

28 September 2022

## Sunset on AFP powers is one to watch

The Law Council of Australia considers that ongoing Parliamentary scrutiny is needed regarding the Australian Federal Police's counter-terrorism powers.

This week the Parliament will consider the [Counter-Terrorism Legislation Amendment Bill \(AFP Powers and Other Matters\) Bill 2022](#), which seeks to extend the preventive detention order regime, control orders regime, and stop, search and seizure powers a further 12 months beyond their current sunset date.

The Law Council notes that the purpose of the 12-month extension is to allow the Government to consult on, and then implement, its response to the recommendations made by the former Parliamentary Joint Committee on Intelligence and Security (**PJCIS**) in October 2021.

"The Law Council's longstanding view is that there is no persuasive case for retaining either the control order regime or the preventative detention order regime. These powers are not necessary or proportionate responses to the threat of terrorism," Mr Liveris said.

If some or all of these powers are to remain in force, the Law Council maintains its position that amendments are needed to strengthen safeguards.

"The PJCIS's recommendations in relation to strengthening issuing thresholds, applicable oversight mechanisms, and procedural requirements are important and were critical in the PJCIS's support for the renewal of these powers," Mr Liveris said.

The Law Council's view is that reliance should instead be placed upon agencies' extensive surveillance and investigatory powers, which enable the enforcement of the wide range of terrorism and security offences under Commonwealth laws, including offences that specifically target preparatory and ancillary activities to terrorist acts and foreign incursions.

The Law Council acknowledges that, in circumstances of emergency, the extraordinary powers in Division 3A of Part IAA of the Crimes Act, which permit extraordinary police powers of stop, search and seizure, could be necessary and proportionate for the prevention of an imminent terrorist act, and to managing its immediate aftermath.

In its October 2021 report, the PJCIS recommended that the Government investigate the cost of providing legal aid to those affected by these powers and recommended a report be submitted to the PJCIS within 12 months.

"The Law Council reiterates the need to ensure those who are subject to proceedings for a control order or preventative detention order have access to legal representation, and this requires availability of timely legal assistance funding," Mr Liveris said.

The Law Council also supports the recommendation of the PJCIS that section 29 of the *Intelligence Service Act 2001* be amended to enable the PJCIS to commence a review of these powers prior to the next sunset date.

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