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Criminal justice response not always most effective tool against terror

Australia must seek out the most effective mechanisms to prevent the profound harm caused by hate speech and its potential to lead to acts of violent extremism, the Law Council of Australia counselled in its appearance today before the Parliamentary Joint Committee on Intelligence and Security (PJCIS).

Providing evidence to the PJCIS's Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 the Law Council raised concerns with a number of measures contained in the legislation.

"While robust and fair legal responses, including criminal justice responses, are an important component of any national counter-terrorism strategy, they are often not the most effective tool to prevent such conduct in the first place," Law Council of Australia President, Mr Luke Murphy said.

"A number of measures contained in the current Bill have not been demonstrated to be effective, necessary or proportionate. For this reason, we have recommended strengthening the justification for the measures contained in this Bill.

"Our concern is that criminalisation will not fully address the nuanced causes of radicalisation and violent extremism nor respond fully to the discrimination faced by certain communities. Instead, we suggest consideration should be given to reforms directed to strengthening civil racial and religious vilification laws instead of criminal prohibition in relation to hate symbols and insignia.

"The threat of criminal sanction could make it less likely that early, community-based identification, intervention and rehabilitation of 'at-risk' individuals will occur. The Law Council maintains that criminalisation should not be conceived as the primary tool through which to prevent radicalisation and extremism from propagating, or to facilitate behavioural change by disaffected individuals."

During its appearance, the Law Council also raised the potential for the legislation to create unintended consequences. The proposed prohibition on public display of Nazi and Islamic State Symbols is complicated and difficult to enforce. Exceptions designed to protect the activities of collectors with a genuine interest in history and journalists are insufficient. Concerns have also been raised with the inclusion of the Islamic State flag, noting that it contains symbolism with a wider significance to Australian Muslims.

The Law Council also questioned the necessity of new offences relating to violent extremist material in light of existing Commonwealth offences. These offences fail to account for technological changes, and may capture individuals who unwittingly view material online on social media feeds. Further, there are concerns with the broad definition of 'violent extremist material', which has the potential to capture material associated with legitimate matters of political dissent or struggle.

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

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In addition, the Law Council called for existing sunset provisions relating to the listing of terrorist organisations be maintained, as a critical safeguard which is necessary to preserve in the context of extraordinary legislation.

A full copy of the Law Council's submission to this inquiry is available [here](#).

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