

Friday, 4 December 2020

## Law Council raises grave concerns about lack of safeguards in new ASIO powers

The Law Council of Australia is deeply concerned that the compulsory questioning powers of ASIO are set to be significantly expanded, without crucial safeguards and out of line with other nations in the Five Eyes alliance.

While the Law Council welcomes the recommendations of the Parliamentary Joint Committee on Intelligence and Security, they do not go far enough to ensure that extraordinary powers can only be exercised where necessary and proportionate.

Law Council of Australia President, Pauline Wright, said she was especially troubled by the proposal to remove any form of judicial involvement from the process of issuing these extraordinary warrants.

"Intelligence operatives work in a complex and dynamic security environment and need appropriate and adequate powers to keep the community safe, but the flip side of that social compact is that extraordinary powers must also be subject to extraordinary safeguards. That includes judicial approval, which will ensure that decisions to authorise coercive questioning and apprehension are subject to the highest degree of independence," Ms Wright said.

"These laws would mean that the Attorney-General will be solely responsible for authorising compulsory questioning and – in some cases – the apprehension of a person to bring them into questioning. The critical approval role that is presently played by judges, which was introduced by the Howard Government, would be repealed.

"Australia is already an outlier among its like-minded counterparts in the Five Eyes alliance by being the only jurisdiction to confer compulsory questioning powers on a security agency for intelligence collection purposes.

"We are also alone among the Five Eyes in not having any judicial authorisation in the issuance of highly intrusive surveillance warrants. The United States, United Kingdom, Canada and New Zealand confer responsibility on judges for issuing warrants."

The Law Council has expressed satisfaction that the Committee has endorsed its recommendations for a shorter sunset period for these laws of five years.

The Committee also endorsed the Law Council's recommendation for an additional issuing criterion for issuing questioning warrants for children, which requires the Attorney-General to take into account the best interests of the child as a primary consideration.

The Committee has also made attempts to strengthen requirements for the qualification of lawyers who can be appointed to supervise compulsory questioning, which implements some of the safeguards recommended by the Law Council.

# Media Release



"Overall, however, these recommendations do not come close to giving the Bill reasonable prospect of compliance with Australia's human rights obligations and essential requirements of the rule of law," Ms Wright said.

"Serious inadequacies remain in the protections for children and persons with disabilities during compulsory questioning. We also are worried about limitations on the ability of lawyers to represent and assist people subject to questioning warrants and the retention of powers to compel people who are charged with offences to incriminate themselves by answering questions. In addition, we hold concerns about the retention of the ability of ASIO to use tracking devices for up to 90 days without a warrant."

If the Bill is passed, the Law Council urges the government to consult with the Law Council on the Statement of Procedures for Questioning, and regulations governing the disclosure of information.

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