



NSWCCL STATEMENT ON NEED TO MAINTAIN INDEPENDENT NATIONAL SECURITY LEGISLATION MONITOR

NOT A 'RED TAPE' MATTER !!!

IMPORTANT ONGOING ROLE IN PUBLIC INFORMATION

**BALANCED INDEPENDENT PERSPECTIVE ON COUNTER-TERRORISM LAWS AND
IMPLEMENTATION**

The pre-emptory and gratuitous abolition of the Independent National Security Legislation Monitor role next Wednesday will weaken the monitoring of Australia's 'extraordinary' counter-terrorism laws and their use by intelligence and security agencies.

It will also deprive the community of a credible and independent source of information about and analysis of these laws and their operation.

The establishment of the Independent Monitor statutory role in 2010 was the outcome of 4 years of discussion, debate and multiple reviews¹. The coalition, the ALP and the Greens supported the legislation.

Though frugally resourced, the Independent Monitor has delivered an illuminating body of work which, for the first time, provides a coherent account of the complex array of interlinked security and intelligence legislation - as well as a rigorous and independent critique of these laws and soundly based recommendations for change.

Yet the Government plans to abolish the Independent Monitor role under cover of the 'red tape bonfire' - without consultation, forewarning or reasonable explanation.

¹ Security Legislation Review Committee in June 2006, the Parliamentary Joint Committee on Intelligence and Security in December 2006 and September 2007, and the Inquiry by the Hon. John Clarke QC into the Case of Dr Mohamed Haneef

It is absurd and misleading for the Government to treat this legislation and the Independent Monitor role as ‘red tape’ which can be swept away as inconsequential.

The Independent Monitor’s functions are significant and of ongoing importance.

It is also inconsistent with views recently held by the coalition and the ALP.

In 2010 Senator Brandis vigorously supported the establishment of the Independent Monitor and claimed coalition credit for the idea (‘this bill, which for all practical purposes is our own’).² He wisely insisted the Monitor have statutory independence and report to Parliament so as to avoid Government keeping his/her reports secret.

The Rudd Government, initially reluctant, but under pressure to reform aspects of the counter-terrorism legislation was also enthusiastic about the role.

‘A new independent review mechanism will ensure that Australia’s laws underpinning Australia’s counterterrorism and national security regime are effective as the threat to Australia’s national security interests evolve. Importantly, the impartiality of the monitor, as envisaged in this bill, will strike a necessary balance between the need to prevent terrorist activities from threatening Australia’s way of life and the need to protect our individual rights and liberties.

The debate about establishing in Australia an independent reviewer of counterterrorism laws is not new. This bill represents implementation of bipartisan recommendations...’³

The role of Independent Monitor remains relevant and important. The ongoing scrutiny of the Independent Monitor is of particular relevance over the next few years.

In 2016 the ‘extraordinary’ counter terrorism legislation is scheduled for repeal under a sunset clause which acknowledges that this legislation is not appropriate as a permanent fixture in a democracy.

The Government is likely to move to implement the intelligence agencies bid for a major and radical expansion of their powers around cyber surveillance and data collection. This hugely contentious expansion of surveillance powers was resisted in 2013. The community was not given reasonable information as to the scope of the agenda. Nor, it would seem, was the responsible Parliamentary Committee. The recent Snowden revelations about the extent of electronic surveillance and data sharing by intelligence agencies strengthen the cause for concern about expansion of surveillance and data collection powers without strong protections and oversight.

The views of an expert Independent Monitor at these critical points of evolution of our counter terrorism legislative regime will provide a critical independent input. Exactly as the object of the Act intended.

The NSWCCCL did not support the compromise of appointing the INSLM in 2009. We argued for the repeal of the disproportionate and dangerous powers of the post 9/11 laws. The repeal did not and has not yet occurred. NSWCCCL continues to fight for the repeal of these excessive and dangerous laws through the National ASIO Campaign.

² Senator Brandis Shadow AG 2R speech Hansard 2/2/2010

³ AG Senator McLelland SC 2R speech, Hansard 17/3/2010

In the meantime, the Independent Monitor role has proven its value and should be maintained.

The failure of the Rudd/Gillard Governments to implement the reasonable and widely supported recommendations of the Monitor is a failure of government- not the Monitor.

The current Government should withdraw this Act from the 'bonfire' and give serious consideration to implementing the existing recommendations of the Monitor.

Failing this, the Parliament should block this ill-considered abolition of an important part of the oversight and monitoring framework for our security and counter-terrorism laws how they are interpreted and used by security and intelligence agencies.

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