

Thursday, 25 July 2019

## Passing of TEO Bill sets dangerous precedent, undermines PJCIS

The Law Council of Australia is disappointed the Federal Government's Temporary Exclusion Orders (TEO) Bill has passed the Senate, reiterating concerns about its constitutional validity.

Law Council President, Arthur Moses SC, said in its current form, the legislation could be open to constitutional challenge.

"Governments shouldn't roll the dice and gamble on constitutionality. When laws are passed and ministers make decisions which are later found to be invalid and unconstitutional, this creates uncertainty," Mr Moses said.

"There have been personal attacks on Minister Dutton in relation to the powers the minister would exercise under the TEO Bill. These attacks are not warranted and are a distraction from the real issue, which is the constitutional validity of the legislative proposal.

"To present any minister with the power to exclude citizens because it is believed they may be foreign fighters creates a slippery slope to exclude people on other grounds, such as geography or religion.

"Protecting the community must always be of paramount concern. But laws at risk of constitutional challenge pose an unnecessary risk to national security. Australians must be confident that their safety and the work of our intelligence and law enforcement agencies is protected by laws and powers that are strong, proportional and without legal ambiguity."

Mr Moses said it was regrettable the government had failed to implement the recommendations of the Parliamentary Joint Committee into Intelligence and Security (PJCIS), nor made amendments to ensure the constitutionality of TEOs.

"The PJCIS is a committee of great importance and works in the spirit of bipartisanship to ensure Australia's national security legislation is not only solid, but also proportionate and operating according to the rule of law. I am concerned that the government has not implemented all the recommendations in this case and hope this is not a continuing trend."

Mr Moses cautioned against the government again ignoring advice from both the [Independent Security Legislation Monitor \(INSLM\)](#) and the [PJCIS](#), regarding the [ASIO Amendment \(Sunsetting of Special Powers Relating to Terrorism Offences\) Bill 2019](#), which have been reintroduced to parliament.

He said Questioning and Detention Warrant (QDW) powers in this Bill have never been used and are "some of the most far-reaching and extraordinary granted to any intelligence organisation in the world".

"If this legislation is passed, QDW powers will have been repeatedly extended for 14 years despite recommendations of repeal from both the INSLM and the PJCIS. Secrecy does not secure security and infringing civil rights does not ensure safety," Mr Moses said.

"Providing ASIO with the power to secretly and immediately detain persons whether or not they are suspected of terrorism-related activities is a clear overreach."

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