



National Legal Aid Secretariat
GPO Box 9898
Hobart TAS 7001

Executive Officer: Louise Smith

t: 03 6236 3813

f: 03 6236 3811

m: 0419 350 065

e: louise.smith@legalaid.tas.gov.au

The Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
Canberra, ACT, 2600

pjcis@aph.gov.au

7th July '06

Dear Madam,

Re: Security laws review

Introduction

National Legal Aid represents the Directors of each of the 8 State and Territory Legal Aid Commissions. NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal or State and Territory legal systems; or
- Obtain adequate information about access to the law and legal system

NLA makes this submission on the basis that there is the potential for Commission services to be required to provide assistance to people affected by the existing legislation or any future changes to the legislation.

The experience of Legal Aid Commissions in Australia in relation to these laws has been that a negligible proportion of our legal advice and representation work have involved the package of legislation being considered by the committee.

The Sheller Report recommendations relate to several major pieces of legislation which, due to our lack of practical knowledge of the workings of these statutes, we choose not to comment on.

Notwithstanding this, there is potential for circumstances in relation to the threat of terrorism and enforcement of laws to change and there to be a resultant impact on our services. We therefore wish to briefly make a brief submission in relation to the general framework of these Acts.

The basis of the concerns which NLA wishes to convey to the committee are expressed specifically to the Senate Committee's recent inquiry in relation to the *Anti-Terrorism Act (No 2) 2005*. Briefly, these include the need to ensure that:

- Defendants have access to confidential and independent legal advice and representation;
- Legal assistance in relation to the package of legislation is funded under the Commonwealth Legal Aid Guidelines under which all Legal Aid Commissions operate.
- Due process and procedural fairness is afforded to persons coming under this legislation.
- Legislation conforms with international Law and human Rights, in particular the *International Covenant on Civil and Political Rights*.

Recommendations

We wish to express our general support of the recommendations of the Sheller Report, particularly the emphasis on community education and adherence to administrative law and human rights principles. We make the following comment on the specific recommendations:

- We support a legislated timetable of ongoing review of security legislation by an independent body as proposed in recommendation 1.
- We place a high priority on the need for community education in relation to National Security Laws, in particular in relation to the Muslim community, as proposed by recommendation 2.
- We support an emphasis on a transparent process of proscription in accordance with administrative law principles, particularly the inclusion of natural justice principles as part of that process as proposed in recommendations 3 and 4;
- We support the wide publication of proscribed organisations and notification of persons connected to those organisations as proposed in recommendation 5.
- We agree with recommendation 9 that the definition of ‘advocates’ in section 102.1(1A) is too broad and should either be repealed or amended so that it is more tightly defined.
- We support recommendation 15 to repeal the offence of ‘associating with terrorist organisations’ in section 102.8 as it impinges on the right to freedom of association.
- We prefer not to comment specifically on the remaining recommendations, however generally concur with the fourth area of concern noted in the Report, that where ‘criminal offences involve heavy penalties of imprisonment, neither the offences nor elements of them should be of strict liability.’¹

Yours sincerely,



Ms Suzan Cox QC
Chairperson
National Legal Aid

¹ P 5