

Monday, 5 July 2021

Call for tighter reins on powers in an emergency

All comments to be attributed to Law Council President, Dr Jacoba Brasch QC.

“The Law Council of Australia agrees with the key recommendation of the Senate Legal and Constitutional Affairs Committee to give the Commonwealth Parliament stronger control over the exercise of extraordinary powers under the *National Emergency Declaration Act 2000* (Cth).

This Act confers broad discretionary powers on the Executive Government to unilaterally suspend or modify the application of existing requirements of numerous Commonwealth laws while a national emergency declaration is in force – this may include, for example, removing statutory requirements that require proof of identity or other paperwork when claiming emergency relief assistance.

But the Law Council is concerned that the scope of the powers and low thresholds within the legislation goes too far.

While on one hand the Act could provide benefit in a time of crisis, it could if not revised, potentially remove or compromise important provisions in the *Freedom of Information Act 1982* (Cth), *Privacy Act 1988* (Cth), *Australian Human Rights Commission Act 1986* (Cth) and *Australian Information Commissioner Act 2010* (Cth) impacting on the broader rights of individuals.

These are significant powers, and the Law Council has voiced its view that such declarations are not currently subject to Parliamentary disallowance.

The Law Council is pleased that the Committee’s majority report and additional remarks from Labor and Greens senators have identified this as a key deficiency in the legislation and have endorsed the Law Council’s view that emergency declarations, or at least their extension beyond three months, should be subject to Parliamentary disallowance.

This recommendation reinforces the importance of Parliament as an oversight body and as a vital check on Executive power.

In its support of the recommendation, the Law Council calls on the government to introduce legislation as a matter of priority when the Parliament resumes in August.

The Law Council is also of the view that more is needed to ensure the right balance within the legislative framework to allow for a timely and effective response to genuine national emergencies, while at the same time maintaining a degree of control and oversight that is appropriate with the significance of the powers that this Act confers.

The Law Council looks forward to working with government on these and other aspects of the Act, ensuring that the legislative framework is subject to a degree of control and oversight that is equal to the significance of the powers that this Act confers.”

ENDS

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