



THE UNIVERSITY OF  
NEW SOUTH WALES



FACULTY OF LAW

6 April 2005

Committee Secretary  
Senate Legal and Constitutional Legislation Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Dear Secretary

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

Thank you for the opportunity to make this submission, and for the extension of time until 6 April 2005. We support efforts to appropriately protect national security information in civil proceedings, while respecting the need for fairness and justice in such proceedings.

We note that the Bill is largely in conformity with the recommendations of the Australian Law Reform Commission in *Keeping Secrets: The Protection of Classified and Security Sensitive Information* (ALRC 98, 2004), adopted after extensive consultations with relevant stakeholders.

We make five short points:

1. Considering the breadth and vagueness of the definition of 'national security' under federal law, it is unduly onerous to criminalise the failure to notify the Attorney-General of national security information arising in civil proceedings (sections 38D and 46C).

Under the *National Security Information (Criminal Proceedings) Act 2004*, 'national security' is defined as meaning 'Australia's defence, security, international relations or law enforcement interests' (s 8). The terms 'international relations', and 'law enforcement interests' are then separately defined (ss 10 and 11), while 'security' is defined in section 4 of the *ASIO Act 1979*, with its various elements also separately defined (such as espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence system, and acts of foreign interference).

A vast range of information potentially falls within the ambit of these definitions, particularly Australia's 'international relations interests' (defined as 'political, military and economic relations with foreign governments and international organisations'). The

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Bill imposes strict liability for failure to notify the Attorney-General, regardless of whether a party unintentionally, inadvertently or mistakenly failed to notify.

2. The Bill protects national security information through the use of closed hearings, ministerial certificates and security clearances. However, as the ALRC noted in its report, other measures are available to achieve the same objective (see ALRC recommendation 11-10). In particular, measures that interfere less in the ordinary conduct of civil proceedings should be considered before resorting to the more intrusive measures.
3. As the ALRC recommended, the Bill should not require certain proceedings to be held in closed session, but should leave the courts with the discretion whether to close the court.
4. As the ALRC recommended, national security information should also be protected in administrative proceedings, which are not covered by this Bill or existing laws.
5. As the ALRC recommended, a special security officer should be made available to courts to assist in the management and protection of security information.

Yours sincerely

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