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Office of the President

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Our ref (BDS-CrLC)

Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Queensland 4000

By email: lacsc@parliament.qld.gov.au

Dear Acting Committee Secretary

Counter-Terrorism and Other Legislation Amendment Bill 2017

Thank you for the opportunity to provide comments on the Counter-Terrorism and Other Legislation Amendment Bill 2017 (the Bill). The Queensland Law Society (QLS) appreciates being consulted on this important issue. This response has been compiled with the assistance of the Criminal Law Committee who have substantial expertise and practice in this area.

The timeframes available for making submissions on the Counter-Terrorism and Other Legislation Amendment Bill 2017 mean that it has not been possible for the Society to conduct an exhaustive review. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles, which we have not identified.

QLS supports proportionate legal responses to the threat of terrorism. Such legal responses must respect the principles of necessity, legality and proportionality. QLS acknowledges that, in some circumstances, preventative legal measures (that intervene early in the chain of events leading up to a potential terrorist act) may be justified.

However, QLS remains concerned that expanding the breadth of anti-terrorism laws can shift expectations and could lead to the replication of extraordinary measures in other areas in criminal law.

Appropriate oversight and review mechanisms are crucial to ensuring that the proposed amendments represent a measured and suitable means of response to the threat of terrorism.

We make the following specific comments in relation to several aspects of the Bill:

Counter-Terrorism and Other Legislation Amendment Bill 2017***Public Safety Preservation Act 1986***

The proposed amendments clarify that the power to search a person includes a power to search an electronic device and information accessible from the device. While this is not intended to provide unfettered access to information stored on or accessible from the device, in our view, this power is excessively intrusive and represents a gross breach of privacy. Personal electronic devices may contain highly sensitive information. Mobile phones are often used as a work tool and contain material that should be kept confidential.

The search power is restricted to information relevant to the emergency, therefore searches should be confined to the period of or leading up to the emergency. However, this does not sufficiently protect sensitive material that could be inadvertently viewed in the course of the search. In the Society's view, the power to search a person, and their electronic device, should be restricted to persons whom are reasonably suspected to be involved in or connected to a terrorist act. In this regard, the Society considers that it is imperative that the protections of derivative use immunity be strictly applied.

The Society supports the implementation of safeguards, and in particular, reporting on the details of the emergency situation within three months.

Terrorism (Preventative Detention) Act 2005

Preventative detention powers are extraordinary in nature and must be restrained by appropriate safeguards. QLS remains concerned about the proposed replacement of the current 'imminence test'. The imminence test requires that the terrorist act would occur in the next 14 days. The proposed amendment would change the threshold test to allow the exercise of these powers to when a terrorist act could occur within the next 14 days. This reduces the safeguards around the exercise of this power.

However, QLS acknowledges that some amendment may be required to improve the utility of preventative detention orders. This amendment is consistent with legislative changes to preventative detention powers at a Commonwealth level and QLS notes the importance of consistency in preventative detention legislation across jurisdictions. Considering this, QLS strongly supports the protection of current safeguards and oversight mechanisms, including judicial oversight and notification to the Public Interest Monitor.

Police Powers and Responsibilities Act 2000

The proposed amendments in relation to surveillance devices will allow a senior police officer to authorise the installation and use of a tracking device to assist in taking persons into lawful custody in the circumstance where taking a person into custody may pose a serious risk to the safety of a person, or another person.

In our view, a warrant should be required to authorise the installation and use of a tracking device in these circumstances. QLS considers this to be a significant increase in powers, support for which has not been made out in the context of proportionality. Judicial oversight is essential to the protection of due process and ensures that the police officers who are carrying out these functions are adequately protected.

Counter-Terrorism and Other Legislation Amendment Bill 2017

Further examples of the need for continued judicial oversight are demonstrated throughout the Bill, including in relation to tracking devices and dealing with explosives.

Oversight

Counter-terrorism legislation must strike a balance between protecting the community and preserving fundamental principles of law. The proposed extraordinary powers must be restrained by appropriate safeguards including providing suitable processes and opportunities for those affected to challenge the lawfulness of the order and maintaining proper oversight.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Advocacy team at

Yours faithfully



Christine Smyth
President