

27 November 2024

Response to secrecy offences review welcomed

The Law Council welcomes the Australian Government's response to the Independent National Security Legislation Monitor (INSLM) report 'Secrecy Offences: Review of Part 5.6 of the Criminal Code Act 1995' which was tabled in Parliament today.

"We have long called for reforms to Australia's secrecy laws to ensure a better balance between preventing the release of information which could harm essential public interests and the need for open and accountable government," Law Council of Australia President, Mr Greg McIntyre SC said.

"In our view, the INSLM's report, tabled in Parliament on 27 June 2024, represents a comprehensive and measured review on the effectiveness, necessity and proportionality of Commonwealth secrecy offences contained in Part 5.6 of the Criminal Code, which make it a criminal offence to deal with, or disclose, certain government information.

"In our submissions, we have explained that the current Commonwealth secrecy offences regime offends against key rule of law principles; that the intended scope and operation of offence provisions should be unambiguous; and key terms should be defined. The uncertain reach of secrecy laws diminishes transparency and disproportionately interferes with the important role of a free press and civil society groups."

The Law Council has long argued that general secrecy offences should contain an express harm requirement to ensure that criminal sanctions are reserved for behaviour that harms, is reasonably likely to harm, or intended to harm essential public interests. Currently, the scope of conduct prohibited by Commonwealth general secrecy offences is defined by nebulously defined categories of national security information where any unauthorised disclosure is deemed to be harmful.

"We are particularly pleased to note that the Government has agreed in full, in part or in principle with 12 of the 15 INSLM's recommendations," Mr McIntyre said.

Of those recommendations supported by the Government, the Law Council welcomes the commitments towards:

- developing legislation to repeal the security classified information limbs of the deemed harm offences in section 122.1 and 122.4A of the Criminal Code. To this end, the Law Council has supported the removal of a reliance on information being security classified, under an administrative framework, as an element of an offence;
- giving further consideration to narrowing the scope of information subject to existing deemed harm offences, acknowledging that not all information held by intelligence agencies will be inherently sensitive;
- repealing the current offence of 'dealing with' information as they apply to people who are not working for the government; and
- further considering the recasting of the current defence for journalists as an exception, rather than a defence.

The Law Council remains highly supportive of the principles set out by the INSLM to underpin a new general secrecy offence in the Criminal Code to replace existing section 122.4, which if implemented, would reduce the number of specific secrecy offences and

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non-disclose duties across the Commonwealth statute book. We welcome the Government's ongoing work in this regard and look forward to collaborating with the Attorney-General's Department to progress this important body of work.

"We again congratulate the INSLM on his report, which was informed in-part by extensive submissions from the Law Council and other civil society bodies," Mr McIntyre said.

"The Law Council will now closely monitor the implementation of those recommendations agreed to by the Government to ensure that Commonwealth secrecy offences achieve an appropriate balance of effectiveness, necessity, and proportionality."

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