

Friday, 6 August 2021

PJCIS in agreement with the Law Council

The recently tabled Parliamentary Joint Committee on Intelligence and Security's (PJCIS) *Advisory Report on the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020* has overwhelmingly endorsed the key reforms recommended by the Law Council of Australia.

Law Council President, Dr Jacoba Brasch QC said, "it is pleasing that the PJCIS has identified and agreed that there are fundamental problems with the proposed legislation. The Law Council calls on the government to fully implement all the 34 recommended amendments as a matter of urgency."

"The proposed legislation confers three extraordinary new powers on the Australian Federal Police and the Australian Criminal Intelligence Commission to tackle serious cyber-enabled crime. This includes powers to disrupt data on computer devices, networks or systems (such as taking down websites or servers), powers to remotely access computers for the purpose of collecting criminal intelligence, and powers to 'lock out' the lawful users of online accounts such as banking, governmental services like Medicare and social security, cloud-based data storage and social media.

"While the Committee was satisfied that there is a credible need for the powers, the Committee's recommendations recognise and agree with the Law Council's primary concern that the proposed legislative framework does not meet the essential requirements of proportionality.

"The Committee also shared the Law Council's concern that the Bill does not presently make adequate provision for the Parliamentary and independent operational oversight of the exercise of powers under the new regime.

The Law Council is pleased that the Committee endorsed the majority of the Law Council's recommended improvements to the Bill, and particularly welcomes the Committee's recommendations for the judicial issuance of warrants (with certain warrants to be issued by superior court judges alone), more robust issuing criteria that require structured assessments of necessity and proportionality, more targeted scoping of intrusive powers, and the sunseting of the new powers after a period of five years (with statutory reviews to be conducted by the Committee and the Independent National Security Legislation Monitor).

"All of the Committee's recommendations will add significant and workable safeguards to the legislative framework for the new powers. This will greatly enhance public trust and confidence in the important and difficult work of our law enforcement agencies undertake in tackling serious and organised crime, and particularly heinous crimes against vulnerable persons such as child sexual abuse.

"More broadly, the Committee's review of this Bill is a testament to the effectiveness and deep value that thorough, bipartisan and participatory Parliamentary scrutiny brings to the democratic process."

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.