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Submission to the Senate Legal and Constitutional Affairs Committee on the National Security Legislation Amendment Bill 2010 and Parliamentary Joint Committee on Law Enforcement Bill 2010

- 1 The National Security Legislation Amendment Bill 2010 (“the NSLA Bill”) and Parliamentary Joint Committee on Law Enforcement Bill 2010 (the PJCLE Bill”) follow the Attorney-General’s National Security Discussion Paper (July 2009) (“the Discussion Paper”), in relation to which the Attorney sought public comment by October 2009. Forty-six submissions have been published on the Attorney’s website.¹ Most of those submissions highlight the lack of an explicit consideration of the fact that the laws derogate in myriad ways from fundamental human rights embedded in our justice system. Many submitters identify, analyse and make suggestions for mitigating these breaches of

¹<http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_Nationalsecuritylegislation-Publicconsultation_SubmissionstotheNationalSecurityLegislationPublicConsultation

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Australians' human rights. Many of these submissions have the support of previous inquiries into Australia's national security laws.² However, a comparison of the draft legislation annexed to the 2009 Discussion Paper and the NSIA and PJCLE Bills 2010 reveals that most of those submissions have fallen on deaf ears as far as the government is concerned.³ The Committee is urged, in its reporting, to highlight this failure of the government to be responsive to the products of a consultation exercise.

- 2 This makes further detailed comment on the Bills unnecessary. To the extent that they implement the proposals set out in the Discussion Paper without amendment, ALHR repeats the submissions it made in relation to the Discussion Paper, and endorses again the submissions of Stephen Keim SC, Public Interest Advocacy Centre, Gilbert + Tobin Centre of Public Law, National Association of Community Legal Centres and Dr Patrick Emerton, amongst others, who called for a human rights analysis of the proposed reforms as well as a broader consideration of the national security legislation generally.
- 3 In summary, the Bills strike at the heart of public confidence in the administration of justice by eroding its core principles of transparency and procedural fairness, and will render court proceedings including jury trials unwieldy, uncertain and unmanageable in the extreme.
- 4 In the absence of a human rights act, ALHR is not expecting to hear any robust debate about the necessity and proportionality of national security laws' derogatory impact on individual human rights. However, we urge the Committee to exceed our expectations in that respect.
- 5 We note, however, on 18 March 2010, the Independent National Security Legislation Monitor Bill 2009 was passed by the Senate. The Government has announced its intention to appoint an Independent Monitor shortly. ALHR urges the Committee to recommend that the Government refer the NSLA Bill and PJCLE Bill to the Monitor for consideration. The Monitor's brief should include a request that the consideration of the two Bills be conducted against the now considerable number of recommendations made by the various inquiries and reviews who have looked at the mass of national security legislation passed since Spring, 2001.

² See, for example, Security Legislation Review Committee in the House of Representatives, Parliament of Australia, Report of the Security Legislation Review Committee (2006) (the Sheller Committee Report), Parliamentary Joint Committee on Intelligence and Security, Commonwealth Parliament, Review of Security and Counter Terrorism Legislation (2006) (PJCIS report), MJ Clarke QC's Report of the Inquiry into the Case of Dr Mohamed Haneef (2008) (the Clarke inquiry).

³ The Attorney-General's dropping of the proposed prescription regime is not an exception as the principal objections to that proposal were not based on human rights so much as logic and practicality.

6 We are reminded that those Inquiry reports and recommendations were said by the government to have given rise to the above-mentioned Discussion Paper.

Yours sincerely

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