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Rushed legislation requires urgent review

The Law Council of Australia is calling for an urgent Parliamentary review into the *Migration Amendment (Bridging Visa Conditions) Act 2023* (Cth).

“We have strong concerns about the rushed passage of an Act that imposes harsh offence provisions subject to mandatory sentences and draconian limitations on liberty that are disproportionate to the risks it seeks to address,” Law Council of Australia President, Mr Luke Murphy said.

“While Parliament elected to fast track the Bill without adequate scrutiny, we think a review must now occur. The review needs to be based on agreed objectives of community safety while ensuring regard to rule of law and human rights principles. The views of migration, social services and legal experts within the community should be sought to inform this.

“It is important to remember that persons who have completed their prison sentence are routinely released into the community.

“The Law Council believes that placing restrictions on the liberties of individuals based on a prediction they may commit a future offence is only legitimate as an extraordinary and appropriately tailored scheme. This would be directed, for example, to prevent the commission of a serious offence in view of the seriousness of the harm to be averted and the level of risk posed by the person sought to be detained or otherwise restrained.

“Where post-sentence regimes apply, they must include sufficiently tight thresholds, be subject to judicial oversight, be time limited and require periodic review. The Act does not meet these criteria.

“In addition to the issues raised yesterday by the Law Council with regards to this Act, it is also deeply concerned by the mandatory sentencing amendment agreed last night.

“The Law Council has consistently opposed the use of mandatory sentencing regimes, which prescribe mandatory minimum sentences upon conviction for criminal offences. These regimes impose unacceptable restrictions on judicial discretion, independence and undermine fundamental rule of law principles.

“It is our view that these types of provisions are arbitrary and limit an individual’s right to a fair trial by preventing judges from imposing an appropriate penalty based on the unique circumstances of each offence and offender.

“In the circumstances of the Act, application of these mandatory sentencing provisions may result in unjust, harsh and disproportionate sentences where the punishment does not fit the crime - for example, if a person fails to notify the Minister of changes to certain personal circumstances.

“This framework should not be in place any longer than is required and urgent reforms are necessary.”

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.