

Media Statement



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Act now to bolster government accountability and rule of law

A raft of legislation before parliament this week risks seriously undermining the administration of justice and the rights of all Australians, the Law Council of Australia has warned.

Law Council president Arthur Moses SC urged parliamentarians to act this week to strengthen government accountability and protect the rule of law.

“Parliamentarians should resist pressure to rush through legislation and carefully consider the consequences of eroding rights and freedoms,” Mr Moses SC said.

“We are on a slippery slope. Legislation, even well-intentioned legislation, that is poorly drafted and rushed through parliament can undermine the administration of justice, government accountability, and liberty.

“Our Parliament is the guardian of the rights and freedoms of Australian citizens. While protecting our community must always be the priority, this must be considered in conjunction with potential impacts on human rights and freedoms in order to ensure proposed laws are necessary and proportionate.”

The Law Council is concerned about legislation to validate unlawful decisions that have been taken by the Australian Criminal Intelligence Commission and broaden the authorisation process for operations or investigations.

The trigger for the Bill is unclear but appears to be a case currently before the High Court, Mr Moses SC said.

“The Law Council is concerned that this legislation appears to go beyond just addressing concerns raised in the case before the High Court and would validate unlawful decisions made by the ACIC. If there have been breaches of the law by government agencies, then it would be odd and inappropriate for Parliament to validate those breaches as there would not be any deterrent for government agencies in the future who breach laws passed by the very same Parliament.

“The rule of law means no one is above the law, including Government and government agencies. There must be consequences for anyone who breaches the law.”

The Bill empowers ACIC to authorise future special operations and investigations in relation to alleged criminal activity “at whatever level of generality the Board considers appropriate”.

“This significantly broadens the power of the ACIC to prospectively authorise investigations and exercise its coercive powers,” Mr Moses SC said.

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

“The concern the profession has is that it will become the norm not the exception to use coercive powers that include the power to abrogate the privilege against self-incrimination without special circumstances being established on the facts of a particular case.”

Mr Moses SC said the legal profession also had significant concerns about the erosion of the rule of law if legislation was passed introducing mandatory minimum sentencing and repealing Medevac.

"If the Government succeeds this week in passing these laws, this will add to the damage already done to the rule of law. Gradually shifting power from a system of rules to the Government and criminal intelligence agencies and away from the Parliament and Courts undermines our democracy.

“The rule of law hardly ever disappears overnight - it is dismantled brick by brick until it can't reasonably be said to function with fairness, accountability, and transparency.”

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