



SENATOR BRANDIS' PRESS CONFERENCE ON COUNTER-TERRORISM LEGISLATION

ASIO and the AFP should have adequate powers to protect Australians against the real threat of terrorist activity- consistent with the maintenance of a healthy democracy. Today the Attorney-General provided some more information on the two 'tranches' of counter-terrorism legislation he is bringing into the Parliament this week.

Not all are necessary or consistent with a healthy democracy.

Tranche No 1: National Security Legislation Amendment Act

- **Torture and ASIO immunity in Special Intelligence Operations context**

NSWCCL welcomes the AG's decision to explicitly prohibit torture from the immunity provisions associated with the proposed 'Special Intelligence Operation'.

The explicit prohibition **in the legislation** is necessary as the existing draft legislation clearly encompassed the possibility of ASIO officers having immunity for acts of torture.

The issue was not a 'red herring' but a significant and relevant concern.

- **Special Intelligence Operations (SIO)**

Notwithstanding this change- NSWCCL strongly opposes the proposed SIO regime for ASIO. It is not appropriate, or necessary for ASIO to do its work.

Intelligence agents should not have legal immunity for covert unlawful acts. The fact that the federal police have such immunity does not provide an automatic justification. ASIO is not a law enforcement agency. It is an intelligence agency. It quite properly lacks the public visibility and the stronger and more transparent oversight and accountability framework that apply to law enforcement agencies like the AFP.

The current system seems to have been working.

Tranche no 2 The 'Foreign Fighters' bill

- **Extension of the sunset clause on extraordinary and short term laws**

It is disturbing that the Government has made a decision, on the run, to extend the sunset clauses for the ASIO extraordinary counter-terrorism powers for **another** ten years. These powers breach longstanding rights and freedoms- hard won over

centuries. That's why Parliament determined they were 'extraordinary' and only enacted them for a short term –initially 3 years.

An extension to 2025 will embed these laws as normal and almost certainly 'permanent'.

These extraordinary powers are unnecessary- and will undermine important assumptions about protection from arbitrary arrest and detention that have long been central to our sense of justice.

They should be allowed to lapse as scheduled.

If there is to be any extension of these extraordinary powers, it should only be after a public review and for a maximum duration of 3 years.

- **New offence of entering or staying in a 'declared' area**

The AG addressed the widespread concern that persons who travel to proposed 'declared' areas will have to prove they were there for legitimate reasons. He assured Australians there would be no reversal of the onus of proof from the prosecution to the defendant.

This is a welcome assurance.

However, the AG's further explanation suggests the proposal will shift the balance of proof significantly towards the accused. The legislation will include a defence of legitimate purpose. A person travelling to a declared area will have the evidentiary burden of demonstrating that they had a legitimate/good reason for so doing.

- **Hasty legislation**

The Government is rushing through new and as yet unseen 'Foreign Fighters' laws in the super hyped atmosphere post the major counter-terrorism raids in Sydney last Thursday. This is not sound and considered process.

Australia has one of the most extensive suites of counter-terrorism laws among liberal democratic nations. These will be significantly extended by the National Security Legislation Amendment Bill already currently before Parliament.

We urge the Government and the Parliament to slow down the hype-driven rush to further extend extraordinary counter-terrorism powers.

The 'Foreign Fighters' bill should be referred to a Parliamentary Committee and community and independent expert views should be sought.

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