

3 April 2023

Law Council Calls for Reform to Abolish Continuing Detention Order Regime

The Law Council of Australia welcomes the release of the Independent National Security Legislation Monitor's (INSLM's) report into the operation and effectiveness of Division 105A of the *Criminal Code Act 1995* (Cth) and calls for urgent consideration of its recommendations.

"There are two post-sentence orders that can be made pursuant to Division 105A: the continuing detention order (CDO), and the extended supervision order (ESO). In essence, the CDO regime allows for the detention of an individual based on a prediction they may commit a future offence," said Law Council President Luke Murphy.

"Detention should only be imposed as a criminal sentence following a person's conviction for an offence. The Law Council welcomes the INSLM's recommendation that the power to make CDOs be abolished.

"The Law Council's long-standing position is that the CDO regime is not a necessary or proportionate response to the threat of terrorism. Detention should not be available based on a prediction of a person's future risk, which is a fraught exercise in the absence of an empirically validated risk assessment methodology. The Law Council agrees with the INSLM's findings that Australia remains an outlier among countries that share Australia's values and traditions, such as the United Kingdom and New Zealand, in having a CDO mechanism as a response to the risk of terrorism.

"The Law Council has consistently expressed concern that there is a lack of an established body of specialised knowledge on which to base predictions about a person's future risk of committing a terrorism offence. Accordingly, the Law Council supports implementation of amendments suggested by the INSLM, which will improve procedural fairness governing the admission and use of expert evidence in determining the risk posed by an offender.

"In principle, the Law Council supports retention of the ESO scheme, subject to implementation of the INSLM's detailed recommendations to improve proportionality and better achieve the objectives of rehabilitation and reintegration of the defendant into the community.

"The Law Council strongly supports the INSLM's finding that the Commonwealth has the obligation to fund the legal costs of defendants confronting these applications and must fund them in a timely and adequate manner. It is essential that defendants have, or be provided with, the capacity to respond to these applications in a manner consistent with their seriousness.

"The Law Council congratulates the INSLM and his office for this report and looks forward to seeing these important recommendations implemented."

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