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## **CIVIL LIBERTIES COUNCILS DEMAND SCRUTINY OF NATIONAL SECURITY LEGISLATION**

### **Public statement from The NSW Council for Civil Liberties, Liberty Victoria, The Queensland Council for Civil Liberties, The SA Council for Civil Liberties, Civil Liberties Australia**

Civil Liberties Councils across Australia<sup>1</sup> urge the Government - and failing that - the Australian Parliament to ensure that the foreshadowed national security legislation is subject to proper scrutiny and not rushed through parliament next week - as some media suggest is the Government's intention.

The, as yet unseen, legislation will implement most of the 22 recommendations from chapter 4 of the Parliamentary Joint Committee on Intelligence and Surveillance (PJCIS) report.<sup>2</sup>

This is important legislation with significant implications for national security and for the workings of our democracy. It is of fundamental importance that we get the balance right in this area.

**Members of Parliament and the Australian public must have the time to consider and take advice on these national security proposals before they are enacted into law.**

#### **No case for urgency**

There is no urgency that overrides a proper parliamentary and public review process.

This is notwithstanding an apparent scare campaign over recent weeks to link the 'Jihadist' element of the Middle East conflict and the involvement of some Australians with an urgent need for the immediate passage of expanded national security laws.

There is a real risk that a small number of the 150 or so Australians participating in the Syrian or nearby conflicts will return to Australia with a dangerous 'jihardist' perspective. As Australia has one of the most extensive counter-terrorist legislative regimes in the western democratic world, our intelligence/security agencies already have extensive powers and resources to monitor and manage such individuals who return to Australia intent upon terrorist activity.

Any significant extension of these powers requires careful public scrutiny.

The report of the PJCIS has been with Attorney-General Brandis for 10 months. The Government could have acted on its recommendations at any time since coming to office if it felt there was an urgent need.

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<sup>1</sup> NSW Council for Civil Liberties, Liberty Victoria, Queensland Council for Civil Liberties, SA Council for Civil Liberties, Civil Liberties Australia

<sup>2</sup> Report of the Inquiry into Potential Reforms of Australia's National Security Legislation, Parliamentary Joint Committee on Intelligence and Security, May 2013, Canberra. (PJCIS Report 2013)

### **The likely package**

Some of the recommended changes by the PJCIS are uncontroversial. They address much needed modernisation and clarification of existing provisions without significantly encroaching further on civil liberties and privacy.

Other likely provisions will be contentious and raise major concerns as to their necessity, proportionality and impact on democratic values and freedoms, for example:

- expanded ASIO powers to access computers and computer networks of both suspects and non-suspects; ASIO disruption of target computers, ASIO entry to non-suspect premises, changes to ASIO warrant provisions
- new powers of surveillance of Australians by the Australian Security Intelligence Service (ASIS), the Australian Signals Directorate (ASD) and Defence Imagery and Geospatial Organisation (DIGO) - currently these intelligence agencies only have a foreign brief

Such provisions will provide further 'exceptional' powers to ASIO and blur the current clear demarcation between the role of ASIO and the other foreign oriented intelligence agencies.

In the light of the Snowden revelations about the consequences of these kinds of powers and intelligence sharing relationships in the USA and elsewhere, Australians would be wise to insist on very careful scrutiny of these proposals before endorsing them.

### **The proper parliamentary process**

**Parliament must be certain the new laws are necessary, that they include strong protections for privacy and effective independent oversight of the use of these new powers by the intelligence agencies.**

The PJCIS was strongly of the view that this certainty required the proposals '*be released as an exposure draft for public consultation. The Government should expressly seek the views of key stakeholders, including the Independent National Security Legislation Monitor and Inspector-General of Intelligence and Security. In addition, the Committee recommends the Government ensure that the draft legislation be subject to Parliamentary committee scrutiny*'.<sup>3</sup>

**The Government should abide by the recommendations of the PJCIS and**

- **release the proposals as an exposure draft bill for public consultation**
- **refer the draft legislation for review by an appropriate parliamentary committee (the CCLs consider the PJCIS most appropriate)**

For inexplicable reasons the Government has removed the independent and expert Independent National Security Legislation Monitor (INSLM) just before it intends introducing the first of a number of national security legislative packages. However, the INSLM repeal legislation has not yet been passed.

Common sense would suggest the INSLM repeal bill should be withdrawn by the Government or rejected by Parliament. The Government should move quickly to appoint a widely respected, non-partisan national security legal expert to this unique position to provide much needed independent and expert advice in relation to national security legislation.

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<sup>3</sup> Recommendation 41, PJCIS Report 2013