



NSWCCL COMMENTS ON AG BRANDIS MEDIA CONFERENCE ON NATIONAL SECURITY LEGISLATION

1. We welcome the Attorney-General's wise decision to send the Government's proposed new legislation relating to national security to the relevant Parliamentary Committee for proper and considered review. This is very important legislation and the Australian community must be given an opportunity to understand what is being proposed and what the implications of these laws are. Indeed – so must the members of parliament and particularly the most recently elected new senators. This can now happen.

It is essential that the committee calls for submissions from stakeholders and the community on the draft legislation. The prior review process did not have the detail provided by actual draft provisions.

2. Similarly we welcome the very sensible decision to back away from their incomprehensible decision to abolish the role of the Independent Monitor of National Security and Intelligence Legislation. We note that at the time the Government incorrectly claimed the Monitor's job was finished. As a core and unique part of the job was to review and assess national security legislation to see if it was necessary and did not inappropriately undermines rights and liberties of a modern democracy – it does not make sense to abolish the role just prior to introducing major new legislation.

It is a pity however that we have lost the expertise which the previous monitor had built up over his almost 3 years . That would have been a useful basis from which to provide an independent assessment of the need for new national security laws.

3. Of course we agree that the ASIO Act needs to be modernised to align better with the current political context and new information technology - although we do note there have been over 53 amendments to counter-terrorism laws since 2001. Those parts of the package which clarify and update provisions without significantly encroaching further on civil liberties and privacy are not controversial and will not be opposed by civil liberties groups.
4. However there are numbers of provisions which are controversial and will require the most careful consideration in the review process.
5. Data retention. While not in this package- it may as well be, as both Senator Brandis and the Opposition seem to be flagging they consider it non-controversial and essential. Senator Brandis has repeatedly described this proposal as the way of western democracies.

This is most disturbing. It is in fact a very controversial issue across western democracies.

In April the European Union Court of Justice declared a data retention directive invalid because of serious interference with fundamental privacy rights. The Data Retention and Investigatory Powers legislation passed in the UK this week was and remains hugely controversial. Its earlier version was so controversial it was eventually withdrawn by the Government. In the USA there have been intense debates and major divisions on this issue in the Congress and the Senate.

There are multiple global efforts at the moment to draw up strong surveillance and data retention protocols.

Meta –data is not insignificant and unimportant. It reveals a full profile of all aspects of a person’s life. In a democracy we should be very wary of allowing the state to have access to such data on suspects and non-suspects alike.

6. The expanded ASIO powers to access computers and computer networks of both suspects and non-suspects, allowing ASIO disruption of target computers , ASIO entry to non-suspect premises and changes to ASIO warrant provisions are all concerning and will require careful consideration by the review committee and the community.
7. Senator Brandis confirmed his intention to impose quite draconian penalties on whistleblowers. We are concerned about these provisions .

The proposed laws will see the current two year maximum prison sentence for the unauthorised use of security information increase fivefold to ten years. Another offence concerning illegal dealings with intelligence materials will carry a maximum penalty of twenty five years. And a new offence will be introduced to prohibit taking notes on, copying and deleting ASIO intelligence data. This offence will carry a maximum three year prison sentence.

Of course ASIO and other security agencies must be able to keep information confidential for an appropriate period. However, if for a healthy democracy we must ensure that our laws wisely balance the needs for confidentiality with the strength and effectiveness of whistle blower protections. When things go awry total secrecy is not desirable.

When something is seriously awry whistleblowers play a vital role in the provision of good governance. The recent case relating to East Timor has thrown some light on this balance in Australia. There is reason to suspect that our whistleblower protections and processes are not effective- at least in relation to ASIS.

We need to consider these new provisions in the context of our whistleblower laws.

8. Strong and meaningful privacy protections must be included in the legislation . They were absent from the last version of this package – with the exception of some very token gestures.
9. We hope that both major parties move into the review/consultation process with open minds. There have been some statements which might lead the community to suspect the review process is not expected to lead to any significant reconsideration of the proposals.

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