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Government should implement Renwick's recommendations

The Law Council of Australia has made 21 recommendations to the government's proposal to establish a new type of 'post-sentence order' in Division 105A of the *Criminal Code Act 1995* (Cth), aimed at managing future risk presented by a person who has completed a sentence of imprisonment for a terrorism or security offence.

The proposed new 'extended supervision order' (ESO), will impose prohibitions, restrictions and other conditions on the person's activities, associations, and movements in the community, for up to three years.

Law Council President, Pauline Wright, said that while not opposing the proposal to create a less restrictive alternative to ongoing detention, the 21 recommendations made by the Law Council will ensure that the Bill meets the appropriate standards.

"It is important that these proposed orders apply a fair, reasonable and proportionate process for the determination of ESO applications, including adequate access to legal assistance," Ms Wright said.

"They also need to be consistent with the recommendations that the third Independent National Security Legislation Monitor (INSLM), Dr James Renwick CSC SC made in his 2017 review.

"These recommendations focus on the applicable standard of proof and conditions able to be imposed under an ESO," Ms Wright said.

Speaking at the Parliamentary Joint Committee on Intelligence and Security hearing into the review of the Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020, the Law Council called on government to revise the bill to ensure that the criminal standard of proof, or at least a high degree of probability of future offending applies, rather than the lower, civil standard of proof as proposed in the bill. The new regime is intimately related to the criminal process and would significantly expand the conditions available under ESOs compared to control orders (COs).

"In 2018, the government responded to former INSLM Renwick's report saying, *'the Government supports the features of the ESO scheme recommended by the INSLM,*" Ms Wright said.

"The Law Council believes that the ESO regime should only proceed if it implements Dr Renwick's recommendations as a minimum standard for the legislative framework governing ESOs."

"The Bill contains several, significant amendments that are unrelated to the ESO regime, including a proposal to expand the conditions available under COs. As the CO regime is currently under statutory review by the Committee, it is premature to include these proposals in the Bill and should therefore be scrutinised as part of the Committee's separate CO review," Ms Wright said.

Contact: Dr Fiona Wade, P. 0403 810 865 E. Fiona.Wade@lawcouncil.asn.au