

**Human Rights and
Equal Opportunity Commission**

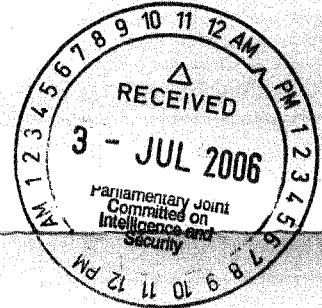


President
The Hon. John von Doussa, QC

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

29 June 2006

Submission No:.....~~2~~ 3.....
Date Received: 6-7-06.....
Secretary:.....*Senston*.....



Dear Chair

Review of Security and Counter Terrorism Legislation

Thank you for the opportunity make a submission to the Joint Committee on Intelligence and Security (the 'Committee') commenting upon the recommendations made in the Report to the Sheller Inquiry which was tabled in Parliament by the Attorney-General on 15 June 2006.

The Human Rights and Equal Opportunity Commission (the 'Commission') commends the Sheller Inquiry on its comprehensive review of the implementation and implications of the anti-terrorism legislation enacted in 2002. In particular, the Commission supports the human rights approach adopted by the Sheller Inquiry in assessing the operation and implications of that legislation. As its 'guiding principle' the Sheller Inquiry sought to determine whether the relevant anti-terrorism laws were consistent with international human rights law, 'whether the relevant legislation constitutes a reasonably proportionate means of achieving the object of protecting the security of people living in Australia and Australians overseas'.¹ This approach recognises that ensuring human security requires the protection of both national security *and* human rights. It is also consistent with Australia's obligations under Security Council resolutions on terrorism which require States to ensure that its anti-terrorism measures comply with all of their obligations under international law, including international human rights law.²

The Commission notes the Committee's advice that it will not be reviewing the provisions enacted by the *Security Legislation (Terrorism) Act 2002* (as amended by the *Criminal Code Amendment (Terrorism) Act 2003*) governing the proscription of an organisation as a terrorist organisation, as it will be reviewing those provisions in early 2007 (pursuant to section 102.1A(2) of the *Criminal Code 1995*). The

¹ Report of the Sheller Inquiry, page 3

² See Security Council Resolutions 1373 (2001); 1456 (2003) and 1624 (2005) available at <http://www.un.org/sc/ctc/resolutions.shtml> Note also, in Resolution 1535 (2004) the Security Council approved a revitalisation of the Counter-Terrorism Subcommittee mandated by Resolution 1373 (2001) through the setting up of a Counter-Terrorism Committee Executive Directorate whose role will be to liaise with the UN Office of the High Commissioner on Human Rights and other UN human rights bodies in matters related to counter-terrorism.

Human Rights and Equal Opportunity Commission

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Commission therefore makes no comment about the Sheller Inquiry's recommendations in relation to the proscription provisions.

The Commission also does not wish to comment on Recommendation 19, the subject of that recommendation being outside its expertise.³

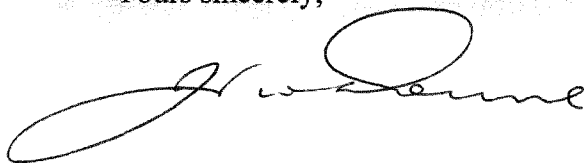
The Commission supports all of the other recommendations made by the Sheller Inquiry. The Commission also supports several of the key findings of the inquiry, in particular that:

- the repeal of s 102.8 of the *Criminal Code 1995* will contribute to a reduction of the fear and concern felt by Muslim and Arab and other communities about counter-terrorism legislation;⁴
- paragraph (b) of the definition of 'terrorist act' should not be repealed;⁵
- Part 1C of the *Crimes Act 1900* should not be amended to allow the admission of evidence obtained overseas in circumstances where AFP had done 'all that they could reasonably be expected to do to comply with that Part';⁶ and
- there should not be any statutory right protecting the anonymity of ASIO officers in counter-terrorist prosecutions.⁷

The Commission urges the Committee to endorse the recommendations of the Sheller Inquiry and recommend their implementation.

The Commission would be happy to discuss specific recommendations and findings of the Sheller Inquiry with the Committee, should it wish to do so.

Yours sincerely,



John von Doussa QC
President

³ Recommendation 19 calls on the Government to give consideration to implementation of Customs' eight recommendations on border security

⁴ Report to the Sheller Inquiry, Finding 1, page 14

⁵ Ibid, Finding 6, page 15

⁶ Ibid, Finding 12, page 16

⁷ Ibid, Finding 13