

Friday, 16 October 2020

Law Council President, Pauline Wright, support to Bernard Collaery

All comments are to be attributed to Law Council President, Pauline Wright.

As President of the Law Council, on behalf of the profession across Australia, I wish to offer my support to a highly-regarded member of the legal profession.

It has been well-reported that the legislation requires this case, for the most part, to be conducted behind closed doors.

The Law Council has expressed its concern that the legislative provisions requiring this offends the principles of open justice, since holding proceedings other than in an open court contradicts a fundamental attribute of a fair trial.

It is a basic rule of the common law that the administration of justice should not take place behind closed doors but must take place in an open court.

Public faith in the administration of justice requires that justice must not only be done, but it must also be seen to be done. Secrecy or suppression is only ever appropriate in those rare cases where the exceptions to open justice have been appropriately considered and applied.

Reforms to the *National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth) (NSI Act)* are required to ensure that the court maintains the interests of justice without being directed to place greater weight on any one consideration, such as national security, over other equally important considerations.

The Law Council considers the NSI Act currently tilts the balance too far in favour of the interests of protecting broadly-defined national security at the expense of the rights of the accused, and maintains that it is not a proportionate response to addressing the risk that information prejudicial to national security may be released.

It is the belief of the Law Council that courts should be empowered to identify the relevant considerations and the degree of weight to be placed on each of them.

The Law Council also believes that the suppression of disclosure or publication of judgments, convictions, sentences and sentencing remarks must be confined to the most exceptional cases.

The Law Council has long called for reform to the NSI Act to recalibrate the balance between the requirements of open justice and protecting the community against the disclosure of information that may genuinely prejudice national security.

The Law Council has and will continue to monitor open court proceedings in this matter and will continue to advocate for changes to the legislation.

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