



## Australian Government

### Independent National Security Legislation Monitor

#### Opening Statement

Chair and Senators,

1. I was not required to appear before you last year so may I briefly bring you up to date with my activities? As you know I am a part time-statutory officer based in Sydney but with offices here in Canberra hosted by the Attorney-General's Department. May I take this opportunity to thank the Secretary, Mr Moraitis, for his support for me and my office, while fully respecting my independence.
2. Since I last appeared before you, I have produced four reports which are available to view on the INSLM website:
  - (a) one for Prime Minister Morrison on the prosecution and sentencing of children for Commonwealth terrorist offences,
  - (b) one for Attorney General Porter on the review of terrorism related citizenship loss provisions in the *Australian Citizenship Act*, and
  - (c) two annual reports also provided to the Attorney General.
3. My latest annual report was tabled last week. If I may, I would like to draw to your attention a number of matters in my annual report? I continue to contend that government agencies must strive to provide more information to the public relating to the exercise of counter-terrorism and national security powers providing that does not impact on national security itself. I give a straightforward example in my annual report of how the United Kingdom every quarter gives quite a detailed breakdown and analysis of counter-terrorism arrests, prosecutions and convictions. In my own annual report, I try and list many of these matters including any reported court decisions. However, I would like to see more information along these lines being provided as a matter of course to the public. As I say in my annual report 'one often overlooked reason for publishing information is to prevent or correct error and to forestall mischievous speculation. Unnecessary secrecy can be seriously counterproductive.'
4. My report notes that my term finishes on 30 June and as I made clear some years ago, I do not seek a further appointment and I stand ready to assist in a smooth transition with my successor once that person has been decided upon.

5. Significantly, my office has for the first time received a reference from the PJCIS to conduct a review, to inform the PJCIS' own required review, of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) known as TOLA. That inquiry is underway. Two weeks ago, I held public hearings. The transcript is on my website. I have conducted extensive consultations in Australia, the United States and the United Kingdom about this important topic and I will give a further speech to the Lowy Institute in Sydney on my current thinking this Thursday.
6. I continue to have a very busy program of engagement with members of Parliament, ministers, judges, oversight bodies both here and overseas, academics and civil society generally.
7. I adopt what the Director General of Security said in his well-publicised recent address, which I attended, as to the nature of counter-terror threats, and also the current threat of espionage and foreign interference.
8. As to how those threats will be manifested in court proceedings, I do anticipate that:
  - (a) there will be further terrorism prosecutions,
  - (b) at some point there will be prosecutions relating to breaches of the espionage and foreign interference laws;
  - (c) the AFP have noted that there will be continuing detention orders sought as terrorism offenders come to the end of their sentences; and
  - (d) depending upon the legislative response to my citizenship report, there may well be court proceedings relating to loss of citizenship in that regard.
9. In my public hearings on TOLA a few weeks ago, I did recommend that the State and Territory ICACs urgently receive powers under Schedule 1 of TOLA to issue Technical Assistance Requests and Notices (TARs and TANs). I think this is something that has bipartisan support and in my view should not wait any longer.
10. The final matter I should announce to this committee, having announced the matter publicly on my website yesterday, is that although it is no part of my role to investigate complaints, I have become aware of the apparently unique circumstances of the case involving the so-called 'Alan Johns' that is to say a person who was charged, arraigned, pleaded guilty, sentenced and served his sentence almost entirely in secret. I have made arrangements to read all of the secret material in the court proceedings, although I have not yet done so.

11. I wish to emphasise that I will not at any time be revealing any more details beyond those confirmed by the Attorney-General in his response to Senator Patrick in a Question on Notice. It is not a matter for me and indeed I am prohibited from revealing what is secret. However, there are relevantly two great strengths in the INSLM Act. The first is that as *of right* I can issue a notice to any person to see anything relevant to my duties regardless of security classification and the second is I can provide a report to the Attorney General containing any of those classified matters that I think appropriate.
12. Everyone may be assured that I will look at all the relevant material and come to my own conclusions about whether any changes to the law seem to me to be appropriate for recommendation.
13. At this stage, I would simply make two tentative observations. The first is that the media have undoubted standing, that is to say an entitlement, to appear and be heard on any application to close a court or to limit the reporting which goes with open court proceedings. In a sense they stand in the shoes of the public who would themselves be entitled to attend any case in open court. In this case, because the matter was conducted entirely in closed court, the public and the media were deprived of that opportunity even if as a matter of practicality, the media could only have given standard rather than fact specific submissions.
14. The second observation is that as far as I understand it no published reasons were given by the relevant court for the orders apparently on the basis that the accused and the government agreed with the orders. I simply make the point that it is unsurprising that almost any accused would agree to orders of that sort and in any event even if there is consent, because of the public interest in open justice, I was surprised that reasons were not published. When I come to examine the transcript of the proceedings there may be some sufficient explanation for this and if there was, I will note that. However, my current view is that the relevant Commonwealth statute under which these orders were made should be amended to permit, or at least require the judge to consider permitting, media and perhaps special advocate submissions, and reasons even for consent orders.
15. With the caveat that I cannot say a scintilla more about the facts of ‘Alan Johns’, I am happy to answer your questions on any matters relating to my role.

3 March 2020