

Proposed citizenship revocation laws must abide with the Constitution and rule of law

The Law Council of Australia has expressed concern over current proposals for a minister to have a complete discretion to remove citizenship from a person suspected of terrorist activity. This is contemplated to be the case without there first being a conviction or judicial review to challenge the basis of a decision, contrary to the Constitution and rule of law.

“It is the primary responsibility of the Parliament to protect Australians from those who seek to do us harm, but protective measures that interfere with fundamental individual rights need to be necessary and proportionate. They must comply with the Constitution and the rule of law.

“Any new laws aimed at revoking citizenship for individuals engaged in terrorism or suspending citizenship rights must be consistent with the rule of law and the separation of powers in the Australian Constitution,” Law Council President Mr Duncan McConnel said.

“Australia’s Constitution requires a clear separation between the independent judiciary, the Executive and the Legislature. The separation of powers means that a Minister cannot exercise a judicial role to decide criminal guilt,” Mr McConnel said.

‘A critical aspect of the rule of law means no one is above the law and that no one should be subject to punishment by the state unless he or she has first been found guilty of a criminal offence by an independent, impartial and competent court or tribunal.

‘While we do not yet know what the legislation will say, when it is presented, it must contain these fundamental safeguards,” Mr McConnel concluded.

The Law Council’s Rule of Law Principles are available [here](#).

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