

Wednesday, 4 March 2020

The principles of open justice must be protected, says the Law Council

A review of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (NSI Act) by the Independent National Security Legislation Monitor (INSLM) underlines the importance of open justice in Australia, says the Law Council of Australia.

The decision by INSLM to conduct an ‘own motion’ review follows the revelation of the secret trial in the Supreme Court of the Australian Capital Territory of ‘Alan Johns’ aka ‘Witness J’. The NSI Act was invoked in the proceedings for closure of the court to manage the protection of the national security information.

“We welcome this review because secret trials are an anathema to open justice,” Law Council President Pauline Wright said.

Ms Wright said she acknowledged that secrecy or suppression may be appropriate where the rare exceptions to open justice have been appropriately considered and applied.

But the Law Council believes that the INSLM review of the operation and provisions of the NSI Act relating to Witness J will ensure that the suppression of disclosure or publication of judgments, convictions, sentences and sentencing remarks is confined to the most exceptional cases.

Ms Wright said revelations that an individual was prosecuted and imprisoned by way of criminal proceedings held in complete secrecy, was of significant concern to the legal profession and it underscores the need for a review.

“Open justice is one of the fundamental attributes of a fair trial. It is a fundamental rule of the common law that the administration of justice must take place in an open court,” Ms Wright said.

“The secrecy in these proceedings appears to be a disproportionate response to the requirements of the administration of justice and is in direct contravention to the Australia’s international human rights obligations.

“It’s important that we know the extent to which these trials are being held and the reasons why in each case there is a need to hold them secretly,” Ms Wright said.

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