

31 March 2005

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Mr Owen Walsh  
Secretary  
Senate Legal and Constitutional Committee  
Parliament House  
CANBERRA ACT 2600

Dear Mr Walsh

**Inquiry into the National Security Information Legislation Amendment Bill 2005**

I refer to your email of 17 March 2005 in which you invited the Society to provide a submission to the parliamentary inquiry into the *National Security Information Legislation Amendment Bill 2005*.

The Bill has been considered by the Society's Human Rights Committee, which has provided the following comments in relation to particular aspects of the Bill.

The Human Rights Committee is concerned that this Bill potentially provides a mechanism to the Government to cover up or otherwise avoid the consequences of bad or negligent decision making, especially in situations where it is a litigant in civil proceedings, under the guise of affecting national security. Whilst a court is the final body that determines what will happen to national security sensitive information, we are concerned at the ability of parties to adduce evidence or mount arguments to counter assertions of the Attorney-General that national security is at risk. This is especially the case when the issue is determined in a closed hearing and where parties and their advisors need to obtain an appropriate security clearance to be present.

We take as a basic premise that self interest taints decision-making. We therefore question the transfer of executive power from the Attorney-General to another Minister as a sufficient mechanism to avoid the charge of conflict of interest when the Attorney is a party to litigation. Presumably the Attorney (or any other Government Minister) would be a party in his/her capacity as a Minister of the Crown. We submit that this decision making power would be best taken out of the political arena to reside with a senior public servant.

We are also concerned that there is a potential for political manipulation of the grant or refusal of security clearances at the appropriate level to litigants and their lawyers.

The Bill provides that a party must notify the Attorney-General at any stage of a civil proceeding where the party expects to introduce information that may affect national security. Indeed it is an offence to fail to so notify. This requires a party and his/her legal advisors to be particularly prescient as to what the Attorney might consider affects national security, upon which opinions will be varied.

The costs of litigation will be necessarily increased for parties who are required to work through this national security information process. To some extent this can be ameliorated by cost orders against the Commonwealth where it seeks to intervene or where it is a party.

I trust that these comments are of interest to you and wish the Committee well with its Inquiry.

Yours sincerely

Alexander Ward  
**PRESIDENT**