



Law Council  
OF AUSTRALIA

# Maintaining Scrutiny Over Emergency Legislation and Extraordinary Powers Invoked during the COVID-19 Pandemic

**Speech delivered by Pauline Wright, President of the Law Council of Australia the South Pacific Lawyers' Association Virtual Roundtable – Rule of Law Issues in the South Pacific**

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The COVID-19 pandemic has had a devastating impact, and governments worldwide have introduced unprecedented emergency legislation and invoked extraordinary powers in order to maintain public health and safety.

In Australia, as in many countries around the world, the imperative to respond decisively to the pandemic has led to the use of extraordinary powers, increased use of ministerial discretion and delegated legislation and expedited legislative processes.

In this context, ensuring transparency and accountability have never been more important.

The legal profession and law associations have a crucial role to play in ensuring that government responses to COVID-19 are consistent with the rule of law, compatible with human rights obligations and subject to appropriate scrutiny.

## Parliamentary Senate Select Committee

We welcomed the announcement in early April that the government would establish a Senate Select Committee tasked with examining the government's response to the coronavirus pandemic. The committee's terms of reference are extremely broad, and permit it to examine all aspects of the Federal Government's COVID-19 response, and any other 'related matters'.

The establishment of this committee was crucial to reassure the public that despite the adjournment of Parliamentary sittings, and the swift passage of unprecedented emergency legislation and public spending, transparency, accountability and scrutiny would be maintained throughout the pandemic and recovery phase.

The committee is expected to present its final report by 30 June 2022.

With input from our Constituent Bodies, specialist Sections and committees, the Law Council is in the process of finalising our submission to the Inquiry.

## Information Sharing Group

Another means by which the Law Council has sought to support the continued administration of justice is our initiative to establish an Information Sharing Group, which brings together the Commonwealth Attorney-General, heads of federal jurisdiction, the Commonwealth Director of Public Prosecutions, myself on behalf of the Law Council, and the President of the Australian Bar Association.

This group has held a number of very helpful teleconferences to share approaches and technology being implemented to address difficulties during the COVID-19 crisis.

## The ASIO Act

In addition to scrutinising emergency legislation and powers related to COVID-19, there is a risk that governments will attempt to pass controversial or problematic legislation while public and media attention is preoccupied with the coronavirus pandemic.

Australia is not immune from this.

This week, a Bill amending the surveillance, questioning, and detention powers of Australia's Security and Intelligence Organisation – known as ASIO – was tabled in Parliament.

This Bill has been in the wings for some time – the relevant Parliamentary Joint Committee on Intelligence and Security tabled its report on the legislation in May 2018, however the government has taken two years to introduce this Bill.

Bearing in mind that the existing legislative regime contains a sunset clause and is set to expire in September of this year, the Law Council has expressed concern that these significant amendments have been tabled with a sense of urgency, and against the backdrop of COVID-19 – potentially in the hopes that the Bill will attract less attention and scrutiny.

If passed, the Bill would expand ASIO's powers to use surveillance and tracking devices without external authority or a warrant, and lower the minimum age of children who may be subject to coercive questioning from 16 to 14 years old.

In light of the complexity and volume of the Bill, and the significance of its subject matter – regarding appropriate powers of law enforcement and intelligence agencies and adequate judicial oversight and review – this is not a Bill to be hurried through.

## Conclusion

From the outset of the pandemic, the Law Council has endeavoured at every turn to constructively engage with government to suggest necessary amendments and innovative practical solutions to enable the administration of justice to continue, and ensure that legal and human rights are protected and upheld throughout this crisis.

This is consistent with our dual priorities to maintain the rule of law and protect and defend human rights – which are recognised by the Universal Declaration of Human Rights to be two sides of the same principle.

In times of crisis, the community looks to the legal profession, law societies and bar associations to draw on their expertise to scrutinise emergency measures in detail. We can offer insights into the practicality, reasonableness and proportionality of proposed measures, their consistency with constitutional principles and the rule of law, and identify responses that may indirectly and disproportionately disadvantage vulnerable groups.

In this way, we seek to facilitate trust between the government and the communities we serve.

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