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Secret trials need reform

At today's hearing before the Independent National Security Legislation Monitor (INSLM), the Law Council of Australia emphasised that trials involving national security need to strike a balance between secrecy and open justice.

The hearing forms part of review into the operation of section 22 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (NSI Act), as it applies in the 'Alan Johns' matter (a pseudonym).

"The Law Council recognises that there may be cases where suppression of information about criminal offending and closure of courts to the public are necessary to protect national security information," Law Council President, Dr Jacoba Brasch QC, said.

"However, open justice is one of the primary attributes of a fair trial. It is a fundamental rule of the common law that the administration of justice take place in an open court, except in the most exceptional of circumstances."

"In the example of 'Alan Johns', it is hard to see that the extent of the secrecy surrounding the 'Alan Johns' case was a proportionate response to the requirements to protect national security."

"According to the recently publicly released summary of offending, it is still unknown what offences Mr Johns pleaded guilty to, why he was given a term of imprisonment, exactly why the proceedings were conducted entirely *in camera*, and why even the ACT Attorney-General was never made aware that he was imprisoned in a correctional facility which the Attorney ultimately oversees," Dr Brasch QC said.

Currently the NSI Act offers accused persons the option of consenting to arrangements and orders under section 22 or enduring a lengthy contested hearing with the aim of securing more appropriate orders under section 31 of the Act.

The difficulty and uneven outcome of this process inherently encourages accused persons to take the option of agreeing to section 22 orders – with likely disproportionate outcomes.

"It appears that the NSI Act requires some reform to recalibrate the balance between the requirements of open justice and protecting the community against the disclosure of information that may genuinely prejudice national security," Dr Brasch QC said.

"It is concerning that without a change in the law, there is no guarantee that we will not see another secret trial or secret prisoner in Australia."

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