends that:</p> <p>(a) the subject of a seizure warrant involving entry to premises should be provided with a statement of rights and obligations;</p> <p>(b) that Customs bears the onus of proving the basis of the seizure.</p>	<p>The Government will give further consideration to recommendation 26 to ensure there are appropriate safeguards within all law enforcement and security seizure powers. A whole of government approach should be settled on this issue prior to determining an approach for specific warrants under the Customs Act.</p> <p>The Government does not support recommendation 26(b) which is understood to be directed at applications for return of goods after they have been lawfully seized. The Government considers that where Customs have lawfully seized an item in an investigation after obtaining a warrant issued by a judicial officer (in which the applicant would have had the onus of establishing the necessity in all the circumstances of the seizure in question), a person whose items have been seized should be required to prove why those seized items should be returned to them.</p>

Parliamentary Joint Committee on Intelligence and Security

Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code

Tabled 20 September 2007

Government response to recommendations

(Note: Any legislative amendments to Part 5.3 of the Criminal Code require the approval of the majority of the States and Territories in accordance with the Inter-Governmental Agreement on the Counter-Terrorism Laws.)

Recommendation	Response
<p>The implications and community impacts of proscription</p> <p>Recommendation 1:</p> <p>The Committee recommends that:</p> <p>(a) The Attorney-General's Department develop a communication strategy that is responsive to the specific information needs of ethnic and religious communities;</p> <p>(b) There be direct consultation on the management of visa security assessments between ASIO, the Inspector-General of Intelligence and Security and the UN High Commission for Refugees.</p>	<p>The Government supports recommendation 1(a).</p> <p>As noted in the Government response to the recommendations of the PJCIS' report entitled <i>Review of Security and Counter-Terrorism Legislation</i>, the Attorney-General's Department has undertaken considerable work to educate communities and create public awareness of the counter-terrorism laws. Future activities may involve extending the range of languages in which information pamphlets are produced, preparing supplementary explanatory material where there is a significant change to counter-terrorism laws, and providing presentations to a range of community groups and stakeholders about impending key amendments to counter-terrorism legislation.</p> <p>The Government notes recommendation 1(b).</p> <p>ASIO is conscious of the need to avoid unnecessary delay in dealing with the significant volume of matters for which it must undertake a security assessment, and has implemented a number of strategies to this end. This activity is monitored by the IGIS who is periodically briefed on ASIO's progress. Unlike the proscription legislation contained in the Criminal Code, security assessments deal only with individuals and not with groups.</p> <p>The Government is committed to ensuring Australia is fully compliant with its obligations under the Refugees Convention and will raise and address any issues of concern when Australian representatives next meet with the UNHCR.</p>

<p>Selection of Entities</p> <p>Recommendation 2: The Committee recommends that the criteria ‘ideology and links to other networks and groups’ be restated so that:</p> <p>(a) the link between acts of terrorist violence and the political, ideological or religious goals it seeks to advance is clearly expressed;</p> <p>(b) links to other networks and groups that share the same world view is identified as a separate criteria.</p>	<p>The Government supports this recommendation by requiring ASIO and the Attorney-General’s Department to develop an unclassified protocol which outlines the key indicators which are taken into consideration when determining whether an organisation meets the statutory test for proscription.</p> <p>This recommendation refers to the six non-statutory factors ASIO uses as a guide to inform them when assessing whether an organisation meets the legislative requirements for listing as a terrorist organisation under the Criminal Code. The ‘six ASIO criteria’ were initially referred to by the former Director-General of ASIO, at a hearing on 1 February 2005 during the PJCIS’ review of the listing of six terrorist organisations.</p> <p>These criteria do not form an exhaustive list of issues considered by ASIO as ASIO considers a wide range of security factors when providing advice on organisations.</p>
<p>Procedural Issues</p> <p>Recommendation 3:</p> <p>The Committee recommends that the mandate of the Committee to review the listing and re-listing of entities as ‘terrorist organisations’ for the purpose of the Criminal Code be maintained.</p>	<p>The Government supports this recommendation.</p> <p>Section 102.1A of the Criminal Code provides for the Committee to review the listing and re-listing of terrorist organisations by the Government. The maintenance of these provisions will ensure that the Criminal Code provides a transparent and accountable mechanism for the Government to outlaw terrorist organisations and organisations that threaten the integrity and security of Australia or another country.</p>
<p>Recommendation 4:</p> <p>The Committee recommends that the Government give consideration to reverting to the initial legislative approach of postponing commencement of a listing until after the disallowance period has expired.</p> <p>The Committee recognises that the Attorney-General should, in exceptional cases, retain the power to begin the commencement of a listing on the date the instrument is lodged with FRLI</p>	<p>The Government supports this recommendation and will adopt the practice of giving consideration to delaying the commencement of a listing regulation (when an organisation is listed for the first time) until after the Parliamentary disallowance period has expired.</p> <p>As recognised by the PJCIS, flexibility must be maintained within this approach so in circumstances where the Attorney-General considers that a listing should commence immediately (for example for security reasons), there remains scope for a regulation to commence when it is lodged with the</p>

<p>where the Attorney-General certifies that there are circumstances of urgency and the immediate commencement of the listing is required for reasons of national security.</p>	<p>Federal Register of Legislative Instruments (FRLI).</p>
<p>Recommendation 5:</p> <p>The Committee recommends that strict liability not be applied to the terrorist organisation offences of Division 102 of the Criminal Code.</p>	<p>The Government notes recommendation 5 in line with recommendation 20 of the PJCIS Report on the Review of Security and Counter-Terrorism Legislation. The Government will refer the strict liability components of the offences for examination by the new National Security Legislation Monitor once appointed.</p>
<p>Recommendation 6:</p> <p>The Committee recommends that:</p> <p>(a) a regulation listing an entity should cease to have effect on the third anniversary of the date it took effect; and</p> <p>(b) the Government consult with the Committee on streamlining the administration of proscription to enable periodic review of multiple listings during the parliamentary cycle.</p>	<p>The Government supports this recommendation.</p> <p>The Government will further consult with the Committee on streamlining the administration of proscription.</p>
<p>Recommendation 7:</p> <p>The Committee recommends that:</p> <p>(a) the Attorney-General’s Department be responsible for the publication of comprehensive data on the application of terrorism laws;</p> <p>(b) an Independent Reviewer be established and the Committee be conferred with responsibility for examining the Independent Reviewer’s reports to Parliament;</p> <p>(c) the application of the proscription power be included in the review of counter-terrorism laws scheduled for 2010 under the auspices of the Council of Australian Governments.</p>	<p>The Government supports these recommendations.</p> <p>(a) Refer to the comment on recommendation 1.</p> <p>(b) Refer to Government response to the PJCIS Report on the Review of Security and Counter-Terrorism Legislation.</p> <p>(c) The Government supports the recommendation that the proscription power be included in the review of counter-terrorism laws scheduled for the 2010 COAG review.</p>

Australian Law Reform Commission

Fighting Words: A Review of Sedition Laws in Australia

Tabled 13 September 2006

Government response to recommendations

	Recommendation	Response
2-1	The Australian Government should remove the term ‘sedition’ from federal criminal law. To this end, the headings of Part 5.1 and Division 80 of the <i>Criminal Code</i> (Cth) should be changed to ‘Treason and urging political or inter-group force or violence’, and the heading of section 80.2 should be changed to ‘Urging political or inter-group force or violence’.	The Government supports this recommendation. The term “sedition” has a historical meaning that should not colour the clear elements of the offence. A shortened title such as “urging violence” is a plain English description of the elements of the offence, and is consistent with the overall approach of modernising the provision.
3-1	The Australian Government should initiate a review of the remaining offences contained in Part II of the <i>Crimes Act 1914</i> (Cth) to determine which offences merit retention, modernisation and relocation to the <i>Criminal Code</i> (Cth), and which offences should be abolished. This review should include the offences in sections 24AA, 24AB and 25-29 of the <i>Crimes Act</i> .	The Government supports this recommendation. However, a further formal external review of the offences in Part II is not required. The Attorney-General’s Department is currently considering the provisions with a view to repealing outdated offences or modernising necessary offences for inclusion in the <i>Criminal Code</i> . This task is being undertaken as part of the Model Criminal Code project which aims to incorporate all serious Commonwealth offences into the Code.
3-2	The Australian Government should initiate a process through the Standing Committee of Attorneys-General to remove the term ‘sedition’ from state and territory laws and to modernise and harmonise the relevant laws in keeping with the proposed changes to federal law.	The Government supports this recommendation by the Prime Minister raising this issue with the Premiers and Chief Ministers.
4-1	Sections 30A, 30AA, 30AB, 30B, 30D, 30E, 30F, 30FA, 30FC, 30FD, 30G, 30H and 30R of Part IIA of the <i>Crimes Act 1914</i> (Cth) concerning unlawful associations should be	The Government supports this recommendation. These offences have never been invoked since their enactment in the 1920s and 1930s. Further, there is no clear example of an organisation that

	repealed.	warrants proscription under Part IIA of the Crimes Act, nor has an organisation ever been proscribed under that Part. The provisions dealing with terrorist organisations in the Criminal Code are considered to adequately address any issue that might arise.
4-2	The Australian Government should include sections 30J and 30K of the <i>Crimes Act</i> in the review of old provisions of the Crimes Act called for in Recommendation 3-1.	The Government supports this recommendation. See comments above in relation to the review by the Attorney-General's Department in response to recommendation 3-1.
6-1	An offence of 'encouragement' or 'glorification' of terrorism, along the lines of that in section 1 of the <i>Terrorism Act 2006</i> (UK), should not be introduced into Australian law.	The Government supports this recommendation. At this time, it appears that the sedition offences, the provision for listing organisations that praise or otherwise advocate terrorism and the classification requirements in relation to 'books of hate' are sufficient to cover off on the glorification offence. However if circumstances suggest that such an offence is necessary, the establishment of an offence of this nature could be explored.
7-1	Peak arts and media organisations should provide educational programs and material to their members to promote a better understanding of: <ul style="list-style-type: none"> (a) the scope of federal, state and territory laws that prohibit the urging of political or inter-group force or violence; and (b) any potential impact of these laws on the activities of their members. 	The Government supports this recommendation. The Government actively supports any recommendation in relation to providing information to the public to ensure a greater understanding of the application of the offences.
8-1	Section 80.2 of the <i>Criminal Code</i> (Cth) should be amended to provide that, for a person to be guilty of any of the offences under section 80.2, the person must intend that the urged force or violence will occur.	The Government supports this recommendation. As currently drafted, subsections 80.2(1), (3) and (5) require the prosecution to prove that the person intentionally urged the use of force or violence. The adoption of recommendation 8-1 would add an extra intention element to the offences so that the prosecution would need to prove that the person intentionally urged the use of force or violence and the person intended that the urged force or violence will occur.

9-1	The heading of s 80.2(1) of the <i>Criminal Code</i> should be changed to refer to urging the overthrow by 'force or violence' of the <i>Constitution</i> or Government.	The Government supports this recommendation in conjunction with acceptance of Recommendation 2-1.
9-2	The word 'intentionally' should be inserted in s 80.2(1) of the <i>Criminal Code</i> before the word 'urges' to clarify the fault element applicable to urging the use of force or violence.	The Government supports this recommendation. While the <i>Criminal Code</i> makes it clear that the sedition offences include the fault element of intention by virtue of section 5.6 of the Code, it is important the fault elements are clearly stated within the offence to ensure clarity and understanding of the operation of the offence.
9-3	Section 30C of the <i>Crimes Act 1914</i> (Cth), concerning 'advocating or inciting to crime', should be repealed.	The Government supports this recommendation. The offences of incitement are dealt with in section 11.4 of the Criminal Code.
9-4	The heading of section 80.2(3) of the <i>Criminal Code</i> should be changed to refer to urging interference in Parliamentary elections by 'force or violence'.	The Government supports this recommendation in conjunction with acceptance of recommendation 2-1.
9-5	Section 80.2(3) of the <i>Criminal Code</i> should be amended to: (a) insert the word 'intentionally' before the word 'urges', to clarify the fault element applicable to urging the use of force or violence; and (b) apply to interference with the lawful processes for a referendum on a proposed law for the alteration of the <i>Constitution</i> .	The Government supports recommendation 9-5(a) for the same reasons outlined in relation to recommendation 9-2. The Government supports recommendation 9-5(b). Acceptance of this recommendation would clarify the offence to make it clear that it includes interference with the lawful processes for a referendum. This extension reinforces the offences contained in section 80.2(1)(a) which apply to a person who urges another person to overthrow by force or violence the <i>Constitution</i> .
9-6	As a consequence of Recommendation 9-5, section 80.2(4) of the <i>Criminal Code</i> should be amended to apply recklessness to the element of the offence under section 80.2(3) that it is the 'lawful processes for a referendum on a proposed law for the alteration of the <i>Constitution</i> ' in respect of which a person has urged interference.	The Government supports this recommendation for the same reasons outlined in relation to Recommendation 9-5(b). This recommendation is consistent with the drafting of offences in Division 80 of the Criminal Code.

10-1	The heading of section 80.2(5) of the <i>Criminal Code</i> (Cth) should be changed to refer to urging ‘inter-group force or violence’.	The Government supports this recommendation in conjunction with acceptance of recommendation 2-1.
10-2	<p>Section 80.2(5) of the <i>Criminal Code</i> should be amended to:</p> <p>(a) insert the word ‘intentionally’ before the word ‘urges’, to clarify the fault element applicable to urging the use of force or violence; and</p> <p>(b) add ‘national origin’ to the distinguishing features of a group for the purposes of the offence.</p>	<p>The Government supports recommendation 10-2(a) for the same reasons outlined above in relation to recommendation 9-2.</p> <p>The Government supports recommendation 10-2(b) as it clarifies that a person’s national origin can be a distinguishing feature of a group.</p>
10-3	As a consequence of Recommendation 10-2, section 80.2(6) of the <i>Criminal Code</i> should be amended to apply recklessness to the element of the offence under section 80.2(5) that it is a group distinguished by national origin that a person urges another to use force or violence against.	The Government supports this recommendation in conjunction with acceptance of recommendation 10-2(b). This recommendation is consistent with the drafting of the offences within Division 80 of the Criminal Code.
10-4	<p>The Australian Government should consider extending the offence in section 80.2(5) of the Criminal Code to circumstances in which:</p> <p>(a) a person urges another person (as distinct from a group) to use force or violence against a group in the community that is distinguished by race, religion, nationality, national origin or political opinion; and</p> <p>(b) a person urges a group that lacks one of the specified distinguishing characteristics to use force or violence against a group in the community that is distinguished by race, religion, nationality, national origin or political opinion.</p>	<p>The Government supports this recommendation and will take steps to extend the offence to cover where force or violence is urged against a member of a group (not just the group as a whole).</p> <p>The ALRC notes that the development of such an offence is consistent with Australia’s obligations under the International Convention on the Elimination of all Forms of Racial Discrimination 1966 and the International Covenant on Civil and Political Rights 1966.</p>

10-5	<p>The Australian Government should continue to pursue other strategies, such as educational programs, to promote inter-communal harmony and understanding.</p>	<p>The Government supports this recommendation in conjunction with Recommendation 7-1.</p> <p>The Attorney-General’s Department is currently further developing its community education program including the development and distribution of information pamphlets which explain the operation of the counter-terrorism offences and related legislation. Significant improvements have also been made to the National Security website and the Department’s website to give greater access to information regarding Australia’s counter-terrorism measures and the impact on the community.</p>
11-1	<p>Sections 80.2(7), (8) and (9) of the <i>Criminal Code</i>, concerning the offences of urging a person to assist the enemy and urging a person to assist those engaged in armed hostilities against the Australian Defence Force, should be repealed.</p>	<p>The Government supports this recommendation.</p> <p>The treason offence adequately deals with criminalising action taken by a person against the Australian Defence Force.</p>
11-2	<p>The treason offences in s 80.1(1)(e)–(f) of the <i>Criminal Code</i> should be amended to:</p> <ul style="list-style-type: none"> (a) remove the words ‘by any means whatever’; (b) provide that conduct must ‘materially’ assist an enemy, making it clear that mere rhetoric or expressions of dissent are not sufficient; (c) provide that assistance must enable an enemy ‘to engage in war’ with Australia or a country or organisation ‘to engage in armed hostilities’ against the Australian Defence Force; and (d) provide that the Proclamation under section 80.1(1)(e)(ii) must have been made before the relevant conduct was engaged in. 	<p>The Government supports recommendations 11-2 (a) and (b). This is consistent with the Government’s proposed response to recommendation 6 of the PJCIS Report on the Review of Security and Counter-Terrorism Legislation.</p> <p>The Government supports recommendation 11-2(c) and 11-2(d).</p>

11-3	In considering the recommendations of the Security Legislation Review Committee (the Sheller Committee) on the law of treason, the Australian Government should take into account relevant recommendations and commentary in this Report.	The Government supports this recommendation as all other recommendations regarding the treason offence have been taken into account.
11-4	Section 80.1 of the <i>Criminal Code</i> should be amended to require that, at the time of the alleged offence, the person is an Australian citizen or resident.	The Government supports this recommendation in the context of the response to recommendation 6(a) of the PJCIS Report on the Review of Security and Counter-Terrorism Legislation.. The Government accepts that the treason offence should only apply to persons who owe allegiance to Australia.
12-1	Section 80.3 of the Criminal Code (Cth) concerning the defence of ‘good faith’, should be amended so that it does not apply to the offences in section 80.2.	The Government supports in principle this recommendation in light of the proposed approach to implementing recommendation 12-2. An expanded good faith defence to the offence of sedition is the most appropriate response to recommendation 12-2 which takes into account the concerns outlined by the ALRC.
12-2	Section 80.2 of the <i>Criminal Code</i> should be amended to provide that in determining whether a person intends that the urged force or violence will occur for the purposes of section 80.2(7), the trier of fact must have regard to the context in which the conduct occurred, including (where applicable) whether the conduct was done: <ul style="list-style-type: none"> (a) in the development, performance, exhibition or distribution of an artistic work; or (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or (c) in connection with an industrial dispute or an industrial matter; or (d) in the dissemination of news or current affairs. 	The Government supports in principle this recommendation but will implement recommendation 12-2 in a different manner to that proposed by the ALRC to avoid complication. <p>The principles of recommendation 12-2 will be adopted through expanding the existing good faith defence in section 80.3 of the Criminal Code so that a court may have regard to the conduct listed in recommendation 12-2 of the ALRC report such as the performance of artistic or satirical work.</p>

12-3	A note should be inserted after each of the offences in sections 80.2(1), (3) and (5) of the <i>Criminal Code</i> drawing attention to the recommended new provisions regarding proof of intention that the force or violence urged will occur.	The Government supports this recommendation in line with the proposed response to recommendation 8-1.
13-1	Section 80.5 of the <i>Criminal Code</i> regarding the requirement of the Attorney-General's written consent to a prosecution should be repealed.	The Government supports this recommendation.

Clarke Inquiry into the Case of Dr Mohamed Haneef

Report of the Inquiry

Government response to the Recommendations

Recommendation	Government Response
<p>Constitution of Inquiries</p> <p>1. The Inquiry recommends that the government consider incorporating in legislation the special arrangements and powers that would apply to inquiries and other independent reviews and investigations involving matters of national security.</p>	<p>Agree – the Government will consider various options to address the Inquiry’s concerns, including:</p> <ul style="list-style-type: none">• asking the Australian Law Reform Commission (ALRC) to review the <i>Royal Commissions Act 1902</i>;• broadening the mandate of the Inspector-General of Intelligence and Security (IGIS) to enable (at the direction of the Prime Minister) IGIS inquiries to be extended to Commonwealth agencies that are not members of the Australian Intelligence Community (AIC); and• reviewing the issues raised by the Inquiry in light of existing mechanisms (for example, inquiries by the IGIS under the <i>Inspector-General of Intelligence and Security Act 1986</i>, as modified by the proposed amendment). <p>The Government is providing a reference to the ALRC to review the Royal Commissions Act, with terms of reference that include consideration of incorporating in legislation the special arrangements and powers as recommended, and consideration of scope for an alternative form of executive inquiry to provide more flexibility where appropriate.</p> <p>Extension of the IGIS’s mandate will partly address some of the Inquiry’s concerns. The IGIS has strong coercive powers under the <i>Inspector-General of Intelligence and Security Act 1986</i>, and is accustomed to conducting inquiries dealing with national-security related matters. The IGIS’s functions are currently limited to agencies in the Australian Intelligence Community (AIC) (ASIO, ASIS, DSD, DIO, DIGO and ONA). Extending the IGIS’s mandate to enable the IGIS to extend his inquiries, by a direction from the Prime Minister, outside the AIC, will enable the IGIS to more effectively assist future inquiries and other independent reviews involving matters relating to security and intelligence that extend beyond the AIC itself.</p> <p>The extension of the IGIS’s mandate would also facilitate the IGIS conducting certain inquiries similar to the Clarke Inquiry, and would provide a further option to Government in establishing an inquiry structure that is appropriate to the circumstances of particular cases where the scope of an inquiry predominantly concerns national security.</p>

<p>Roles, functions and responsibilities of government agencies and departments</p> <p>2. The Inquiry recommends that a committee – consisting of the Deputy Director-General of ASIO, the Deputy Commissioner of the AFP, the Deputy Director of the Commonwealth Director of Public Prosecutions (CDPP) and senior representatives (at minimum at deputy secretary level) of PM&C, DIAC and AGD – be established to conduct a review and determine ways of dispelling misapprehensions about the respective roles, functions and responsibilities of government agencies and departments in a counter-terrorism context and the purpose of the information they produce in that context. The committee should review existing procedures, arrangements and guidelines with a view to providing clear guidance and achieving a common understanding.</p>	<p>Agree – This is an important recommendation that will build upon work that has already been undertaken in response to the recommendations of the Street Review. A committee, chaired by the Department of the Prime Minister and Cabinet, will be convened and conduct a review as recommended.</p>
<p>Issues relating to legislation</p> <p>3. The Inquiry recommends that the provisions of Part 1C of the <i>Crimes Act 1914</i> in relation to terrorism offences and the association of those provisions with s.3W of the Act be reviewed in the light of the discussion in Chapter 5 and relevant provisions of the United Kingdom’s <i>Terrorism Act 2000</i>.</p>	<p>Agree – The Government has requested the Attorney-General’s Department to conduct a review of the relevant provisions in Part 1C, and their interaction with s.3W, of the Crimes Act, taking into account the issues raised in the Clarke Inquiry report.</p> <p>While some amendments could be made quickly to address the key concerns raised by the Inquiry, the Government agrees with Mr Clarke that it would be preferable to conduct a comprehensive review of these detailed and important provisions.</p> <p>The review will involve public consultation through a discussion paper to be released in the first half of 2009.</p> <p>In addition, the Government will direct relevant agencies to ensure their officers are properly trained and briefed on the operation of these provisions.</p>

<p>Independent Reviewer</p> <p>4. The Inquiry recommends that consideration be given to the appointment of an independent reviewer of Commonwealth counter-terrorism laws.</p>	<p>Agree – Please see the response to the Parliamentary Joint Committee on Intelligence and Security Review of Security and Counter-Terrorism Legislation.</p>
<p>Issues relating to legislation</p> <p>5. The Inquiry recommends that consideration be given to amending s.102.7 of the Criminal Code to remove the uncertainties discussed in Chapter 5.</p>	<p>Agree – the Government will confer with the States and Territories on amending section 102.7(2)(a) to clarify the fault element of this offence. This will address Mr Clarke’s finding that the wording of the first element of the offence (s.102.7(2)(a)) is potentially confusing and risks ‘judicial error’.</p>
<p>ASIO material in Minister for Immigration’s decision</p> <p>6. The Inquiry recommends that the Minister for Immigration and Citizenship be added to the distribution list for security intelligence reports produced by ASIO, in addition to senior departmental officers.</p>	<p>Agree – the Minister for Immigration and Citizenship will, where relevant, be added to distribution lists for ASIO security intelligence reports.</p> <p>In addition, DIAC and ASIO will explore ways of ensuring their interaction and cooperation is effective in visa cancellation processes, including how ASIO may best assist DIAC with that process and ensuring appropriate attention is paid to relevant ASIO information.</p>
<p>Cooperation, coordination and interoperability</p> <p>7. The Inquiry recommends that the National Counter-Terrorism Committee develop for the National Counter-Terrorism Handbook and the National Counter-Terrorism Plan procedures specifying operational protocols for an investigational structure and a Major Incident Room structure to be implemented for counter-terrorism investigations.</p> <p>8. The Inquiry recommends that a review of Joint Counter Terrorism Team arrangements</p>	<p>Agree – The Government will support, and seek the collaboration of the States and Territories for, the ongoing implementation of these recommendations through the NCTC and, as necessary, the Council of Australian Governments (COAG).</p> <p>Again, this will build on initiatives already undertaken to implement the recommendations of the Street Review to improve cooperation and interoperability between the AFP and its national security partners.</p>

<p>be conducted with a view to establishing nationally consistent arrangements under the National Counter-Terrorism Committee governance framework.</p> <p>9. The Inquiry recommends that a national case management system for major police investigations be developed and adopted as a matter of urgency.</p>	
<p>Cooperation, coordination and interoperability</p> <p>10. The Inquiry recommends that the National Counter-Terrorism Committee facilitate exercises that specifically respond to the problems involved in investigating and prosecuting terrorist offenders in Australia.</p>	<p>Agree – The Government will support, and seek the collaboration of the States and Territories for, the ongoing implementation of this recommendation through the NCTC and, as necessary, the Council of Australian Governments (COAG).</p> <p>The Street Review of interoperability between the AFP and its national security partners recommended that the AFP request the NCTC to facilitate exercises that specifically address the problems involved in investigating and prosecuting terrorist offenders in Australia. This Street Review recommendation has been implemented. The Mercury 08 Counter-Terrorism exercise program had a heavier focus on prevention, prosecution, and investigation exercises. This focus will be further enhanced in 2009 through the NCTC.</p>