

Friday, 11 June 2021

Call for consistency between intent of legislation and the Bill itself

All comments to be attributed to Law Council President, Dr Jacoba Brasch QC.

“At today’s hearing into the Security Legislation Amendment (Critical Infrastructure) Bill 2020 and Statutory Review of the *Security of Critical Infrastructure Act 2018* (Cth) before the Parliamentary Joint Committee on Intelligence and Security, the Law Council has reiterated the need for consistency between the provisions found in the Bill and the intent of the legislation.

In the extrinsic materials to the Bill, the government has noted its overarching intention to ensure that the regulatory burden of the new regime is no greater than is necessary and proportionate, and that approaches to enforcement are measured and risk informed.

However, the effective operation of the expanded regime requires the governing legislative framework to entrench the principles of transparency, clarity and certainty in the substance of regulatory obligations.

The Law Council is broadly supportive of the overall objective of the Bill, that aims to create a comprehensive national regulatory framework for the security of critical infrastructure, across all sectors of the economy.

Such legislation is required to build resilience against attack or compromise.

The Law Council also acknowledges the reasons for there to be a regulatory focus on cyber security, given the interconnected technological environment in which most businesses operate.

It is therefore imperative that the primary legislation establishing the new regime contains adequate legal safeguards, thus allowing the regime to operate in a targeted, proportionate and accountable way.

The Law Council has made 40 recommendations for targeted improvements which are directed to three key areas. This includes but is not limited to imposing stronger and clearer statutory parameters on the exercise of powers by the Minister for Home Affairs and Departmental Secretary (and staff) to determine the application and substance of regulatory obligations as well as suggestions on how to better deal with interactions between the expanded regime, and foreign investment, privacy laws and other laws applicable to regulated sectors or entities.”

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