



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC:JWsb281021

28 October 2021

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: Christina.Raymond@lawcouncil.asn.au

Dear Michael,

Parliamentary review of the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019 (Cth)*

The Law Society of NSW appreciates the opportunity to comment on the Law Council's submission to the review of the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019 (Cth)* ("**the Act**").

The Law Society supports the proposal of the Law Council to reiterate its concerns about the Act that were raised in relation to the Counter-Terrorism (Temporary Exclusion Orders) Bill 2019 (Cth). We continue to hold significant rule of law and human rights concerns about the following aspects of the Act, including:

- potential incompatibility with Article 12(4) of the *International Covenant on Civil and Political Rights*;
- infringement of rights to freedom of movement, freedom of expression, liberty and security of person, association, work, education and participation in cultural life;
- potential impact of the Act on children;
- limitations on due process and procedural fairness; and
- lack of accountability and reporting mechanisms.

We would draw particular emphasis to s 14 of the Act which requires the Minister, immediately after making a temporary exclusion order ("**TEO**"), to refer the decision to a reviewing authority. The reviewing authority, as set out in s 23 of the Act, is to be a former judge of a superior court or AAT member acting in a personal capacity. The task of the reviewing authority is, among other considerations, to decide whether the decision was an improper exercise of power. It is at the very least arguable that the reviewing authority, in making such a decision, is exercising judicial power. As the Commonwealth cannot confer judicial power on non-judicial bodies, it is possible that the decision of the reviewing authority therefore would be rendered invalid.

The Law Society notes that the above circumstance is in fact contemplated by s 30 of the Act which provides that if s 14 is not a valid exercise of Commonwealth power, the TEO will

come into force immediately after the Minister makes the order, without any oversight. We submit that this is a wholly inadequate outcome, given the deprivation of liberty and denial of natural justice that is a consequence of the TEO scheme.

If you wish to discuss these issues or require further information, please contact Sophie Bathurst, Policy Lawyer, on (02) 9926 0285 or email sophie.bathurst@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'JW', followed by a horizontal line extending to the right.

Juliana Warner
President