

15 December 2017

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

By email: pjicis@aph.gov.au

Dear Mr Hastie

Extended supervision orders – review mechanisms

1. Thank you for the opportunity for Law Council representatives to appear before the Parliamentary Joint Committee on Intelligence and Security (**Committee**) on 1 December 2017 as part of its inquiry into the:
 - police stop, search and seizure powers, the control order regime, and the preventative detention order regime; and
 - review of the ‘declared area’ provisions.
2. In response to a question on notice received from Senator Penny Wong, the Law Council has prepared this supplementary submission to further inform the Committee’s consideration of the relevant powers.

Question on Notice

3. The Law Council’s position on extended supervision orders (**ESOs**) is set out in its recent submission to the Committee, namely the *Review of police stop, search and seizure powers, the control order regime and the preventative detention order regime*.¹ In its submission, the Law Council stated that it would not oppose a period of *up to three years* (emphasis added) for an ESO, provided there are appropriate powers for review applications during the duration of the ESO.
4. Senator Wong asked the following question during the Law Council’s appearance on 1 December 2017:

The Law Council, in its submission to the Committee, states that it would not oppose a period of up to three years for an extended supervision order provided there are

¹ Law Council of Australia, *Review of police stop, search and seizure powers, the control order regime and the preventative detention order regime* (3 November 2017).

appropriate powers for review applications during the duration of the ESO. What would the Law Council consider to be appropriate powers of review?

Law Council response

5. The Law Council submits that appropriate powers of review under any ESO regime should include the power to apply to:
 - vary the duration of an ESO;
 - vary the conditions that have been included in the order; and
 - review and revoke an order where the purpose of the review is to determine whether the offender should remain subject to the ESO.²
6. State and Territory Supreme Courts should be given the power to at any time vary or revoke an extended supervision order or interim supervision order on the application of the Attorney-General or the person subject to the order.
7. The period of an order must not be varied so that the period is greater than that of up to three years.
8. These powers of review are already respectively contained for example in the New South Wales regime³ and the South Australian regime.⁴ However, the Law Council prefers the New South Wales regime which leaves a broad discretion to the court to vary an order and notes that, without limiting the grounds for revoking an ESO or interim supervision order, the Supreme Court may revoke an ESO or interim supervision order if satisfied that circumstances have changed sufficiently to render the order unnecessary.⁵
9. In other words, the Law Council supports a responsive and flexible ESO regime in the case of high-risk terrorist offenders with the inclusion of the full gamut of review powers.
10. Broad review powers would enable a respondent to apply to change the conditions of the ESO and/or to revoke the ESO if the necessity arises or if the circumstances of a particular case change. This is crucial as, during the period of the ESO, which could be up to three years, an offender's circumstances could change.
11. The conditions of an ESO and the duration of the order should be able to be subject to review prior to the expiration of the offender's extension period to allow for the order to be better tailored to the individual circumstances of the offender.
12. In addition, the power to vary or revoke an ESO in this way may also provide an additional incentive to offenders to take active steps to reduce factors associated with their risk of reoffending.
13. Thank you again for the opportunity to provide these observations.

² Sentencing Advisory Council, *High-Risk Offenders: Post Sentence Supervision and Detention Discussion and Options Paper Summary* <<https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/High%20Risk%20Offenders%20Post%20Sentence%20Supervision%20and%20Detention%20Discussion%20and%20Options%20Paper%20Summary.pdf>> p. 20.

³ Section 13 of the *Crimes (High Risk Offenders) Act 2006* (NSW) enables a respondent to apply to vary an ESO or the conditions that have been included in the order.

⁴ Section 13 of the *Criminal Law (High Risk Offenders) Act 2015* (SA) enables a respondent to apply to vary or revoke an ESO.

⁵ *Crimes (High Risk Offenders) Act 2006* (NSW), s 13.

14. The Law Council trusts that these comments are of assistance.

15. Please contact Dr Natasha Molt, Deputy Director of Policy, Policy Division (natasha.molt@lawcouncil.asn.au or on (02) 6246 3754) in the first instance with any questions.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Fiona McLeod'.

Fiona McLeod SC
President