

17 September 2021

Law Council welcomes PJCIS recommendations

All comments to be attributed to Law Council of Australia President, Dr Jacoba Brasch QC

The Law Council of Australia welcomes the Parliamentary Joint Committee on Intelligence and Security's 10 recommendations for amendment to the Advisory Report on the Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020, seven of which directly adopt recommendations made by the Law Council, and calls on the Government to implement them fully.

We particularly support the Committee's recommendations for improvements to the issuing criteria for extended supervision orders (ESOs), to ensure the necessity and proportionality of the significant restraints on a person's movements in the community able to be imposed under those orders. We also strongly support the Committee's recommendations to strengthen the power of the court to make orders for the Commonwealth to grant reasonable legal assistance to people subject to orders for extended supervision orders.

However, despite these valuable amendments, the Law Council remains concerned that the ESO regime as proposed in the Bill will not implement crucial recommendations of the third Independent National Security Legislation Monitor (INSLM), Dr James Renwick CSC SC, in relation to the design of the scheme. This includes the standard of proof for ESOs and the range of conditions able to be imposed on the subject.

The Law Council is also concerned the Government intends to move further amendments to this Bill which are directed to a separate matter. These amendments propose to fetter the discretion of the court to take less restrictive alternatives into consideration when considering an application for a continuing detention order.

The Law Council notes that the fourth INSLM, Mr Grant Donaldson SC, is presently reviewing the regime of post-sentence detention orders in Division 105A of the Criminal Code, which will extend to the ESO regime once the Bill is passed. We also note that the Committee has adopted a recommendation of the Law Council for it to have a further review function of the regime.

It is imperative these outstanding issues are given consideration as part of these later reviews.