

Thursday, 21 December 2017

Government move allowing security cleared lawyers in counter-terrorism control orders welcomed

The Law Council has commended the Australian Government for creating a 'special advocate' regime that would allow security-cleared lawyers to represent individuals that are subject to specific counter-terrorism [control orders](#).

The details of the special advocate regime are included in the [National Security Information \(Criminal and Civil Proceedings\) Amendment Regulations 2017](#) made public today.

The current control order scheme may prevent the subject of a control order proceeding, or their legal representative, from having access to sensitive national security. While the Law Council held procedural fairness concerns about such measures, it noted that should they occur a special advocate regime should be created.

The special advocate regime will 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.

The President of the Law Council of Australia, Fiona McLeod SC, said the special advocate regime was a significant legal safeguard and one that strengthened the rule of law in Australia.

"There is no doubt that being placed under a control order is a very serious step," Ms McLeod said.

"Control orders can involve substantial restrictions of a person's liberty without the standard process of arrest, charge, prosecution and determination of guilt beyond a reasonable doubt.

"A special advocate regime will enhance procedural fairness for the controlee where secret evidence is allowed in control order proceedings without the affected person, or their legal representative, knowing its content.

"Individuals should always be entitled to challenge the evidence tendered against them, this is a core principle of the rule of law.

"With national security, we must always aim to strike the right balance between protecting the community while defending the fundamental legal safeguards that underpin our democracy – in order to ensure there are no unintended consequences.

"With these changes, we believe a better balance has been struck," Ms McLeod said.

The Regulations outline the administrative arrangements for the special advocate regime, including:

- the requirements that must be satisfied to be appointed by the court as a special advocate.
- matters in relation to remuneration, disclosure of interest, conflicts of interest, and immunity from legal action.

"We would like to thank the Government for their ongoing engagement with the Law Council in this matter and believe that the outcome announced today only serves to enhance Australia's commitment to the rule of law," Ms McLeod said.

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