

**National Security Legislation Amendment Bill 2010
and
Parliamentary Joint Committee on Law Enforcement Bill 2010**

CLA – Civil Liberties Australia – submission

Introduction

Civil Liberties Australia (CLA) welcomes and thanks the government for reviewing national security legislation and thanks the Legal and Constitutional Affairs Committee for inviting submissions. We welcome the changes that the government has made since our last submission. However, it is unfortunate that the government has not utilised this opportunity to make more significant reform. CLA encourages the Committee to adopt recommendations arising from submissions to affect positive outcomes for Australian society.

Subdivision C

CLA stated in our submission to the Senate Inquiry in to the proposed *Anti-Terrorism Bill (No. 2) 2005* that sedition is an offence of the mind. In our previous submission on this National Security Legislation, we submitted that the government restricting the free expression of their adversary is unjust. CLA reiterates the necessity of free speech in our modern western liberal democracy, and that the law of inciting violence and the law of vilification are the appropriate legal mechanisms to be utilised. The new Subdivision C extends beyond what is necessary and proportionate in the interests of national security and public safety.

Our primary concern is that the Bill regulates an action constituting the expression of words, not the commission of violence. The proposed offences contained in Subdivision C are speech acts, and imply that the expression of an opinion equates to an intention to act on that opinion.

Absent specific situational context in which the expression is made that clearly connects the expression with the acts that they advocate, or an actual act of violence, the implication is that the words become performative and urging violence is performing an act of violence. It is on this point that CLA disagrees.

Furthermore, Subdivision C contains the ambiguous term of urging. CLA is concerned that urging violence has been adopted in order to increase the breadth of speech that would be criminalised, and significantly lowers the standard of proof required to gain a conviction. We submit that the offences contained in Subdivision C capture expressions that should not be caught and makes it difficult for people to foresee whether their behaviour crosses the line. These problems do not arise under the existing inciting violence and anti-vilification provisions.

Should Subsection C be enacted, CLA advocates for greater scrutiny and accountability to be built in to ensure that it is not abused.

CLA offers the following recommendations:

- That the maximum penalty should be reduced from 7 years imprisonment to 3 years imprisonment, as was the case prior to the 2005 amendments.
- An education program (modelled on the education program that accompanied the Racial Discrimination Act) should be implemented to ensure that people understand the offences, can foresee the consequences of their conduct, and to mitigate community anxiety that the law might be applied disproportionately or unfairly.
- An external monitoring and reporting body should be established and tasked with collecting empirical data on the number of incidents, investigations and prosecutions under these provisions each year. It should be required to report to parliament annually and its report be made publically available.
- An accessible independent complaints mechanism should be established. The functions carried out by the Commonwealth Ombudsman would be an appropriate model to follow, but this complaint mechanism should stand independent of the Ombudsman.
- A five-year sunset clause should be inserted. On the fifth anniversary, the legislation should automatically expire. The government should be required to review these provisions, reintroduce them to the parliament for debate and a vote.
- The defences available under the anti-vilification legislation should be included.

Terrorism

As stated in our previous submission, CLA does not support extending the period of regulation from 2 to 3 years. We do not agree that this provides an adequate level of oversight. Retaining the 2 year provision will require the Attorney General to consider afresh all the material more frequently and be better able to reflect on changes in the international sphere. Furthermore, it would mitigate the perception that the electoral cycle had any bearing on the decision.

Emergency entry to premises without a warrant

CLA advocates this section be amended to include the requirement that there needs to be reasonable harm to an *identifiable* person. This will add a check on the exercise of this power, to ensure that it is only exercised where there is an actual identifiable person who could be harmed.

Limit on time that may be disregarded

The 7 day time limit on disregarded time is excessive. CLA advocates for a shorter 48 hour period of disregarded time.

Listings under the Charter of the United Nations Act

As stated in our previous submission, CLA is concerned that a 3 year period is not adequate. It would be preferable that declarations be reviewed on a frequent basis, thus providing increased accountability and flexibility in regard to changes in the international sphere. We submit that the period should be 2 years.

Parliamentary Joint Committee on Law Enforcement

As stated in our previous submission, we welcome parliament oversight of the AFP. However, Parliament cannot effectively undertake its function as a check on the Executive if its powers are restricted. CLA advocates that the committee be given the full plethora of powers to review all matters it considers necessary. The restriction on reviewing sensitive operational matters emasculates the committee, and reviews into the most important of matters could be stymied.

Functions of the Inspector General of Intelligence and Security

CLA is disappointed that greater community consultation has not occurred in regards to changes to the functions of the Inspector General of Intelligence and Security. Although we generally support greater accountability, it is concerning that the Minister has introduced this provision without adequate transparency and consultation.

Conclusion

Many of the changes to the proposals that have been made by the government since our previous submission are generally supported by CLA. We have highlighted a number of persisting concerns with the Bills which we strongly encourage the Committee to consider. CLA appreciates the opportunity to engage with the government and the Committee through this consultative process, to achieve better outcomes for Australian society.

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