

Thursday, 10 May 2018

Law Council applauds recommendation to repeal ASIO's detention power

The Law Council of Australia has thrown its full support behind [recommendations](#) by the powerful Parliamentary Joint Committee on Intelligence and Security to repeal ASIO's detention power and revise its questioning power.

"The Law Council has [long argued](#) that the current ASIO questioning and detention powers fail to strike the right balance between protecting the community while upholding the rule of law," said Morry Bailes, President of the Law Council of Australia.

"Today the Committee has recognised this imbalance and we welcome these recommendations," Mr Bailes said.

The Committee recommended that ASIO's current detention powers under the *Australian Security Intelligence Organisation Act 1979*, be repealed and that the Government develop legislation for a reformed ASIO compulsory questioning framework.

"It is crucial for our security and law enforcement agencies have appropriate powers to detect, prevent, and prosecute terrorist activities," Mr Bailes said.

"But the appropriate balance must be struck between ensuring national security and safeguarding the fundamental legal rights central to our democracy.

"In addition, ASIO's Questioning and Detention Warrants have not actually been used since they were introduced, which should raise questions around their efficacy as an intelligence tool," Mr Bailes said.

The Law Council has argued, consistent with the recommendations of the second Independent National Security Legislation Monitor, that the model used by the Australian Criminal Intelligence Commission (ACIC) as a starting point for the reforming ASIO's questioning powers.

"Adopting the ACIC Model would allow for judicial oversight of the exercise of the coercive powers. It would also create greater consistency in the powers given to intelligence agencies and offer greater certainty as to their operation," Mr Bailes said.

In the revision of the questioning power, it is critical that the examination of an accused person by ASIO should be deferred until after the disposition of any charges.

"If this is not accepted, authorisation should be required from the Federal Court before a summons is issued to a person who is subject to criminal proceedings.

"The Law Council looks forward to participating in the development of the new questioning power framework with the Australian Parliament," Mr Bailes said.

Patrick Pantano: Public Affairs
P 02 6246 3715
E Patrick.Pantano@lawcouncil.asn.au

Sonia Byrnes: Communications
P 0437 078 850
E Sonia.Byrnes@lawcouncil.asn.au