

Wednesday, 24 July 2019

‘Put national security above politics’: TEO Bill must go back to PJCIS to ensure effectiveness, constitutionality

The Law Council of Australia is urging the Senate to put national security above politics and refer the Temporary Exclusion Order (TEO) Bill back to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) for further review, to ensure it is not subject to constitutional challenge.

The Law Council is concerned the government has side-lined the committee in its rush to secure the Bill’s passage through Parliament.

Law Council President, Arthur Moses, SC, said the government has chosen to ignore critical recommendations from the highly-respected committee that would have better dealt with real concerns about the TEO Bill’s constitutionality.

“PJCIS serves an important function in ensuring a considered, informed and bipartisan approach to national security issues,” Mr Moses said.

“A government cannot purport to be strong on national security or border protection if it does not have laws that are Constitutionally sound and safe from challenge.

“We are concerned the PCJIS recommendations on the TEO Bill have not been fully implemented, especially in relation to the exercise of ministerial decision-making power. This sets a dangerous precedent for future inquiries by the Committee and diminishes its role.”

Mr Moses said serious concerns remain over the constitutional validity of TEOs, which create uncertainty and could undermine the Government’s integrity and adversely impact on national security.

“The TEO Bill must urgently be referred back to the PJCIS to ensure the legislation is robust and will stand up to legal challenge,” Mr Moses said.

“A Commonwealth law may be unconstitutional if it authorises the Executive to determine and impose punishment for criminal conduct. A ministerial decision to grant a TEO is arguably punitive, and arguably invalid. In granting a TEO, a minister is effectively determining and imposing punishment for a citizen’s alleged conduct – or prospective offence - in the form of an order preventing re-entry. If such an order is to be made to exclude an Australian citizen from entering Australia, it is the Law Council’s view it should be made by a court, not a Minister.

“Protecting the safety and security of the Australian people must always be the paramount concern of Government. But rushed laws at risk of Constitutional challenge pose an unnecessary risk to national security. The Australian people must be able to have confidence that public 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.”

“To enhance this legislation’s robustness, as a minimum the committee’s recommendations should be implemented,” Mr Moses said.

“When it comes to matters of national security, Parliament must take the time to get laws right. That is why we are calling on the Senate to send it back to the PJCIS for further scrutiny.”

Anne-Louise Brown

P 0406 987 050

E Anne-Louise.Brown@lawcouncil.asn.au