

Terrorism reform proposals

The following statement can be attributed to Mr Duncan McConnel, President-elect, Law Council of Australia.

- The Law Council of Australia notes with interest the Government's proposed changes to anti-terrorism laws which are aimed at combatting the threat of terrorism in Australia.
- The Government intends to introduce further legislation designed to make it easier to identify, to charge and to prosecute people who have been engaged in terrorist activities overseas.
- The proposed changes will prohibit travel to certain overseas locations determined by the Minister for Foreign Affairs to be places where there is a level of terrorist activity.
- Under the proposed reforms, a person who travels to this area will commit an offence unless they can prove to an Australian court that the purpose of their travel was for humanitarian purposes, family purposes or other innocuous purposes.
- This proposed new offence gives rise to significant concerns as it appears to reverse the usual onus of proof by requiring the accused to demonstrate that he or she has a reasonable excuse for travelling in the designated area.
- Exposure draft legislation has not been released by the Government but details provided in recent press statements suggest that the changes also contain features that strengthen police powers to detain people without charge and expand the range of existing terrorist offences to capture individuals who promote or encourage terrorism.
- While the Law Council agrees with the need to respond to emerging threats to security in a timely and effective manner, it considers that any new proposals will need to take into account the wide range of existing powers and broad offences already available to police and intelligence agencies to protect Australia from the threat of terrorism.
- There is no demonstrated need for the Government to rush legislation through the Parliament without proper public scrutiny, where the legislation may be disproportionate, unnecessary or have unintended consequences.
- These are significant issues and when discussing these proposed reforms, commentators should be careful to avoid language that incites fear and apprehension in the broader Australian community.
- Australia has established mechanisms to review and evaluate its existing laws and to identify gaps in those laws – including the Inspector-General of Intelligence and Security (IGIS) and the Independent National Security Legislation Monitor (INSLM).

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- The Law Council is pleased that the Government recently announced it will retain the position of the INSLM and that additional funding will be allocated to the IGIS to take into account that office's increased role under the proposed terrorism reforms.
 - Both the INSLM and the IGIS are well placed to consider and report on proposals for changes to national security laws having regard to other important public interests such as the right to privacy and the right to a fair trial.
 - The former INSLM recently made a number of recommendations to address the emerging threat posed by home-grown terrorists returning to Australia from Syria - it may be that these recommendations provide an appropriate starting point for any potential reform in this area.
 - The Law Council urges the Government to ensure that its proposed reforms to national security laws are subject to consideration by the INSLM and the IGIS, and also made available for public comment.
 - A broad review of any proposed changes will assist in ensuring Australia's anti-terrorism laws are proportionate, necessary and likely to be effective.
 - The Law Council looks forward to participating in any forthcoming Parliamentary processes and to examining the contents of any proposed new laws in detail.

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