

DISSENTING REPORT BY AUSTRALIAN GREENS

1.1 The National Security Legislation Amendment Bill 2010 proposes a large number of complex changes to the *Criminal Code Act 1995*, the *Crimes Act 1914*, the *Charter of the United Nations Act 1945*, the *National Security Information (Criminal and Civil Proceedings) Act 2004*, and the *Inspector General of Intelligence and Security Act 1986*.

1.2 The Australian Greens believe that the recommendations made by the Committee barely begin to address the concerns expressed by legal experts and institutions that participated in the inquiry.

1.3 Nor does the Committee's recommendations allay the concerns expressed by the Senate Scrutiny of Bills Committee May 2010 Alert Digest which outlines repeated instances where this legislation inappropriately delegates powers, trespasses unduly on personal rights and liberties, removes parliamentary oversight and general reporting requirements to the Parliament.

1.4 This legislation and this inquiry have merely tinkered with long awaited reform. The evidence of one legal professor who noted, "This appears to have been drafted in haste and poorly, to be honest,"¹ and correctly characterised the Bill as, "legislation as symbolism rather than legislation actually to deal with an issue."²

1.5 The Committee recently engaged in analysis of the anti-terrorism laws, holding an inquiry into my Anti-Terrorism Laws Reform Bill 2009. While declining to make recommendations the Committee submitted the detailed analysis and numerous recommendations for improvements to the broader review process being conducted by the Attorney General.

1.6 There is no evidence whatsoever that this material was taken into consideration on any substantive issue. Proposals to improve accountability of rapidly expanding agencies like ASIO, and bringing our legal frameworks back into line with long established principles of the rule of law have been summarily dismissed.

1.7 The overwhelming number of detailed submissions and evidence provided to this inquiry registered profound disappointment at the minimal extent to which the government has considered the constructive criticism on the measures proposed or the numerous suggestions for improvements.

¹ Dr. Patrick Emerton, Committee Hansard, 21 May 2010, p. 30.

² Dr. Patrick Emerton, Committee Hansard, 21 May 2010, p. 32.

1.8 As the submission of The Gilbert + Tobin Centre of Public Law and University of New South stated, of the 267 amendments to Australia's anti-terrorism legislation proposed in the Bill, only 66 of these reflect changes made since the Exposure Draft, and most of these 66 changes can be described as technical as opposed to substantive changes.³

1.9 This inquiry provides yet more evidence of concerns expressed in the national press and elsewhere that independent legal advice is simply not valued by the government. In the wake of significant funding cuts to the Australian Law Reform Commission it is somewhat ironic that the Committee tasks the ALRC with an inquiry into pre-charge detention.

1.10 Such an Inquiry by the ALRC would at least be duplicative of the Council of Australian Governments (COAG) review of the operation of terrorism-related laws that were introduced in 2004 that is scheduled to start in December 2010. This review will cover the laws in the Crimes Act 1914 and the Criminal Code Act 1995 allowing broader police powers, control orders, preventative detention orders, as well as the definition of terrorist organisation and terrorist financing provisions.

1.11 The Independent National Security Legislation Monitor is the office best tasked with reviewing the provisions and procedures in our anti-terrorism legislation. That is its very function.

1.12 The need for an Independent National Security Legislation Monitor to scrutinise the large body of legislation relating to terrorism has been broadly supported for a number of years and is finally to be established in the coming months. This office does have the potential to play an extremely important role ascertaining whether the anti-terrorism laws are necessary and proportionate, and are actually meeting the stated objective of protecting Australians from terrorist violence.

1.13 The Greens believe that given the function of the Independent National Security Legislation Monitor is to review the operation, effectiveness and implications of our anti-terrorism laws, the Monitor should review the proposals in this Bill before the Senate debates it.

1.14 To this end the Committee should forward to the Independent National Security Legislation Monitor this report, the Hansard transcripts and submissions to the inquiry to assist the Monitor in analysing the government's proposed changes to the anti-terrorism laws.

Recommendation 1:

1.15 That the Senate defer debate on this legislation until such time as the Independent National Security Legislation Monitor has reviewed and issued a report on this legislation.

³ Gilbert + Tobin Centre of Public Law, Submission 10, p. 8.

Senator Scott Ludlam

Australian Greens