

# MEDIA RELEASE

## LEGAL ACCESS FOR INMATES CRITICAL TO SAFEGUARD CONVICTIONS IN TERRORISM TRIALS



NEW SOUTH WALES  
BAR ASSOCIATION

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The New South Wales Bar Association today welcomed new recommendations by the Inspector of Custodial Services to improve access to legal representation and trial preparation for prisoners charged with terrorism offences.

A report by the Inspector into the management of radicalised prisoners in New South Wales correctional centres, released this week, includes recommendations that Corrective Services NSW:

- Streamline the approvals process for granting inmates access to their lawyers;
- Increase the number of audio-visual rooms available to facilitate inmates' communication with their legal representatives; and
- Should not listen to or read confidential legal communications between inmates and their legal representatives.

“Australia’s justice system is one of our strongest weapons in the fight against terrorism and extremism,” Mr Moses SC said today.

“The Inspector’s recommendations are prudent, fair and enhance, rather than diminish, our national security. The right to a fair trial and access to legal representation is not a nicety or a luxury. It is a crucial part of Australia’s democracy, our national security infrastructure and keeping our community safe. Terrorism and extremism is a threat to our way of life, democracy and the rule of law.

Promoting the fair and just conduct of trials is not only for the benefit of those who have been accused of crimes who are entitled to the presumption of innocence, but is also critical to safeguard convictions” Mr Moses said.

“Corrective services play an important role in the justice system. There are legitimate reasons for tighter security protocols in correctional centres and restrictions on the entitlements of inmates. However, we must also ensure there is no interference with an accused person's right to a fair trial, regardless of the seriousness of the offence.

The Bar Association agrees with the Inspector’s concerns that holding accused offenders in Goulburn poses a number of problems. The facility was not designed to house large numbers of remand inmates and this has negatively impacted on visits by legal representatives. Inmates have difficulty accessing legal materials and briefs of evidence to enable them to prepare for trial.” said Mr Moses.

“The Inspector’s report recommends that inmates on remand for national security offences be held in a facility closer to the courts and to their lawyers. Further, the report stresses that they should be given access to legal resources to allow them to prepare their trial.

Lawyers are officers of the court, not mouthpieces of their clients, and owe a paramount duty to the administration of justice” Mr Moses SC said.

“Access to the evidence and the accused is vital to the proper conduct of a trial so that lawyers can assess what can be properly put to the court. Without this access, there is an increased risk of adjournments and delays. This in turn increases the financial cost of trials and adds to the emotional strain on witnesses and victims.

It is troubling that the Inspector needs to make a recommendation that the Department of Corrective Services should not be listening to conversations between lawyers and their clients. This should be self-evident. The legal professional privilege of communications between clients and lawyers is an important part of our rule of law. Legal professional privilege exists for a number of reasons including to ensure that an accused has the right to a fair trial” said Mr Moses.

The High Court has stressed the importance of legal professional privilege. In *Baker v Campbell* (1983) 153 CLR 52, at 95, Justice Wilson noted that:

*The multiplicity and complexity of the demands which the modern state makes upon its citizens underlines the continued relevance of the privilege to the public interest. The adequate protection according to law of the privacy and liberty of the individual is an essential mark of a free society and unless abrogated or abridged by statute the common law privilege attaching to the relationship of solicitor and client is an important element in that protection.*

“35 years’ later, his Honour’s remarks are just as relevant. Our response to extremism must be targeted, effective and must remain true to our values. The Association is committed to working with the Government, the Courts and Corrective Services NSW to discuss the implementation of the Inspector’s recommendations,” Mr Moses SC said.

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