

Opening Statement



Thursday, 24 September 2020

Opening Statement on Matters relating to two treaties with Hong Kong

Pauline Wright, President, Law Council of Australia

I am Pauline Wright, President of the Law Council of Australia. I am joined by Mr David Grace QC, a member of the Law Council's National Criminal Law Committee and Dr Natasha Molt, the Law Council's Director of Policy.

We thank the Committee for the opportunity to contribute to this inquiry and discuss the proposed suspension of the agreements relating to extradition and mutual legal assistance between Australia and Hong Kong.

The Law Council is the peak national body representing the legal profession in Australia. We have a keen interest in ensuring that cooperative arrangements with foreign countries relating to criminal matters adhere to fundamental rule of law principles and remain compliant with international human rights obligations.

The Law Council supports the steps taken by the Australian Government to suspend both agreements.

The dominant focus of the national interest analyses before the Committee is the technical basis for suspension, rather than a detailed articulation of the underlying reasons as to why Australia is seeking to suspend the arrangements. It is for these underlying reasons – most notably the introduction by China of the National Security Law that entered into force in Hong Kong on 30 June 2020 – that the Law Council is of the view that suspension of these arrangements is appropriate and indeed consistent with fundamental rule of law principles and human rights obligations under international law.

The National Security Law substantially undermines the independence of Hong Kong's judiciary, as well as the region's autonomy under the 'One Country, Two Systems' policy. The National Security Law also permits security and intelligence agencies of the People's Republic of China to operate in Hong Kong and act outside local laws in carrying out their duties.

The broadly defined offences of sedition, secession, terrorism and collusion with foreign forces in our view undermine rights protected by the International Covenant on Civil and Political Rights, the application of which is preserved in Hong Kong under the Basic Law and the Sino-British Joint Declaration. Due to the extraterritoriality of the National Security Law, these laws may affect not only residents and citizens of Hong Kong, but also Australians whose extradition may be sought from offshore.

Although it is not yet clear how the National Security Law will be implemented, the Law Council agrees that on its face, these measures cast sufficient doubt over the application of the criminal law in Hong Kong, and Australia's confidence in its legal processes, to justify the suspension of both the agreements with Hong Kong.

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

We welcome a discussion on these matters, and again thank the Committee for convening this conference at short notice.

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