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ASIO's extraordinary detention powers extended until March 2021

The Law Council of Australia says COVID-19 should not be used as an excuse to curtail Australia's personal freedoms that are unrelated to the pandemic.

Emergency COVID-19 powers have been used to again extend the powers of the Australian Security Intelligence Organisation (**ASIO**) to detain people for up to seven days for compulsory questioning in relation to terrorism, even though the government proposes to repeal them.

Law Council President, Pauline Wright, noted the highly extraordinary nature of these powers, which have no equivalent in the laws of Australia's closest intelligence partners, including the United States, United Kingdom, Canada and New Zealand.

Ms Wright said: "We appreciate that these are unprecedented times but given the extraordinary nature of ASIO's detention powers they should not be further extended. We need to strike a balance between community safety and protecting individual freedoms.

"Australians expect our security agencies to respond proportionately to terrorism threats and it's time the Federal Government repeals these powers once and for all."

The detention powers came into law 17 years ago and were subject to a sunset clause, which has been extended several times and was due to expire on 7 September 2020. However, the Minister for Home Affairs has just made a legislative instrument to extend them for a further six months.

The powers allow ASIO to obtain 'questioning-and-detention warrants' that can immediately detain someone for up to seven days to collect intelligence about a terrorism offence.

In 2016, the second Independent National Security Legislation Monitor, the Hon Roger Gyles AO QC, recommended that the detention regime should sunset without renewal. Last year the government also accepted a further recommendation of the Parliamentary Joint Committee on Intelligence and Security to allow the detention regime to expire.

The government presently has a Bill before the Parliament to repeal the detention regime, and to enact a modified regime that allows ASIO to compulsorily question a person, but without detaining them.

Ms Wright added: "It is a matter of concern to the Law Council that ASIO's detention powers have once again been extended. This is the second extension since the government committed to letting the detention powers expire, and the third extension since former INSLM Gyles recommended that those powers should not be extended.

"There is no credible justification for extending the detention warrant regime, given that the government is proposing to repeal it. The Minister's legislative instrument is subject to Parliamentary disallowance. It would be open to any Parliamentarian who shares the Law Council's concerns about the extension of ASIO's detention warrants to move a motion of disallowance."

Media Contact: Julia Timms, T. 0457 517366, E. julia@hortonadvisory.com.au