



Australian Government
Attorney-General's Department

National Security
Law and Policy Division



09/22398

28 August 2009

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

Dear Mr Hallahan

Inquiry into the Anti-Terrorism Laws Reform Bill 2009

Thank you for the opportunity to provide a submission on the Anti-Terrorism Laws Reform Bill 2009 ('Reform Bill'). As announced by the Attorney-General on 12 August 2009, the Government has recently released a Discussion Paper outlining proposed amendments to national security legislation for public consultation. The Discussion Paper addresses several of the issues raised in the Reform Bill, and represents the Government's response to a number of reviews of national security and counter-terrorism legislation, including the:

- Inquiry into the case of Dr Mohamed Haneef by the Hon John Clarke QC (Clarke Inquiry (November 2008));
- Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) (September 2007);
- Review of Security and Counter-Terrorism Legislation by the PJCIS (December 2006); and
- Review of Sedition Laws by the Australian Law Reform Commission (ALRC) (July 2006).

The Department submits that the Reform Bill should be considered in the context of the current Discussion Paper process. Public consultation on the Discussion Paper is scheduled to conclude on 25 September 2009. The following outlines some of the measures in the Reform Bill which are related to measures proposed in the Discussion Paper.

Sedition offences

Item 1 of the Reform Bill proposes to repeal the sedition offences in section 80.2 of the Criminal Code in their entirety. Chapter 1 of the Discussion Paper outlines proposed amendments to

implement the recommendations of the ALRC on sedition laws, including replacing the term ‘sedition’ with ‘urging violence’ and clarifying and modernising the offences.

Definition of ‘terrorist act’

The Reform Bill proposes that the reference to ‘threat of action’ be removed from the current definition of terrorist act in subsection 100.1(1) of the Criminal Code. This was a recommendation of the Security Legislation Review Committee (‘Sheller Committee’) and the PJCIS. As outlined in the Discussion Paper, the Government considers that this would dilute the policy intent of criminalising ‘threat of action’ within the offences in Division 101 of the Criminal Code. The Discussion Paper outlines the Government’s proposal to insert the words ‘or is likely to cause’ after the words ‘cause’ in each paragraph of subsection 100.1(2), to clarify that 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.

Definition of ‘terrorist organisation’

The Reform Bill proposes amendments to Division 102 of the Criminal Code which contains the definition of a ‘terrorist organisation’ and outlines the process for proscribing terrorist organisations. This Division was reviewed by the PJCIS in 2006 and 2007 following the review of the Sheller Committee. Overall, the PJCIS concluded that the model of executive regulation and parliamentary oversight provided a suitably transparent and accountable system.

Part 1C of the Crimes Act 1914 (Cth)

Chapter 2 of the Discussion Paper proposes amendments to Part 1C of the *Crimes Act 1914* to address issues arising out of operational experience and the recommendations of the Clarke Inquiry. The proposed amendments will clarify the original policy intent of the terrorism investigation powers and improve the practical operation of Part 1C.

National Security Information (Civil and Criminal Proceedings) Act 2004 (NSI Act)

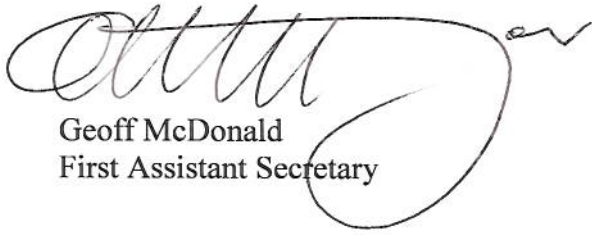
The Reform Bill proposes the repeal of the NSI Act. The NSI Act was introduced in accordance with the recommendations of a 2004 ALRC report. The recommendations in that report were aimed at reconciling the tension between non-disclosure of information to protect national security and disclosure of information in the interests of fair and effective legal proceedings. The NSI Act is an important tool in ensuring the protection of the rights of the accused while also protecting national security information. The proposed amendments in Chapter 4 of the Discussion Paper are designed to improve the practical application of the Act to ongoing and future court proceedings in response to lessons learnt from practical experience with the Act.

Australian Security Intelligence Organisation Act 1979 (ASIO Act)

The Reform Bill proposes amendments to Division 3 of the ASIO Act, which outlines the questioning and detention powers in relation to the investigation of terrorism offences. The operation, effectiveness and implications of the questioning and detention regime were extensively reviewed by the Parliamentary Joint Committee on Intelligence and Security. The Committee, which tabled its report in November 2005, recognised that the questioning regime has been useful, and that “the powers have been used within the bounds of the law and they have been administered in a professional way”. Following the Committee’s recommendation that the powers are effective and should continue to operate beyond the original sunset period of July 2006, legislation was enacted to continue the powers for a further 10 years, at which time they will be subject to further review. The Discussion Paper does not propose any amendments to the ASIO Act.

The action officer for this matter is Annette Willing who can be contacted on 6141 2915.

Yours sincerely

A handwritten signature in black ink, appearing to read 'GM', with a large, sweeping flourish underneath. The signature is positioned above the printed name and title.

Geoff McDonald
First Assistant Secretary