

Wednesday, 8 February 2017

## National security watchdog recommends repeal of ASIO questioning and detention powers

The Australian legal profession is calling on the Federal Government to adopt key recommendations of the Independent National Security Legislation Monitor (INSLM), which has called for the repeal of ASIO's Questioning and Detention Warrant (QDW) powers.

The INSLM [report](#), tabled in Parliament today, included a number of recommendations which closely align with those made by the Law Council in its [earlier submission](#).

Law Council of Australia President, Fiona McLeod SC, said that many of the INSLM's recommendations were aimed at strengthening safeguards in Australia's counter-terrorism framework and should be adopted swiftly.

"It is vital that our security and law enforcement agencies have appropriate powers to detect, prevent, and prosecute terrorist activities to protect the Australian community," Ms McLeod said.

"However these powers must be necessary and proportionate to potential threats, and they must not impinge on the values and freedoms on which our democracy is founded.

"In the case of ASIO's questioning and detention powers, the balance is out of kilter.

"The INSLM has rightly acknowledged that a warrant enabling a person to be detained in custody, virtually incommunicado, without even being accused of involvement in terrorist activity, on grounds which are kept secret and without effective opportunity to challenge the basis of his or her detention is an extraordinary power.

"Currently, immediate detention under a QDW arises on the basis of an assessment by the Attorney-General, rather than a court that has examined the evidence supporting detention. This raises serious questions about the separation of powers and the appropriateness of administrative detention.

"ASIO already has the power to arrest and question without charge for a broad range of preparatory and inchoate offences, to order the surrender of passports, and to prohibit a person leaving Australia. QDWs have not, to our knowledge, been used since they were introduced," Ms McLeod said.

Ms McLeod noted that the Parliamentary Joint Committee on Human Rights has examined ASIO's powers and concluded that they are likely to be incompatible with human rights, including the right to freedom of movement.

"The power to detain individuals for questioning unjustifiably infringes upon the right to freedom of movement and the notion that individuals should not be held in custody without at least a reasonable suspicion of involvement in terrorism," Ms McLeod said.

Among INSLM's other recommendations, the Law Council also noted the proposal to limit the AFP's 'dead time' – periods of time when an individual is detained that are disregarded when calculating the investigation period.

"Limiting dead time to 10 days, as the INSLM recommends, might be argued to be too long. However, it is vastly superior to current arrangements under which dead time can be potentially unlimited."

Ms McLeod acknowledged the former INSLM, the Hon Roger Gyles AO, QC, outstanding contribution to ensuring that Australia's counter-terrorism laws are effective, necessary and proportionate.

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