

9 November 2016

## Passed Counter-Terrorism Bill addresses many Law Council concerns, now time to appoint new INSLM

A number of concerns expressed by the Law Council of Australia to the *Counter-Terrorism Legislation Amendment Bill (No. 1) 2016* have been reflected in the final version passed by the Senate this morning.

Central to these concerns was ensuring that a system of ‘special advocates’ participate in control order proceedings – which can be now imposed on persons as young as 14 years of age.

The system of special advocates permits a panel of security-cleared barristers and solicitors to participate in closed material procedures where the subject of a control order has sensitive information withheld from them and their legal representative.

Other concerns that have been addressed in the final legislation include:

- clarifying that the best interests of the young person are to be a ‘primary’ consideration in determining the terms of the control order;
- clarifying that the parents or guardian of a child are also to be notified of control order applications or variations;
- expressly providing that a young person has the right to legal representation in control order proceedings;
- requiring a minimum standard of information to be disclosed to a control order subject to allowing effective instructions to be given in relation to allegations;
- requiring issuing officers for monitoring powers to have regard to whether the measures constitute the least interference with the liberty or privacy of any person that is necessary in all circumstances; and
- an additional ‘reckless’ threshold for the offence of advocating genocide and to remove the requirement of ‘public’ advocacy.

Law Council of Australia President, Stuart Clark AM, welcomed the inclusion of key amendments, particularly the inclusion of special advocates, in the final version of the Bill.

“It is vital that we get the balance right between protecting the community and ensuring that we do not jettison our fundamental rights and freedoms,” Mr Clark said.

“By addressing a number of the legal profession’s concerns, this Bill goes some way to ensuring that this delicate balance is struck.”

However, Mr Clark emphasised that issues of concern remain within the legislation, making the appointment of a new Independent National Security Legislation Monitor (INSLM) vital. The former INSLM, the Hon Roger Gyles AO, QC, resigned on 31 October 2016.

“This legislation, even with these amendments, tests the boundaries of fundamental rule of law principles, meaning a strong independent review presence is critical,” Mr Clark said.

“We are calling on the Government to appoint a new INSLM without further delay.

“The INSLM ensures that reforms to national security legislation will undergo robust scrutiny and that the laws are necessary, proportionate and operationally effective,” Mr Clark said.

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