

Thursday, September 15 2016

Special advocate regime a vital inclusion in new counter-terrorism bill, but further parliamentary scrutiny necessary

The Law Council of Australia has commended the Government for including a special advocate regime in new counter-terrorism laws introduced to the Senate today.

The Law Council formally recommended the system of 'special advocates' to participate in control order proceedings before the Independent National Security Legislation Monitor last year.

The system would allow each State and Territory to have a panel of security-cleared barristers and solicitors who could participate in closed material procedures where the subject of a control order has sensitive information withheld from them and their legal representative.

Law Council President, Stuart Clark AM, said the special advocate regime was a welcome inclusion to the *Counter-Terrorism Legislation Amendment Bill (No. 1) 2016*, but the Government needed to commit to an immediate review of the scheme by the Parliamentary Joint Committee on Intelligence and Security (PJCIS).

"A special advocate regime provides a significant safeguard. The special advocate will be able to see the sensitive information that has been withheld from the subject of a control order and make representations on behalf of that person. This is essential, given that a person's legal representative will also be excluded from accessing certain information," Mr Clark said.

"For full accountability, however, the scheme must be immediately reviewed by the PJCIS. The exact relationship and level of interaction between the special advocate, the subject of the control order, and their legal representative requires careful consideration."

Mr Clark also noted it is essential that the *Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016*, which was also introduced into the Senate today, be reviewed by the PJCIS.

"Parliamentary Committee review is necessary to ensure the right balance is struck between protecting Australians while ensuring fundamental legal rights are not jettisoned.

"Retaining individuals in prison past the time of their custodial sentence is a serious matter and the highest order of scrutiny should apply," Mr Clark said.

The PJCIS should give particular attention to certain elements of the bill including:

- A minor, who is convicted of a relevant offence, can be subjected to the scheme provided they are 18 when the sentence ends;
- It will apply to persons convicted of terrorism offences prior to the enactment of the scheme; and
- A person who has been convicted for a 'treason' offence may be subjected to the scheme.

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