

Thursday, 1 December 2016

Amended High Risk Terrorist Offenders Bill strikes better balance between community protection and rule of law

Amendments to the Federal Government's new anti-terror laws, that passed the Senate today, strikes a better balance in protecting the community while ensuring fundamental legal rights and freedoms are not jettisoned in the process.

The Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 includes a number of amendments aligning with key Law Council of Australia's recommendations, subsequently included in a report by the Parliamentary Joint Committee on Intelligence and Security.

The amendments include:

- making explicit the right of the person, who is the subject of an application, to call evidence from a relevant expert, or experts of their choice;
- 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;
- removing treason from the scope of offences section; and
- requiring 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.

The Bill has also been amended so that if an offender, through no fault of their own, is unable to obtain legal representation, the Court can either stay proceedings or make an order for reasonable legal representation costs to be funded.

Law Council of Australia President, Stuart Clark AM, said the Council was pleased to see the Government, and Parliament, responding to its concerns.

"The Federal Government and Parliament have a fundamental responsibility to mitigate the risk of terror attacks. However, the rule of law must not be abandoned in the process.

"If we compromise the rule of law we risk jeopardising many of the very freedoms we are looking to defend." Mr Clark said.

Mr Clark said the Law Council still held concerns with the legislation's threshold test and in relation to how individuals will be assessed fairly in terms of risk.

"That said, this is a more balanced piece of legislation than was originally proposed earlier in the year," Mr Clark said.

"The Law Council will continue to work with Parliament to ensure that an appropriate balance is sought and maintained between anti-terror provisions and the rule of law."

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