



amnesty international australia

Submission to the

Senate Legal and Constitutional Legislation Committee

regarding the

**INQUIRY INTO THE NATIONAL SECURITY INFORMATION
LEGISLATION AMENDMENT BILL 2005**

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Submitted by

Amnesty International Australia

Locked Bag 23
Broadway NSW 2007

Phone: Rebecca Smith (02) 6248 0730

Fax: (02) 6257 6636

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1. Introduction

Amnesty International is a worldwide movement of more than 1.8 million people across 150 countries working to promote the observance of all human rights enshrined in the *Universal Declaration of Human Rights* and other international standards. In pursuit of these goals, Amnesty International undertakes research and action focused on preventing grave abuses of human rights including rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International has monitored the use of security legislation and security measures in all regions of the world for 40 years. Many states have enacted measures and amended legislation regarding national security in recent years to counter terrorism. As an independent and impartial global human rights organisation, Amnesty International is monitoring the enactment of such legislation and its impact on human rights. The organisation maintains that the introduction of national security measures should not be at the cost of human rights.

Amnesty International Australia continues to closely monitor legislation introduced in Australia to counter “terrorism” and protect national security. Amnesty International Australia made submissions to and appeared before this Committee in May 2002 during its inquiry into the *Security Legislation Amendment (Terrorism) Bill 2002* [No.2] (Cth). Amnesty International Australia also made submissions to this Committee for the inquiries into the *Anti-Terrorism Bill 2004* and the *National Security Information (Criminal Proceedings) Bill 2004* and the *National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004*. Submissions were also made to the Parliamentary Joint Committee on ASIO, ASIS and DSD on the review of the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* and to the current inquiry on the *Australian Security Intelligence Organisation Act 1979*. Amnesty International Australia also made a submission to the Senate Legal and Constitutional References Committee inquiry to the *Australian Security*

Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters in 2002.

2. Summary

Amnesty International Australia (hereafter referred to as Amnesty International) is concerned that the proposed amendments to the *National Security Information (Criminal Proceedings) Act 2004* (Cth) (the **Act**) contained in the *National Security Information Amendment Bill 2005* (Cth) (the **Bill**) may breach some of Australia's obligations under international human rights law.

Amnesty International's main concerns in relation to the Bill are that the Bill affects the following rights:

- the right to a fair and public hearing;
- the right to choose counsel; and
- the right to remedies.

Amnesty International also remains concerned about the vagueness of the terms used, specifically the meaning of "national security".

In this submission, Amnesty International reiterates many of its concerns detailed in its submission to this Committee regarding the Inquiry into the *National Security Information (Criminal Proceedings) Bill 2004* and the *National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004*. As detailed below, many of the concerns that Amnesty International had as regards those pieces of legislation also apply in relation to the Bill currently under consideration.

3. The Bill

3.1 Application of the Bill

The Bill amends the Act and extends the operation of the Act to civil proceedings in all Australian courts. The Bill establishes a process for the Attorney-General to determine that particular information or witnesses in civil matters may prejudice national security. Civil proceedings is defined to mean "any proceeding in a court of

the Commonwealth, a State or Territory, other than a criminal proceeding”.¹ This includes all the stages of the civil process, including discovery and interlocutory proceedings.²

The Bill will apply once the Attorney-General has issued notice to the parties and to the court that states that the Bill applies.³ Under the proposed legislation a party to a civil proceeding is required to give the Attorney-General written notice if the party knows or believes that information that relates to or affects national security will be disclosed during the proceeding.⁴ The Attorney-General must be notified about “... information that may be introduced through a document, a witness’s answer to a question or the presence of a witness”.⁵

If a party to a proceeding knows or believes that a witness might disclose information that relates to or affects national security in civil litigation, the party must advise the court. The court must then order that the witness provide a written answer.⁶ The proceedings are to be adjourned after the court receives this written information.⁷ If the court adjourns the proceeding, the court must give the written answer to the Attorney-General.⁸ The adjournment must continue until the Attorney-General gives a copy of a certificate discussed below to the court or gives advice to the court that no certificate will be issued.

3.2 Attorney-General’s Certificate

¹ Proposed section 15A(1).

² Proposed section 15A(2).

³ Proposed section 6A. By way of contrast, in relation to criminal matters, this notice is to be provided by the prosecutor.

⁴ Proposed section 38D(1). If the party knows that the Attorney-General has already issued a certificate in relation to this information, or if the court has made an order in relation to the information, the party is relieved from the obligation of notifying the Attorney-General.

⁵ Commonwealth *National Security Information Legislation Amendment Bill 2005 Revised Explanatory Memorandum* p. 2.

⁶ Proposed section 38E(3).

⁷ Proposed section 38E(4). Such an adjournment is not necessary if the information disclosed is the subject of a certificate issued under the proposed clause 38F or the answer relates to information subject of an order of the court under clause 38B or 38L.

⁸ Proposed section 38E(5).

The Attorney-General decides, after being notified about information or a witness, whether the information may affect Australia's national security.⁹ If the information would be disclosed in a document, the Attorney-General may then issue a copy of the document with the information deleted; or a copy of the document with the information deleted and a summary of the information; or a copy of the document with the information deleted and a statement of facts that the information would or would be likely to prove attached to the document. This is to be accompanied by a certificate that describes the information and states that the information must not be disclosed except in "permitted circumstances" but that the copy; or the copy and the statement; or the summary may be disclosed.¹⁰ Alternatively, the Attorney-General may simply issue a certificate which prohibits the disclosure of the information.¹¹ If the information is not in a document, the Attorney-General may give each "potential discloser" a written summary of the information, or a written statement of facts that the information would or would be likely to prove, together with a certificate that states that the information may not be disclosed except in permitted circumstances but that the summary or statement may be disclosed.¹² As regards a witness, the Attorney-General may give a certificate that prevents the witness being called in the proceeding.¹³ All these certificates remain in force until they are revoked by the Attorney-General, or until a court makes an order in relation to the information to give effect to an arrangement between the parties, or until an order made by the court on the certificate itself ceases to be subject to appeal.¹⁴

3.3 Role of the Court

If a certificate has been issued before the substantive hearing, this certificate must be considered before the commencement of the substantive hearing.¹⁵ If the certificate is issued after the substantive hearing has commenced, the court must adjourn the proceeding for the purpose of holding a hearing on the certificate.¹⁶

⁹ Proposed section 38F.

¹⁰ Proposed section 38F(2)(a).

¹¹ Proposed section 38F(2)(b)

¹² Proposed section 38F(3)

¹³ Proposed section 38H(2)

¹⁴ Proposed section 38F(6) for information and proposed section 38H(5) for witnesses.

¹⁵ Proposed section 38G(1)(a) for information and proposed section 38H(6)(a) for witnesses.

¹⁶ Proposed sections 38G(1)(b) and (c) for information and proposed section 38H(6)(b) for witnesses.

In the hearing on the certificate, the court may exclude court officials and those who do not have security clearance.¹⁷ Persons without a security clearance can however make a submission to the court in relation to the disclosure of information or the calling of a witness.¹⁸

When considering the information and the certificate the court must consider whether there would be a risk of prejudice to national security if the information were disclosed and if the non-disclosure of the information or the exclusion of the witness will affect the fairness of the hearing.¹⁹ Other matters can be taken into consideration,²⁰ however the most weight must be accorded to considerations relating to national security.²¹

If the information is in a document, the court may make an order that the information not be disclosed except in “permitted circumstances”²² but may allow disclosure of a copy of the document with:

- information attached; or with
- the information deleted; or
- the information deleted and a summary of the the information deleted and a statement of facts that the document would or would be likely to prove attached.

The court may alternatively order that the information may be disclosed.²³ As regards a witness, the court must order either that the witness not be called or that the witness may be called.²⁴ The order by the court may preclude disclosure of the information to a party or their legal representative. Note also that the Attorney-General’s certificate discussed above continues to apply until all appeals regarding an order by the court have been exhausted.²⁵ It is an offence to disclose information

¹⁷ Proposed section 38I

¹⁸ Proposed section 38I(4)

¹⁹ Proposed section 38L(7)

²⁰ Proposed section 38L(7)(c)

²¹ Proposed section 38L(8)

²² “Permitted circumstances” are defined in proposed sections 16(aa)9, (ab), (ac), and (ad).

²³ Proposed section 38L(2), (4) and (5)

²⁴ Proposed section 38L(6)

²⁵ Proposed section 38F(6) and 38H(5).

or call witnesses contrary to the Attorney-General's certificate.²⁶ This effectively means that even if a court orders that the information may be disclosed, the Attorney-General's certificate continues to prevent disclosure until "... it is no longer subject to a possible appeal".²⁷

Regardless of the above, the court retains the power to stay proceedings if the court considers that a fair hearing could not be achieved.²⁸

The court must provide the parties with reasons regarding its decision, however the Attorney-General may request that the court vary the reasons for the decision on the grounds that it may disclose information that may affect Australia's national security.²⁹

A record of the court proceedings must be made, and this record can be disclosed to persons with security clearance.³⁰ The Attorney-General may also apply to have this record varied so that information that may affect Australia's national security is not disclosed.³¹

Parties or the Attorney-General (if he was represented at the closed hearing) may make an appeal against the exclusion (or redacting) of information or a witness.³²

3.4 Security Clearance

Security clearances are required for all parties to the civil litigation covered by the Bill (including parties, legal representatives and assistants of the legal representatives).³³ The Secretary of the Attorney-General's Department may give written notice to a party, a party's legal representative and a person assisting a party's legal representative that an issue is likely to arise relating to a disclosure of information

²⁶ Proposed sections 46D and 46E.

²⁷ Commonwealth *National Security Information Legislation Amendment Bill 2005 Revised Explanatory Memorandum* p. 18

²⁸ Proposed section 19(4)

²⁹ Proposed section 38M

³⁰ Proposed section 38I(9)

³¹ Proposed section 38I(7)

³² Proposed section 38R

³³ Proposed section 39A

that is likely to prejudice national security. After receiving this notice, the person may apply to the Secretary of the Department for a security clearance that is considered appropriate by the Secretary.³⁴ The Secretary may inform the court of failure to apply for a security clearance within 14 days or failure to be granted a security clearance.³⁵ The court then may inform the party of the consequences of not having a security clearance and may suggest to a party that he/she seek a security clearance or engage representation with a security clearance.³⁶

3.4 Use of the Information at a hearing

The Bill provides for certain situations to be classified as “permitted disclosures”. “Permitted disclosure” include an appropriately security cleared party to the proceedings disclosing the information in the proceeding or a security cleared legal representative disclosing the information in the course of his or her duties in relation to a civil proceeding. Thus the information may still be used in its entirety. However only those who are security cleared are able to have access to this information. Otherwise, access is limited to the information as provided by the Attorney-General or the court, that is, a summarisedsummarized or redacted version of the information.

3.5 Offences

The Bill creates a number of offences. It is an offence to:

- disclose information after a notice has been given to the Attorney-General but before the Attorney-General has issued a certificate in relation to that information;³⁷
- call a witness after notifying the Attorney-General but prior to the Attorney-General issuing a witness exclusion certificate;³⁸
- disclose information or call a witness who is the subject of a certificate from the Attorney-General;³⁹

³⁴ Proposed section 39A(2)

³⁵ Proposed section 39A(5)

³⁶ Proposed section 39A(5)

³⁷ Proposed section 46A

³⁸ Proposed section 46B

³⁹ Proposed sections 46D and 46E

- fail to notify the Attorney-General;⁴⁰
- disclose information to persons who do not have a security clearance;⁴¹
and
- contravene a court order.⁴²

3.6 *Amendment to the Administrative Decisions (Judicial Review) Act 1977*

The Billbill also amends the *Administrative Decisions (Judicial Review) Act 1977*, to provide that:

- a court cannot hear a party's application in relation to a certificate issued by the Attorney-General (or appointed Minister) in relation to a notice that the Act applies or a decision to issue a certificate while a civil proceeding or an appeal is taking place;⁴³
- section 13 of the *Administrative Decisions (Judicial Review) Act 1977* will not apply to a certificate decision (which means that a person cannot seek reasons for the Attorney-General's decision (or decision of the appointed Minister) to provide the person with a written statement).⁴⁴

4. Amnesty International's Concerns

4.1 *Right to a Fair and Public Hearing*

Under international law, everyone is entitled to a fair hearing. The right to a fair hearing encompasses all the procedural and other guarantees of fair trial laid down in international standards, but is wider in scope. The right to a fair hearing lies at the heart of the concept of a fair trial. Article 10 of the Universal Declaration of Human Rights (UDHR) provides:

⁴⁰ Proposed section 46C

⁴¹ Proposed section 46G

⁴² Proposed section 46F

⁴³ Proposed section 9B of the *Administrative Decisions (Judicial Review) Act 1977*

⁴⁴ Proposed paragraph (da) of Schedule 2 of the *Administrative Decisions (Judicial Review) Act 1977*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Further, Article 14 of the *International Covenant on Civil and Political Rights* (the *ICCPR*) provides:

- (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
 - a. The Human Rights Committee has specifically commented that "... article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law".⁴⁵ Thus civil cases are equally entitled to the protection of a fair and public hearing and a public judgment

4.1.1 Fair Hearing

An essential component of the right to a fair hearing is the principle of "equality of arms".⁴⁶ This principle firmly establishes the need for equality between the parties

⁴⁵ See UNHRC, General Comment No 13, Article 14 (21st sess., 1984), Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), para. 2

⁴⁶ Also discussed in the ALRC Report 98 *Keeping Secrets: The Protection of Classified and Security Sensitive Information* 7.67- 7.69. The European Court of Human Rights has discussed this notion in a number of decisions (*Delcourt v Belgium European Court of Human Rights* 17 January 1970 A-11, EHRR 355

and is an overarching right that must be observed throughout the process. It means that both parties must be treated in a manner ensuring that they have a procedurally equal position during the course of the hearing and are in an equal position to make their case.⁴⁷ This principle would be violated, for example, if a party was not given access to information necessary for the preparation of their case, if a party was denied access to expert witnesses, or if a party was excluded from an appeal hearing where the other party was present. This Bill proposes several such restrictions that would directly undermine the right to “equality of arms” and would remove the equality between the parties.

Amnesty International believes that the parties should be present in court during the hearing to hear the full case, to refute or provide information to enable their counsel to refute evidence and to examine witnesses or advise their counsel in the examination of witnesses. The Bill provides for exclusion of a party and their legal representative if the court considers that their presence is likely to prejudice national security and if they do not have a security clearance., They can be excluded while the court hears details of the information or hears arguments as to why the information should not be disclosed or why a witness should not be called from the Attorney-General or his or her legal representative. Obviously the Attorney-General or his or her legal representative is able to be present as is any security cleared party or party’s legal representative.⁴⁸ This may result in the exclusion of one party but not the other. This would prevent the excluded party from rebutting the evidence or from providing appropriate instructions to their legal representative.

4.1.2 Right to prepare

The Bill may prevent a party from preparing their case, both before the hearing and during the hearing. Such access is required in accordance with Principle 21 of the *Basic Principles on the Role of Lawyers* which states, “It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time”.

⁴⁷ See European Court judgments in the cases of *Ofrer and Hopfinger*, Nos 524/ 59 and 627/59 Dec. 19.12.60, yearbook 6, p. 680 and 696.

⁴⁸ Proposed section 38I(2)(e)

Specifically the Bill provides for restriction of information at all stages. The Attorney-General may issue a certificate which provides that disclosure of the information is likely to prejudice national security. It is an offence to disclose this information except in “permitted circumstances”. If the information is in the control of one party, it may not be disclosed to the other party and their counsel and would thereby impact upon their ability to prepare their case. The court may confirm the certificate and refuse to allow access to the information by a non-security cleared party.

4.1.3 Delay

The provisions in this Bill will almost certainly create significant delay in legal proceedings. There are many provisions for delays in the legislation. Firstly, the parties will have to notify the Attorney-General of expected disclosure of national security information. If the proceedings have already commenced, the Bill provides for a compulsory adjournment until the Attorney-General gives a copy of a certificate to the court.⁴⁹ If the proceedings have not yet commenced, the parties will have to wait for a determination by the Attorney-General before they know how they can expect to run their case. They cannot in the meantime disclose the information about which the Attorney-General has been notified as this constitutes an offence⁵⁰ and there is no time limit within which the Attorney-General must make a decision.

Similarly, if proceedings are on foot and a party notifies the court that a witness is expected to disclose national security information, then the court must order that the witness give the court a written answer and must then adjourn proceedings until the Attorney-General gives a certificate.⁵¹ This could create another delay.

Once the hearing has commenced or when the court receives a certificate relating to information or a witness, the court must hold a closed hearing to determine whether the information or witness can be used. The court must make a record of this hearing and regardless of the decision of the court, the Attorney-General’s certificate

⁴⁹ Proposed section 38D(5)

⁵⁰ Proposed section 46A

⁵¹ Proposed sections 38E(4), (5) and (6).

continues to apply until the possibility of an appeal has ceased. This creates a further delay. The Attorney-General may also request the court to vary the record and the court must make a decision on this request.⁵² The Attorney-General may then request that the court delay allowing access to the record pending a decision by the Attorney-General as to whether he will appeal the court's decision on his application for variation.⁵³ This would all create a delay in the other parties accessing the record.

The court is also to give reasons for its orders. However the Attorney-General may request that the court vary the proposed statement and the court must make a decision on this request.⁵⁴ The Attorney-General may then request that the court delay allowing access to the reasons pending a decision by the Attorney-General as to whether he will appeal the court's decision on his application for variation.⁵⁵ This would all create a further delay in the other parties accessing the reasons.

Hence there is a multiplicity of opportunities for delay in the proceedings. This will have significant impact on the parties as it will make the proceedings more expensive and will ultimately limit their access to justice. The parties have a right to a remedy in civil proceedings and this right may be adversely affected by the continued delay of the proceedings made possible under this Bill.

4.2 *Right to choose counsel*

The Bill creates the possibility of lawyers obtaining security clearances. A lawyer can only make an application for security clearance if the Secretary of the Attorney-General's Department gives written notice to a party, a party's legal representative or a person assisting a party's legal representative that an issue is likely to arise relating to a disclosure of information in the proceeding that is likely to prejudice national security.⁵⁶ The trigger mechanism for the security clearance process is the written notice from the Secretary of the Attorney-General's Department. However there is no obligation on the Secretary to give such notice.

⁵² Proposed section 38I(8)

⁵³ Proposed section 38J

⁵⁴ Proposed section 38M(4)

⁵⁵ Proposed section 38N

⁵⁶ Proposed section 39A(1)

If a party, a party's legal representative or a person assisting a party's legal representative does receive such a notice, then they may make an application for a security clearance by the Department at a level considered appropriate by the Secretary.⁵⁷ If the person fails to apply for a security clearance within 14 days of receiving the notice, then the Secretary may advise the court. The court may then advise the party of the consequences of not being given a security clearance at an appropriate level and of not engaging a legal representative who has been given a security clearance at the appropriate level. The court may recommend that the party engage a legal representative who has been given or who is prepared to apply for security clearance. The Bill provides that it is an offence to disclose information that is likely to prejudice national security to a person including a legal representative if the person does not have security clearance at the level considered appropriate by the Secretary.⁵⁸

Amnesty International is concerned that this may limit the ability of a party to choose their own lawyer. The right to choose your own lawyer is protected by Principle 1 of the *Basic Principles on the Role of Lawyers*. The chosen lawyer may not receive written notice from the Secretary that an issue is likely to arise relating to a disclosure of information that is likely to prejudice national security. Further, their application for security clearance may be denied or may not be granted at a level considered appropriate by the Secretary in relation to the information. The party would then be unfairly prejudiced and, although they could technically retain their lawyer of choice, they would be placing themselves in a disadvantageous position. This limits the right to a lawyer of your own choice, as the party cannot be expected to place themselves at a disadvantage to exercise this right.

4.3 Right to Remedies

Amnesty International is concerned by the interaction that this Bill may have with the provisions in Division 3 of Part III of the *Australia Security Organisation Act 1979* (the **ASIO Act**). As the Committee is aware, the Division establishes a regime for detention and questioning warrants. Amnesty International has recently made a submission to the Committee on ASIO, ASIS and DSD regarding the review of this Division.

⁵⁷ Proposed section 39A(2)

⁵⁸ Proposed section 46G

One specific example of the way in which this Bill may interact unfavourably with the *ASIO Act* is as follows. The *ASIO Act* provides for remedies to be obtained from the Federal Court. For instance, section 34E(1)(g) provides that the Prescribed Authority must inform the person subject to the warrant "... that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant". If the warrant is a detention warrant, the person who is the subject of the warrant may want to contest their detention or another party may wish to make a habeas corpus application (assuming that such an application is possible given the secrecy provisions in the *ASIO Act*). The detained person may want to contest the grounds upon which they have been detained. This will require access to the information which formed the basis of the warrant. As suggested by the Australian Law Reform Commission in their report *Keeping Secrets: The Protection of Classified and Security Sensitive Information*, "the fact that an investigation is being undertaken by ASIO is likely of itself to constitute security sensitive information".⁵⁹ Thus it is highly likely that the Attorney-General will find that the information sought is the subject of national security.

This means that the person is essentially unable to challenge their detention. They are unlikely to have been security cleared (after all, they are currently being detained for questioning by ASIO); and it is also likely that their lawyer will not have been security cleared. They would therefore technically fall under the provisions of this Bill and would be required to notify the Attorney-General that their action is likely to reveal national security information. They would be required to go through all the steps in this Bill before being able to contest their detention. Given that their detention is for seven days, it is unlikely that all these provisions could be complied with, including the security clearance process and the closed hearings within that time. This essentially makes the ability of the person to seek a remedy whilst detained nugatory.

Further, even if they seek a remedy after their detention has ended, they are unlikely to be able to access the relevant information, as discussed above. This again has the effect of denying them access to justice and rendering the right to seek a remedy meaningless..

⁵⁹ ALRC Report 98 *Keeping Secrets: The Protection of Classified and Security Sensitive Information* para. 8.15

4.4 Vagueness of Terms

Amnesty International is concerned with the uncertainty created by the definition of “national security”. Amnesty International believes that it is important for there to be certainty in the law. In the Act, national security is defined as “Australia’s defence, security, international relations or law enforcement interests”.⁶⁰ The Act goes on to further define “security”, “international relations”, and “law enforcement interests”.⁶¹

Amnesty International notes that, as originally proposed, the definition of “national security” included a reference to “national interests” and that this was deleted when the Bill was enacted. However it remains the position of Amnesty International that these definitions are unacceptably broad. “National security” incorporates an extraordinarily large area of issues and it is extremely difficult to delineate the limits of the definition. The application of this definition would allow for virtually any issue to be considered a matter of “national security” and thus to be subject to both a certificate of the Attorney-General preventing disclosure and a determination of the court preventing disclosure of the information.

The Bill states that it is an offence to fail to notify the Attorney-General if a party knows or believes that they will disclose information that relates to national security or that may affect national security and that disclosure is likely to prejudice national security.⁶² It is also an offence if a party knows or believes that a witness will disclose information in their evidence or by their mere presence that may affect national security and the party fails to advise the Attorney-General and the disclosure is likely to prejudice national security.⁶³

Amnesty International is concerned that the definition of “national security” is so broad as to make it virtually impossible to know if information is going to relate to national security or affect national security and therefore it is virtually impossible to know if one is committing an offence. Amnesty International is also concerned that this offence may unacceptably limit the issues that may be presented and discussed

⁶⁰ Section 8 of the Act

⁶¹ Sections 9, 10 and 11 of the Act

⁶² Proposed section 46C

⁶³ Proposed section 46C

in court as an extremely broad range of issues may fall under the definition of “national security”.

5. Conclusion

Amnesty International is concerned that these proposals impact upon the individual's right to a fair hearing in civil litigation. At a time when Governments are balancing individual rights need against competing collective interests, such as national security, Amnesty International is very concerned about the disproportionate impact security legislation such as this will have on the rights of the individual.