



THE LAW SOCIETY  
OF NEW SOUTH WALES

18 February 2011

Mr Laurie Glanfield AM  
Director General  
Department of Justice & Attorney General  
GPO Box 6  
SYDNEY NSW 2001

Dear Mr Glanfield,

**Monitoring detainee-lawyer communications under the Terrorism (Police Powers) Act 2002**

Thank you for seeking the Law Society's comments on proposals to reform the monitoring of detainee-lawyer communications under the *Terrorism (Police Powers) Act 2002*.

Section 26Z1 of the Act provides that communication between a detained person and a lawyer can only take place if it can be monitored by a police officer.

The Law Society's Criminal Law Committee (Committee) is of the view that the provision constitutes an unacceptable obstruction to lawyers performing their duty to their client. Although the communication cannot be used in evidence against the person, the rationale for legal professional privilege of full and frank disclosure by the client to the lawyer is completely undermined.

The Committee is of the view that section 26Z1 is unnecessary and should be repealed. If the section is not repealed the Committee suggests that the legislation should be amended to only permit monitoring to occur when the Court considers it necessary in accordance with a threshold test.

The Committee's preferred test is as follows:

*'the Court is satisfied that there is a high probability that a detainee will use communications with his or her lawyer to facilitate acts of terrorism'*.

While the Committee is strongly in favour of the threshold test above, the following alternative test would also be acceptable:

*'the Court is satisfied that there are reasonable grounds for believing that the communication between the lawyer and client will be used to facilitate further acts of terrorism [or interfere with the investigation]'*.

I trust that these comments are of assistance.

Yours sincerely,

  
Stuart Westgarn  
President