

19 July 2016

YAB Dato' Sri Mohd Najib bin Tun Abdul Razak
Prime Minister
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Your Excellency

Amendments to the *Legal Profession Act 1976* (Malaysia) and threats to the independence of the Malaysian Bar Council

The Law Council of Australia is the peak national representative body of the Australian legal profession, representing over 60 000 legal practitioners nationwide. A principal responsibility of the Law Council is to promote and defend the interests of the legal profession both within Australia and internationally.

The Law Council wishes to express its grave concern at a number of proposed amendments to the *Legal Profession Act 1976* (Malaysia) ('LPA') which will have the effect of severely impeding the independence of the Malaysian Bar Council.

The Law Council believes that an independent Bar Association is an essential requirement for the protection of citizens' rights in a democratic society and is indispensable to the administration of justice and the operation of the rule of law. Lawyers must be able to act freely from external control, influence or interference, and it is vital that Bar Associations are able to speak out against such abuses of power.

The amendments to the LPA significantly restrict the powers of the Malaysian Bar Council to conduct itself in an impartial and independent manner. The Law Council agrees with the concern of the Malaysian Bar Council that the appointment of two members from the Government to sit on the Bar Council would compromise the confidentiality of Council deliberations, inhibit free and open debate, and compromise the independence of its decisions.

The Law Council shares the concern of the Malaysian Bar Council that the amendments to the quorum requirement would impose unduly onerous burdens on the Malaysian Bar Council. Unreasonably high quorum requirements would paralyse the functioning of the Malaysian Bar by rendering it impossible to convene Annual General Meetings or pass

resolutions. It is essential to the functioning of democratic and transparent society that a Bar Association is able to operate uninhibited in its review of Government.

The Law Council also agrees with the concerns of Malaysia Bar Council over the changes to the election process and eligibility of Council members. The prevention of a postal vote and overly onerous requirements of 10 or more years experience as an Advocate and Solicitor severely restricts the ability of State Bar members to run for Council. This restriction is both unfounded and undemocratic. The Law Council believes that equality before the Bar should be paramount for election to Council.

Further, the Law Council wishes to express its concern that the Malaysian Bar Council was not consulted at any general meeting in regards to the proposed amendments. Professional associations of lawyers and Governments should cooperate to ensure the effective administration of justice.

The United Nation's *Basic Principles on the Role of Lawyers* (adopted 27 August 1990) protects the freedom of expression and association of lawyers, guarantees the functions of lawyers, and protects the self-governing and independence of professional associations. Specifically, Principle 24 states

Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members *and shall exercise its functions without external interference.* (emphasis added)

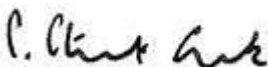
The International Bar Association's *International Principles on Conduct for the Legal Profession*, (adopted 28 May 2011) lists independence as its first principle, stating that

It is indispensable to the administration of justice and the operation of the rule of law that a lawyer act for the client in a professional capacity free from direction, control or interference.

The Law Council is concerned that the proposed amendments interfere with these internationally protected principles and the right of lawyers to independence.

The Law Council is aware of the proud and respected position of the Malaysian Bar Council throughout the world. The Law Council is concerned about the use of legislation in any country which interferes with the principle of independence. Independence strengthens the effective administration of justice and integrity in the system, and respect for the rule of law drives certainty which encourages foreign investment. Malaysia, as a country which respects the rule of law, should adhere to this principle and desist from any action which could stifle the independence of the Malaysian Bar Council.

Yours sincerely



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