

Additional Comments by Labor Senators

1.1 Labor strongly supports the Independent National Security Legislation Monitor.

The importance of the Monitor

1.2 As is noted in Chapter 1 of the Committee's Report, the office was created by the previous Labor Government in 2010, which appointed eminent barrister Mr Bret Walker SC the inaugural holder of the office in 2011.

1.3 In March 2014, the newly-elected Coalition Government announced that they would abolish the office as part of their initiatives to 'cut red tape'. Speaking to the repeal Bill, the then Parliamentary Secretary to the Prime Minister the Hon Josh Frydenberg MP claimed that, having delivered several annual reports, the work of the Monitor was complete.

1.4 This was a deeply misguided decision by the government, and Labor staunchly opposed it.

1.5 The stated reasons for the Monitor's abolition were nonsensical.

1.6 The Monitor is not in any sense "red tape". The function of the office is to provide a uniquely independent review of our evolving national security laws, which contain a range of provisions that impact the rights of Australian citizens and impose significant obligations on Australian companies. The regular review of those national security laws to ensure that they are still appropriate, effective and proportionate to the risks we face is the opposite of "red tape".

1.7 Further, the Monitor was intended as a permanent office—unlike the various ad hoc reviews of national security law and policy which have been commissioned. Its review function is, by design, ongoing. For the government to declare that the Monitor's work was complete showed either an unfortunate lack of understanding of the ongoing role the Monitor fulfils, or worse, a disdain for it.

1.8 In the face of vociferous opposition and certain defeat for the repeal measures in the Senate, the government backed away from its ill-considered plan to abolish the Monitor on 16 July 2014. However, the government left the office vacant between the expiry of Mr Walker's term in April 2014 and the appointment of the Hon Roger Gyles AO QC in December 2014.

1.9 The worth of the Monitor has since been thoroughly vindicated. Since July 2014, with Labor's support, the Government has passed three very substantial pieces of national security legislation. In each case, the legislation proposed by the government was subject to rigorous scrutiny by the opposition, resulting in substantial amendments to ensure a range of improvements including further safeguards and accountability measures.

1.10 A fourth piece of national security legislation, dealing with the removal of citizenship, is foreshadowed. The term of the current Parliament has seen the most significant revision of our national security laws since the period immediately after the September 11 attacks.

1.11 The input of the Monitor has been of invaluable assistance to the Parliament throughout this period of legislative change.

1.12 Mr Walker's reports provided much of the impetus for the measures contained in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*. He provided very considered advice on the revocation of citizenship, a topic soon to be dealt with by the Parliament.

1.13 The Monitor will continue to play an important role. Immediately after he was appointed, the new Monitor Mr Gyles was directed by the Prime Minister, at Labor's insistence, to inquire into the impact on journalists of the contentious s 35P of the *ASIO Act*, added to the Act in the Government's first national security Bill. The Monitor has held public hearings and is due to report back on this important matter in June.

1.14 Beyond that current inquiry, the Monitor will have the substantial task of reviewing Australia's newly-revised national security laws, including any changes to our citizenship laws that the government may introduce.

Senator Wright's Bill

1.15 Senator Wright's Bill proposes a range of amendments to the *Independent National Security Legislation Monitor Act 2010* and to the *Australian Human Rights Commission Act 1986*.

1.16 In her second reading speech, Senator Wright said that the Bill was 'introduced with the aim of preserving and enhancing the crucial role' of the INSLM. Senator Wright spoke of 'the need to have a robust conversation about our national security laws'.

1.17 Labor supports these goals. However, we are not convinced that the specific measures proposed in this Bill are either appropriate or timely.

1.18 We note that neither the current Monitor nor the previous office-holder Mr Walker provided a submission to this Committee inquiry. Labor is hesitant to proceed with any reforms to the office of the Monitor without their input.

1.19 Some of the Bill's measures seem reasonable. Labor is certainly concerned, for instance, about adequate staffing of the Monitor, and we are keen to ensure that the office cannot be left vacant, as it was by the Government for many months in 2014. This was a view shared by a number of submitters.¹ The Law Council of Australia (LCA) noted that 'it is valuable for there to be an incumbent in the office of the INSLM when counter-terrorism proposals are progressed'.² The Gilbert + Tobin Centre of Public Law stated that:

The long silence as to the successor to Mr Bret Walker SC as Monitor after his term concluded on 20 April 2014 was deeply unsatisfactory, especially

1 Law Council of Australia, *Submission 2*, p. 3; Gilbert + Tobin Centre of Public Law, *Submission 3*, p. 6; Human Rights Law Centre, *Submission 7*, p. 4.

2 Law Council of Australia, *Submission 2*, p. 3.

after the government's decision earlier in the year to abolish the office altogether (which it subsequently abandoned) and the later prominence of terrorism and national security issues, including fresh legislative responses, in the national spotlight by September.³

1.20 Other measures, though well-intentioned, are problematic. Labor is concerned, for example, that making the Monitor a full-time position will make it more difficult to attract expert applicants. We are not convinced that it is appropriate for the Monitor to report on Bills presently before the Parliament.

1.21 We also do not believe it necessary to further complicate and potentially increase the Monitor's reporting obligations by allowing the Australian Human Rights Commission and the Senate Legal and Constitutional Affairs Committee to refer matters to the Monitor. We note the evidence provided by the LCA, who submitted that 'it may not be appropriate for a statutory authority to require the INSLM to conduct inquiries, and this may lessen the independence of the INSLM'.⁴ We also refer to evidence provided by the Gilbert + Tobin Centre of Public Law, who noted that it 'might have the unintended effect of concentrating scrutiny of national security laws in the office of the Monitor and limiting public debate on human rights'.⁵ Labor members of this Committee believe that the Parliamentary Joint Committee on Intelligence and Security is the appropriate committee to issue references to the Monitor. We also note that the Human Rights Commission itself, in its submission, does not support the proposal that it have power to refer matters to the Monitor.

1.22 Further, the Bill is premature. The Monitor presently has a heavy work program to deal with. It would be more timely for the institutional arrangements of the office to be reconsidered once the current set of references have been dealt with, and when the Monitor is in a position to advise on how those institutional arrangements could be improved.

Senator Jacinta Collins
Deputy Chair

3 Gilbert + Tobin Centre of Public Law, *Submission 3*, p. 6.

4 Law Council of Australia, *Submission 2*, p. 3.

5 Gilbert + Tobin Centre of Public Law, *Submission 3*, p. 6.

