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Missed opportunity to defend the rule of law

While the Law Council of Australia welcomes some of the amendments proposed to the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 in the report of the Senate the Legal and Constitutional Affairs Legislation Committee released yesterday, it is disappointed that it failed to heed the serious concerns raised in relation to the legislation's potential to undermine access to justice.

"We endorse the view expressed in the Committee's report that barristers acting on the instructions of a solicitor should be expressly excluded from the AML/CTF regime," Law Council of Australia President, Mr Greg McIntyre SC said.

"However, we do not think it goes far enough and the implications of proceeding with the Bill in its current form will be significant.

"As we have stated previously, this Bill will critically impact access to justice in this country because of the regulatory burden it will place on the legal profession and the fact that it will limit a person's ability to trust and confide in their lawyer.

"Under this Bill, lawyers will be forced to become covert informers on their clients. This undermines the vital, fundamental and long accepted right for Australians to be able to consult their lawyer in privacy. Insufficient thought has been given to the impact of the Bill on the criminal justice system.

"We believe costs and red tape will force small law firms to either increase fees or close their doors.

"More than 90 per cent of Australia's legal profession operates through small practices with fewer than four principal lawyers. These are classic small businesses scattered across the country, in the suburbs and the regions.

"The hardest hit communities will be those already facing disadvantage because of lawyer shortages, such as those in rural, regional and remote areas.

"Yet we have shown that Australian law firms do not pose a substantial risk, so this additional burden will achieve little other than to make it more expensive or difficult for people in need to be able to engage a lawyer.

"We support the recommendation of the Coalition Senators that legal practitioners be excluded from the application of the mandatory suspicious matter reporting requirements. We also support comments from the Green Senators that there should be a clear legislative provision to the effect that the reporting requirements in the Act are subject to a lawyer's primary duty to the Court. Failure to do so raises questions about the Bill's constitutionality.

"The Law Council strongly urges the Parliament to take more time to properly review this Bill and its potential consequences before proceeding any further."

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