

Rule of law principles must be protected in any move to hold jailed terrorists past their terms

The Law Council of Australia is urging the Australian Parliament to proceed cautiously with proposals to introduce new legislation that would allow jailed terrorists who still pose a risk when their prison terms expire to be held for an extended period of time.

Law Council President, Stuart Clark AM, said while the Government's commitment to judicial review was positive, it would be critical to carefully assess the details of the proposal, and that the measures should only be used in the most serious of circumstances.

"The Federal Government has a clear responsibility to ensure the nation is safe and secure, but it is crucial we do not compromise Australia's commitment to the rule of law in the process," Mr Clark said.

"The appropriate balance must be struck between ensuring national security on one hand and safeguarding the fundamental legal rights that are central to our democracy on the other.

"Applications for post-sentence controls must always be put before a court, and orders must only be made by a judge exercising his or her own discretion.

"There must be a proper hearing before the court where the person who is the subject of the application is given the opportunity to answer the material on which the application is based.

"Any order must be periodically reviewed and the scheme monitored by those responsible for its administration, the Parliament and the Independent National Security Legislation Monitor.

"The person who is the subject of the order must also be able to apply to the court to have their case reviewed should their circumstances change. The legislation itself should also be reviewed within three years of its commencement.

"These elements might sound peripheral when set against the objective of keeping Australians safe, but if Australia abandons its rule of law principles then the forces of global terrorism will have secured a significant victory over our nation."

Mr Clark said that the Law Council commended the Government on its agreement to implement the recommendations of the Parliamentary Joint Committee on Intelligence and Security in relation to the Counter-Terrorism Bill [No.1] 2015.

"By accepting these recommendations it sends a strong message to the community that the Government is serious about ensuring proper protections are in place for new counter-terrorism measures," Mr Clark said.

"The Law Council and the Government share the same goal of getting the balance right and we look forward to an open and constructive dialogue as this legislation is developed and introduced."

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