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Further evidence required before extending intelligence agencies' powers

The case for key measures contained in the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021 must be made clearer to the Australian public before the legislation proceeds, according to the Law Council of Australia.

The Law Council raised this issue in its submission to the Parliamentary Joint Committee on Intelligence and Security's Review of National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021.

"There are several aspects of the proposed legislation we believe require further consideration, especially the supporting justification for measures which conflict with, or exceed, recommendations of recent independent reviews of intelligence legislation," Law Council of Australia President, Mr Tass Liveris, said.

"In particular, we don't think the extrinsic materials to the Bill provide enough information to establish the necessity of the proposals in Schedule 5, which will authorise the Australian Secret Intelligence Service (ASIS) to operate covertly in Australia, to undertake limited domestic intelligence collection activities, where the Australian Security Intelligence Organisation (ASIO) requests this assistance."

"The Comprehensive Review of the Legal Framework for the National Intelligence Community considered this proposal and recommended against it, because there was insufficient evidence of its necessity. The explanatory materials to the Bill do not clearly explain why existing cooperation mechanisms are considered inadequate. For example, ASIO can already second ASIS staff to work on its intelligence operations, so that those ASIS officers fall directly under ASIO's operational command when collecting intelligence in Australia, including on Australians. The amendments would mean there are two intelligence agencies operating covertly inside Australia, targeting the same persons or matters."

"Further, ASIS would not be required to obtain Ministerial authorisation to undertake domestic intelligence collection activities in support of ASIO. The explanatory materials do not offer specific justification for adopting a model of internal, agency level approval.

"The Law Council could only support these measures if a compelling explanation of their necessity, which directly addresses these questions, is provided publicly," Mr Liveris stated.

The Law Council has also recommended targeted amendments to the separate measures in Schedules 1-4 to the Bill, which would reduce authorisation requirements for agencies to collect intelligence on Australian persons who are outside Australia.

"While the Law Council has no 'in-principle' objections to these changes, we have identified opportunities for more precisely targeted powers and stronger safeguards," Mr Liveris said.

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