

## Inquiry into the National Security Legislation Monitor Bill 2009

Submission from Civil Liberties Australia, 27 July 2009

Civil Liberties Australia welcomes the opportunity to comment on this legislation. CLA has for some time been calling for a review of the terror laws, and we consider this a step in the right direction. This is especially so as the Troeth/Trood Bill, having been passed by the Senate, appears to be languishing in the House of Representatives.

However, it is not clear whether the Executive will be obliged to correct any faults the Monitor identifies. Without enforceable authority and appropriate personal and/or organisations sanctions, the Monitor is a toothless tiger.

Civil Liberties Australia applauds the 'objects' of the legislation, particularly  
3(c) *is consistent with Australia's international obligations, including human rights obligations, and*  
3(d) *contains appropriate safeguards for protecting the rights of individuals.*

However, there are several sections that the CLA wishes to question.

Part 2 6, (2) (a) and (b) defines functions which are NOT to be covered by the Monitor. It is hard to comprehend why such functions of the agencies are not the responsibility of the Monitor. Being able to review agency priorities in enforcing their own legislation, and what lies behind the selective decision-making, is crucial to effective functioning of the laws and should be in the province of the Monitor. In addition, the Monitor should be empowered to consider individual complaints about the activities of the agencies, which may well point to systemic problems in legislation and how it operates in practice.

Part 2. 7. References and 'guidance' to the National Security Legislation Monitor are the sole province of the Prime Minister. CLA considers that this gives excessive influence and unconscionable power to a Prime Minister. Responsibility for legislation in Australia's parliamentary democracy does not lie with the Prime Minister: responsibility lies with the Australian Parliament. This is dangerous law, apparently giving total control to one person without any check or balance. In CLA's opinion, references to the Monitor should be entitled to come from the Prime Minister, the Leader of the Opposition, The President of the Senate or the Speaker of the House of Representatives, as well as being able to be launched by an "own motion" process by the Monitor, without requiring the approval of a Prime Minister. Without at least the Leader of the Opposition involved, this legislation has a distinct party political sheen to it, whichever party is currently dominant: no party should have exclusive control – even temporarily – in such an important area of law.

### 10. Consultation with agencies

To extend the ability of the Monitor to engage in community consultation, or to consult as widely as he or she likes, CLA recommends the addition of (2) (e) *any other person or organisation*

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