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Law Council urges Government to adopt key counter-terrorism report recommendations

The Law Council of Australia is urging the Federal Government to adopt key recommendations of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) concerning proposed laws that could see individuals detained past the expiry of their sentence.

The PJCIS today released its recommended amendments to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016, which included:

- making explicit that each party is able to bring forward their preferred relevant expert, or experts;
- providing that an application for a continuing detention order may be commenced up to 12 months (rather than six months) prior to the completion of an offender's sentence, in order to provide all parties additional time to prepare and for the offender to seek legal representation; and
- removing treason from the scope of offences section.

The PJCIS also recommended that the Bill be amended so that if an offender, through no fault of his or her own, is unable to obtain legal representation:

- the Court has the explicit power to stay proceedings for a continuing detention order; and
- the Court is empowered to make an order for reasonable costs to be funded to enable the offender to obtain legal representation.

Law Council of Australia President Stuart Clark AM said if the Government was to adopt the report's recommendations it would strike a better balance.

"The Government has a responsibility to keep Australians safe from the threat of terrorism, but in acting on this responsibility it should not jeopardise our nation's commitment to the rule of law," Mr Clark said.

"It is the Law Council's view that the amendments recommended by the PJCIS would lead to legislation that strikes a better balance. Indeed, that is why the Law Council made many of these recommendations in its submission to the Committee this year.

"We also support the PJCIS's recommendations that the continuing detention regime should be reviewed again after six years by the Joint Committee and five years by the Independent National Security Legislation Monitor," Mr Clark said.

Mr Clark also noted that while the PJCIS's recommendations are a step in the right direction, the Law Council still has concerns over the lack of a developed and validated risk assessment tool.

"We also believe the threshold test for determining whether a person presents a risk is set too low and may not be consistent with the broader counter-terrorism legislative framework.

"The Law Council will continue working constructively with the Government and the relevant parliamentary committees to help contribute to better legislation," Mr Clark said.

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