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24 August 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON ACT 2612

By email:

Dear Dr Popple,

COUNTER-TERRORISM LEGISLATION AMENDMENT BILL 2026 (CTH)

The Law Society of New South Wales is grateful for the opportunity to contribute to the Law Council's submission to the inquiry of the Parliamentary Joint Committee on Intelligence and Security into the Counter-Terrorism Legislation Amendment Bill 2026 (Cth) (**Bill**). The Law Society's Public Law and Criminal Law Committees contributed to this submission.

Preventing terrorist attacks and protecting the public are a central purpose of national security laws and frameworks in contemporary Australia. The most recent antisemitic terrorist attack on Bondi Beach in 2025 resulted not only in devastation and grief for the victims, their families and communities, but also affected broader societal cohesion and peace.

The Law Society supports an approach to counter-terrorism powers and other frameworks that is capable of appropriately responding to complex and evolving threat environments, while at the same time ensuring transparency and proportionality. It is necessary that the laws directed to preventing terrorism are tailored with a high degree of precision so that, where the law imposes significant restraints on individual liberty, there are safeguards to ensure that rule of law and core civil and political human rights principles are upheld, particularly in terms of accountability and fair process.

Extension of the counter-terrorism orders frameworks

Schedule 1 of the Bill extends the sunseting dates for several counter-terrorism powers and other frameworks for a further 3 years until 7 December 2029, including:

- Division 3A of Part IAA of the *Crimes Act 1914* (Cth) (**Crimes Act**); and
- Divisions 104, 105 and 105A of the *Criminal Code Act 1995* (Cth) (**Criminal Code**).

Division 104 of the Criminal Code – Control Orders

Division 104 of the Criminal Code allows courts to impose obligations, prohibitions and restrictions on individuals to protect the public from a terrorist act, or prevent the provision of support, or facilitation of a terrorist act, or

engagement in hostile activity in a foreign country.¹ While the scheme is described in the Explanatory Memorandum as “preventative rather than punitive”², it must be recognised that the imposition of a control order can significantly curtail the fundamental freedoms of an individual by limiting their activities, including their communications, associations and movements.³ In some instances, an order can require the individual to wear an electronic monitoring device at all times.⁴ This raises rule of law concerns, particularly in circumstances where control orders are imposed on persons who have not been charged with any offence under the law. The fact that successive control orders can be imposed means that an individual may be subject to onerous conditions for long periods of time.

The Law Society supports previous advocacy by the Law Council regarding control orders imposed on persons that have not committed an offence, which advocated for the scheme to be discontinued. We agree that the focus would be more effectively placed instead on the enforcement of terrorism and security offences under Commonwealth laws, including offences directed to preparatory and ancillary activities to terrorist acts and foreign incursions, together with the extensions of criminal liability provided for by Part 2.4 of the Criminal Code, such as conspiracy and aiding and abetting.⁵ We suggest that proper use of existing criminal offences would lend greater legitimacy to the counter-terrorism response in Australia, as opposed to reliance on what is technically a civil, albeit onerous and significantly rights-limiting, approach established by the s 104 control order regime.

Division 105A - Post-sentence orders

Current division 105A allows the Supreme Court of a State or Territory to impose continuing detention orders (CDOs) or extended supervision orders (ESOs) for up to 3 years on an offender who has completed their custodial sentence but poses an unacceptable risk of committing a serious terrorism offence.⁶

We note previous submissions made by the Law Council opposing the use of CDOs and share the Law Council’s concerns about a lack of transparency around the treatment of persons subject to these orders, as well as whether these types of order contribute appropriately, if at all, to the rehabilitation of high-risk individuals.⁷ The latest INSLM review of Division 105A recommended the abolition of CDOs and retention of ESOs with certain amendments.⁸

We note, however, the Government has not accepted the INSLM’s recommendation to abolish CDOs and retain ESOs.⁹ Rather, the amendments in this Bill remove the ability of the Minister (or their legal representative) to apply directly for an ESO. An ESO may only be considered by the Court as an alternative, when considering a CDO application, where it is not satisfied that the relevant thresholds for a CDO have been met.¹⁰ The Law Society supports the continued advocacy by the Law Council that continues to raise rule of law issues around use of CDOs within the anti-terrorism framework.

¹ *Criminal Code Act 1995* (Cth) (**Criminal Code**), 104.1.

² Explanatory Memorandum, Counter-Terrorism Legislation Amendment Bill 2026 [14].

³ Criminal Code, 104.5A.

⁴ Criminal Code, 104.5A, 2(d).

⁵ Law Council of Australia, ‘[Review of Australian Federal Police powers](#)’ (Submission to the Parliamentary Joint Committee on Intelligence and Security, 17 September 2020).

⁶ Criminal Code, 105A.1

⁷ Law Council of Australia, ‘[Review of post-sentence terrorism orders: Division 105A of the Criminal Code Act 1995 \(Cth\)](#)’ (Submission to the Parliamentary Joint Committee on Intelligence and Security, 17 July 2023).

⁸ Independent National Security Legislation Monitor, ‘[Division 105A \(and related provisions\) of the Criminal Code Act 1995 \(Cth\)](#)’ (Report, 3 March 2023) [20]. ESOs can also involve significant restrictions on liberty. For example, in the recent matter of *State of New South Wales v Farhat (final)* [2026] NSWSC 985, the State sought an ESO with 55 conditions in relation to Mr Farhat, including effective home detention at his parents’ house.

⁹ Parliament of Australia, ‘[Government response to the Independent National Security Legislation Monitor report: Review into Division 105A \(and related provisions\) of the Criminal Code Act](#)’ (12 August 2026).

¹⁰ Counter-Terrorism Legislation Amendment Bill 2026 (Cth) Schedule 2, Part 1 inserting *Criminal Code Act 1995* (Cth) s 105A.7A(5).

Application of control orders and Preventative Detention Orders (PDOs) to children

The proposed extension of the sunseting of Divisions 104 and 105 means that control orders would continue to be available for persons aged 14 and over, and PDOs available for persons aged 16 and over.

We continue to share the Law Council's concerns that the use of these orders on children and young people may do little to deter them from the radical ideologies of violent extremism, and may even have the inverse effect of undermining their long-term rehabilitation and reintegration into the community. It is likely that any order made under Division 104 or 105A would be perceived by a child or young person as punitive, regardless of how it is characterised in law, and may further alienate them from the values and standards of mainstream society.

We emphasise that the preventative response to divert children and young people from being radicalised should not be confined to the criminal law. There are a range of interrelated factors such as digital media standards, educational interventions, and family and community supports that must be bolstered in the face of this emerging threat. In this respect, we note Recommendations 1-4 of the Senate Standing Committee on Legal and Constitutional Affairs' recent report on *Right wing extremist movements in Australia*, which seek to provide holistic responses to the threat of radical extremism in light of evidence that 'criminalisation of extremist behaviour is unlikely to fully address the threat of violence and reduce the risk posed to the wider community'¹¹. The Law Society highlights the work of the NSW Department of Communities and Justice's Engagement and Support Program, which is a voluntary, consent-based service that aims to assist individuals and their families to make positive changes that limit their risk of involvement in violent extremism.¹²

Removal of information sharing barriers

Schedule 5 of the Bill is intended to remove what are described as "information sharing barriers" which would "limit the disclosure and use of certain information that is relevant to the assessment of the risk posed by a person subject to a control order or PSO application". It inserts a new subdivision in Division 6 in Part VIIC of the Crimes Act to provide an exception to the operation of paragraph 85ZR(2)(b) and section 85ZS for the purposes of Division 104 and Division 105A of the Criminal Code. The practical effect of this is to enable sharing of information in relation to an offence where an individual was found guilty, but a conviction was not recorded.

We do not consider this amendment to be appropriate, nor aligned with rule of law principles. Where a court decides, as part of the sentencing process, to not record a conviction for an adult individual despite a finding of guilt (for example, in NSW, through s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW)), this decision as been reached as part of a "deliberative process".¹³ As set out in the Judicial Commission of NSW Sentencing Bench Book:

Section 10 provides a useful safety valve for ensuring that justice can be served in circumstances where, despite a breach of the law, there are such extenuating circumstances or the matter is so trivial that punishment does not seem appropriate.

...

The scope for the application of s 10 decreases where the offence is objectively serious and general deterrence and denunciation are important factors in sentencing for the offence.¹⁴

¹¹ Senate Standing Committee on Legal and Constitutional Affairs, [Right wing extremist movements in Australia](#) (Report, December 2024), Recommendations 1-4, xiii.

¹² NSW Department of Communities and Justice, 'NSW Engagement and Support Program' (Web Page, last updated 15 October 2025).

¹³ *Hoffenberg v District Court of NSW* [2010] NSWCA 142 at [29] per McClellan CJ.

¹⁴ Judicial Commission of NSW, [Sentencing Bench Book](#), [5-020]

Allowing a finding of guilt, despite no conviction being recorded, to be disclosed and considered to inform control order and PSO applications is, in our view, inappropriate and undermines established norms of criminal sentencing. When a Court has determined not to convict an offender, we are of the view that this determination should not be circumvented for the purpose of informing control order and PSO applications.

We are particularly concerned about the impact of this provision on children. In NSW, s 14 of the *Children (Criminal Proceedings) Act 1987* (NSW) restricts the circumstances in which a conviction can be recorded against a child who has pleaded guilty to, or been found guilty of, an offence. Section 14(1) provides that a court shall not record a conviction for a matter that is disposed of summarily in relation to a child who is under the age of 16 years. The intention of this legislation is to avoid stigmatisation of the child, thereby promoting the child's rehabilitation and reintegration into the community.¹⁵ We are concerned that the changes in the Bill will allow the fact of a child's guilt, despite no conviction being recorded by the Court, to be shared with authorities to facilitate orders under Division 104 and Division 105A of the Criminal Code, undermining the intended protective purpose of s 14 and similar provisions in other states and territories.

Amendments to de-listing of terrorist organisations in Division 102 of the Criminal Code

Schedule 6 of the Bill amends the de-listing requirements and procedures relating to proscribed terrorist organisations under the framework contained in Division 102 of the Criminal Code. Item 7 of the Bill repeals ss 102.1(16), (17) and (18) and thereby removes the existing ability for an individual or an organisation to make a de-listing application. The Explanatory Memorandum sets out the rationale for the change as follows:

Removing the ability for an individual or an organisation to make a de-listing application would ensure that the decision to de-list a terrorist organisation is driven by intelligence and threat assessments rather than public applications. It would also ensure consistency with recently introduced state sponsor of terrorism and prohibited hate group listing frameworks, which do not include equivalent de-listing application provisions.

This amendment does not remove the Minister's obligation to remain continually satisfied that the organisation meets the criteria for listing as a terrorist organisation. The Minister's satisfaction could be informed by representations from the organisation or members of the public. In addition, judicial review would remain available to individuals and organisations seeking to compel the Minister to perform the duty required by subsection 102.1(4), so long as they had standing to do so. The Parliamentary Joint Committee on Intelligence and Security is also able to review the listing of a terrorist organisation at any time and provide comments and recommendations to each House of Parliament. These safeguards would continue to operate to ensure that all terrorist organisation listings are appropriate.¹⁶

In our view, this rationale for the repeal has not been articulated with sufficient clarity. In particular, no adequate explanation is given for why removing the ability for an individual or an organisation to apply for a de-listing would give rise to a situation where the Minister's exercise of discretion in ordering a de-listing itself would not be based on 'intelligence and threat assessments'. All that is required by current s 101.2(17) is for the Minister to consider the de-listing application if the grounds at 17(a) to (c) are made out. Presumably, for the Minister to be satisfied that the grounds to de-list the organisation are made out under 102.1(4), they would take account of intelligence and threat assessments to verify any information contained in an application.

While the Bill identifies several safeguards, including that there is an "ongoing requirement that the Minister remain satisfied that an organisation meets the threshold for being listed as a terrorist organisation",¹⁷ it is not clear that these safeguards will be effective or appropriate. In particular, it is unclear how regularly or in what circumstances the Minister will consider whether he or she remains satisfied that the organisation meets the criteria for listing as

¹⁵ Judicial Commission of NSW, [Sentencing Bench Book](#), [15-100].

¹⁶ Explanatory Memorandum, Counter-Terrorism Legislation Amendment Bill 2026 [409]-[410].

¹⁷ Explanatory Memorandum, Counter-Terrorism Legislation Amendment Bill 2026 [44].

a terrorist organisation in the absence of the ability for organisations to be able to apply for de-listing. In our view, the repeal of review mechanisms of this nature is not in the interests of the principle of executive accountability, particularly given the impacts that flow from an individual or organisation being listed as a terrorist organisation (such as criminal sanctions for membership etc.).

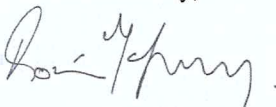
Recommendations arising from the Royal Commission on Antisemitism and Social Cohesion

The Terms of Reference of the Royal Commission on Antisemitism and Social Cohesion (**Royal Commission**) include examination of the circumstances surrounding the antisemitic Bondi terrorist attack on 14 December 2025, including whether relevant Commonwealth, State and Territory intelligence and law enforcement agencies were prevented from taking prohibitive actions by the current legislative framework and authorising environment. The Royal Commissioner is directed to make any recommendations arising out of the inquiry, including about policy, legislative, administrative or structural reforms.¹⁸

We suggest it may be desirable to require review of Divisions 104, 105 and 105A before the next sunseting date (7 December 2029), particularly if there are other recommendations around the legislative framework for counterterrorism arising from the Royal Commission that are directed to or impact up the current framework for counterterrorism orders.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney
President

¹⁸ Royal Commission on Antisemitism and Social Cohesion, '[Letters Patent](#)' (Published on Royal Commission webpage on 8 January 2026 and updated on 12 January).