

Law Council calls for stronger safeguards to counter-terrorism legislation

The Law Council of Australia has told a Parliamentary Joint Committee on Intelligence and Security hearing today that there a number of key areas of concern in the Federal Government's Counter-Terrorism Bill and that further safeguards are required.

Law Council of Australia President Duncan McConnel said while the aim of the Bill was sound, specific aspects required further consideration.

"It is critically important that our security and law enforcement agencies have appropriate powers to protect the Australian community from terrorism. However, further safeguards are necessary in the Counter Terrorism Bill to ensure the necessity, reasonableness, and proportionality of the measures," Mr McConnel said.

The Law Council noted significant concerns associated with the Bill's expansion of control orders.

"Control orders are a particularly intrusive form of restraint on personal liberty without there being any criminal conviction or even charge," Mr McConnel said.

"The powers in question involve serious intrusions into a person's private life, but also into the privacy of individuals unrelated to the person who is the subject of a control order. This includes the power to inspect any document on the premises or to search computers of, for example, an educational institution.

"Before a monitoring warrant is issued in relation to a person who is the subject of a control order, there should, at a minimum, be a reasonable suspicion that the order is not being complied with or that the individual is engaged in terrorist related activity. Further, prompt and due regard should be given to the forthcoming recommendations of the Independent National Security Legislation Monitor's Report into the adequacy of the safeguards in the control order regime, including the desirability for introducing a special advocate regime."

The Law Council noted that the Bill reduces the age at which control orders can be applied. It recommended that if the Committee accepts the necessity of the extension of control orders to children as young as 14 then additional safeguards should be introduced.

"The Bill should ensure that the child's best interests are a primary consideration in the court's determination of whether to impose an obligation, prohibition or restriction. This includes not permitting the court appointed advocate to disclose information against the wishes of the child, which would potentially be a serious infringement on the child's right to silence," Mr McConnel said.

The Law Council noted the Bill would also reduce the threshold for which a preventative detention order may be granted to there being reasonable grounds to suspect that a terrorist act 'is capable of being carried out, and could occur, within the next 14 days'. The Law Council warned the breadth of this provision may give rise to constitutional challenge and that the test should at a minimum require a likelihood or an unacceptable risk of a terrorist act occurring.

Measures in the Bill would also effectively allow evidence to be admitted into a control order proceeding without the subject of a control order, or his/her legal representative, having access to the information.

"An inability for a controllee to meaningfully interrogate and challenge information is inconsistent with the right to a fair hearing. Untested evidence may also inadvertently mislead the court, which is not in the interests of justice," Mr McConnel said.

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