

Friday, 8 June 2018

Espionage report a step in the right direction

The Law Council today welcomed the release of the bipartisan Parliamentary Joint Committee on Intelligence and Security's (PJCIS) [Advisory Report on the National Security Legislation Amendment \(Espionage and Foreign Interference\) Bill 2017](#).

The lengthy report has accepted evidence that there is a need to ensure the Bill is proportionate and appropriately targeted to the threat, while strengthening and modernising current espionage and foreign interference laws.

Law Council President, Morry Bailes, said that while further analysis of the PJCIS's report will be undertaken by the Law Council, early indications are that the recommendations are a step in the right direction.

The report includes a number of important recommendations aimed at:

- clarifying key definitions such as 'national security' and 'security classification' which underpin a range of offences in the Bill;
- broadening several defences such as extending the journalist defence for secrecy offences to editorial, legal and administrative staff within the news organisation; and
- reducing maximum penalties for proposed new secrecy offences, and requiring the consent of the Attorney-General to any prosecution under these offences.

Mr Bailes said that while it is pleasing to see the PJCIS take on many of the recommendations put to it throughout the consultation process, including by the Law Council, more needs to be done to improve the Bill prior to its passage in the Australian Parliament.

"Key clarifications to definitions such as 'national security' should be set out in the legislation, not only contained within the Explanatory Memorandum. This is critical given the seriousness of the proposed offences which attract heavy penalties," Mr Bailes said.

"Defences should be further strengthened to include for example a 'good faith' defence for espionage offences and a public interest defence for individuals other than journalists or those assisting them, this is an important safeguard for freedom of expression.

"In addition, the definition of national security, still to include economic and political relations with another country, might be best likened to a leap into the unknown for freedom of speech in Australia.

"While there is no doubt we all want to keep Australia and Australians safe from foreign interference, that must not be at a cost to our freedom – and where that does encroach, the encroachment must be measured and justified.

"Legitimate political and public debate in Australia should be encouraged and it is the responsibility of parliamentarians to ensure that debate is not stifled through legislation. It is vitally important that on matters of national security we get the legislation right."

The Law Council will continue to work with the Australian Parliament to ensure the Bill is further improved ahead of its debate later this month.

Sonia Byrnes: Communications

P 0437 078 850

E Sonia.Byrnes@lawcouncil.asn.au

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