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Caution recommended over criminalisation

Appearing at the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) public hearing into extremist movements and radicalisation in Australia, the Law Council of Australia urged the committee to be cautious in scrutinising the case for extending criminal laws to deal with the evolving threat presented by extremist groups.

Speaking on behalf of the Law Council, Co-Chair of the National Criminal Law Committee, Mr Richard Wilson SC, said that the Law Council's [submission](#) highlighted guiding policy principles that the committee may wish to utilise when assessing the necessity and proportionality of any proposals to create new offences, or to widen the criteria for listing terrorist organisations.

"The Law Council echoes recently expressed views found in the Richardson Review, that careful consideration should also be given to whether the things identified as 'barriers' or 'limitations' are, in fact, deliberately imposed safeguards."

"This is particularly the case with proposals from law enforcement agencies to criminalise possession of a symbol or an insignia, without requiring any proof of connection to terrorism or any intention to engage in harmful activity," Mr Wilson SC said.

Presently, the offences in Division 101 of the Criminal Code for possessing documents or things connected with terrorist acts require proof that the document or thing has a connection with a terrorist act. Proof of such connection is a deliberate safeguard, which limits the scope of criminality, and associated police powers.

"The criminal law is a very blunt instrument through which to achieve the social policy objective of preventing and deterring the spread of extremist ideology," Mr Wilson SC said.

"Criminalisation can have significant unintended consequences, including fuelling extremism by heightening the sense of grievance and marginalisation felt by disaffected individuals which made them susceptible to radicalisation. It can also impact on law-abiding family and community members and disrupt social cohesion and undermine faith in Australian institutions. Prolonged incarceration, particularly in high-security facilities with significant isolation of prisoners, can be highly detrimental to a person's rehabilitation."

"The Law Council recommends a 'justice impact assessment' of any proposals to expand criminal liability or extend intrusive powers be undertaken," Mr Wilson SC said.

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