

NT adopts stronger police powers in the fight against terrorism



The Terrorism (Emergency Powers) Amendment Act will give Northern Territory Police stronger powers in the fight against terrorism according to Police Minister Paul Henderson.

The Act was passed by Parliament earlier this year and introduces a strengthened national regime to deal with terrorism threats and acts agreed to by COAG.

“The changing focus of terrorism means we must continue to look at new ways to protect Territorians against potential terrorism threats,” Mr Henderson said.

“These amendments are designed to give Police stronger tools to effectively prepare for, prevent and respond to a terrorist act or threat.”

However, the Law Council of Australia has voiced strong opposition to the new federal anti-terrorism legislation, and enabling legislation that will be implemented in each jurisdiction - as agreed at COAG.

Referring to the national legislation, Law Council President John North said: “The legal profession has done all it can to prevent these laws being passed in their current form.”

The Law Council voiced strong opposition to the Anti-Terrorism Bill, making it clear to all Australian governments that many aspects of the legislation are highly offensive.

Despite letters to the Prime Minister from the legal profession, strong support from lawyers in the United States and United Kingdom, and a hard-hitting advertising campaign, the Law Council’s pleas have fallen on deaf ears.

“What concerns us most is that it is going to take abuse and misuse of these laws by police or spy agencies before people realise what rights they’ve allowed the executive,” Mr North said.

The Northern Territory Act includes a number of new measures including:

- New Preventative Detention Orders – under the Act, police will be able to apply to the Supreme Court for an Order approving the detention of a

person for up to 14 days if they are suspected of preparing for or engaging in a terrorist act.

The preventative detention order must be reviewed by the Supreme Court, which can confirm, vary or revoke the order.

- New police powers to declare a public place a special area when police believe there is a reasonable threat of a terrorist act occurring, giving police the power to stop, search and detain people in that area.

A special area may include an airport, train station, bus station, ship or ferry terminal, or an event where mass gatherings will take place. A special area declaration can be made for a maximum period of 28 days and may be extended for a further seven days.

- Allowing police to make an application to a Judge for a covert search warrant for locations where they believe a terrorist act has or may be committed.
- Expanding police powers to allow them to enter and search the premises of a person suspected of being involved in planning or committing a terrorist act even if that person is not present.

The Law Council is seriously concerned about the introduction of control and detention orders for terror suspects. These orders would allow the Government to imprison and restrict the freedoms of people for whom there is insufficient evidence to prosecute for a criminal offence.

“The Law Council is adamant that people who are not guilty of a criminal offence should not be imprisoned or controlled by the State - preventative detention and control orders should not be introduced into Australian law,” Mr North said.

“We have to face reality - and the reality is this extraordinary legislation is to be given the green light. Very soon it will be law.”

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Dates for your diary

Friday 21 July - Retirement dinner for Chief Magistrate Hugh Bradley combined with the Law Society's Annual Dinner from 6.30pm at Pee Wees on the Point.

Wednesday 5 July - CPD seminar with Tony Young on "Zen and the profession of law" from 5.30-6.30pm.

Wednesday 12 July - CPD seminar with Des Crowe on "Transfer of Liquor Licence Applications/Gaming Applications" from 5.30-6.30pm

Tuesday 18 July - CPD seminar with Dr John Lowndes SM on "Youth Justice Act" from 5.30-6.30pm.

Monday 31 July - CPD seminar with Stephen Mason on "Digital Evidence: Issues for Lawyers, Judges & Scholars and What is Coming up over the Horizon" 5.30-6.30pm

Friday 11 August - OH&S seminar with AMPLA and ACLA from 9am-3pm at the Crowne Plaza, Darwin

Wednesday 16 August - CPD seminar with Justice Dean Mildren from 5.30-6.30pm - topic to be advised

Wednesday 23 August - CPD seminar with Peter Tiffin on "Plain English in Documents: Drafting Tips and Conventions for Maximum Clarity" from 5.30-6.30pm

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However, Minister Henderson disagrees, claiming: "These new measures are designed to strike the balance between ensuring the freedom of Territorians and the need for law enforcement to counter terrorism and will be strictly controlled.

"The amendments, along with existing counter-terrorism laws, will equip police with special investigative and preventative tools to help protect Territorians in the fight against terrorism."

The President of the Law Council, John North, said, "We remain vehemently opposed to the new laws because, as we've been saying for some time, they threaten our fundamental freedoms while not necessarily making Australia a safer place."

Mr North said the recent anti-terror raids by police demonstrated that existing laws and intelligence-gathering procedures are effective.

Late last year, the Law Council promised that the Australian legal profession will keep a watchful eye on new counter-terrorism laws, to ensure they are not abused or misused by those in power.

"We want governments to know that almost 50,000 lawyers will be watching closely to make sure the new laws are not implemented at the expense of our civil liberties."

"When that happens, we want to assure the Prime Minister and the premiers that lawyers across the country will be watching. Because these are very bad laws indeed," Mr North said.

Evidentiary onus and prejudice at the AAT cont...

discussed by the High Court in *Brisbane South Regional Health Authority v Taylor* (1996) HCA 25. The High Court held that, with delay, the quality of justice deteriorates. The High Court found that the deterioration of quality of evidence may not be ascertainable or even recognized by the parties.

Deterioration of justice may include:

- Where witnesses are no longer available;
- Where important evidence or documents have been destroyed;
- Where evidence may have disappeared without anyone knowing that it ever existed;
- That with time, the significance of a known fact or circumstance, because of its relationship to the cause of action, may no longer be apparent;
- That the longer the delay the more likely the case

will be decided on less evidence than was available at the time;

- That delay will effect the quality of the evidence.

If, through the passage of time there is a deterioration of justice such that a Tribunal is unable to satisfy itself that there is sufficient evidence to determine there has been a change in circumstances, then a Tribunal must set aside any decision purporting to re-determine an entitlement. See *The Commonwealth v Muratore* (1978) 141 CLR 296.

It follows that a Determining Authority proposing to cease entitlements where the employee's original claim dates back more than a few years, should consider prejudice when making its decision.

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