



Law Council
OF AUSTRALIA

Office of the President

24 July 2020

Mr Craig Kelly MP
Chair
Parliamentary Joint Committee on Law Enforcement
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: le.committee@aph.gov.au

Dear Chair

COVID-19, criminal activity and law enforcement

The Law Council of Australia welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into criminal activity and law enforcement during the COVID-19 pandemic (**the Inquiry**).

The Law Council acknowledges the contributions of the Victorian Bar and its Criminal Bar Association in the preparation of this submission.

The measures introduced across all jurisdictions in response to the pandemic have affected many areas of public and private life, and the operation of the criminal justice system has been disrupted in a significant way. The Law Council draws to the Committee's attention the broad risks of these measures, including:

- (a) those associated with lowering 'threshold' tests for the application of any coercive powers and practices;
- (b) those associated with modifying methods and procedures employed by law enforcement and intelligence agencies;
- (c) those associated with funding increases to law enforcement bodies, which should be met with commensurate additional funding to oversight and legal assistance bodies; and
- (d) legislative 'creep' in the functions and powers of federal enforcement bodies such as the Australian Federal Police, the Australian Security Intelligence Organisation, the Australian Transaction Reports and Analysis Centre and the Australian Criminal Intelligence Commission.

Further, the COVID-19 environment (particularly in areas subject to lockdown restrictions) may foster an increase in 'private' crimes mostly covered by state laws, such as those dealing with family violence. There has also been a reported increase in internet-based offending such as grooming, procurement and other cyber-crimes contrary to the *Criminal*

Code Act 1995 (Cth). It appears from media reports¹ that law enforcement bodies are also concerned with an increase in these types of crimes.

Although any targeted law enforcement approach is understandable, the Law Council cautions against any enforcement or investigative response that may 'overreach' what is necessary and proportionate to increasing instances of this type of offending. The onus must be on law enforcement agencies to prove that existing processes, powers and procedures are insufficient to undertake the necessary investigatory action.

Although the Inquiry is focused on matters relating to Commonwealth law agencies, it is observed that police powers that enable movement tracking are currently being employed in Victoria and other jurisdictions. The use of drones, random vehicle checks, questioning of citizens, radar car registration recognition and border checks are all matters that have an impact on the privacy of individuals. Measures affecting these rights must be proportionate to the risks they seek to address and accompanied by appropriate safeguards including rigorous procedures to protect and delete any data collected.

While such measures may be justified during the pandemic, the Law Council notes that that some of these measures may endure after it has been controlled. All extraordinary powers conferred on law enforcement and health agencies to control the spread of the coronavirus and manage increases in criminal activity during the pandemic must be discontinued once the pandemic crisis has passed. If it is proposed that they continue beyond that point, governments must provide proper justification.

Finally, in parts of the country where border restrictions between states are easing, the Law Council notes that there is a risk that interstate crimes may increase, as movements of people increase. The broad powers that exist in relation to COVID related checks ought not to be used as a pretence to over-police marginalised groups. There is concern that powers to stop, question and search people for the purpose of controlling the spread of the coronavirus may be used to profile people for other matters which are out-of-scope, and all necessary processes (and protections) relating to obtaining and executing warrants in relation to non-COVID investigations must remain.

Thank you again for the opportunity to participate in this Inquiry. Should you require any further information or wish to discuss, please contact

Yours sincerely

Pauline Wright
President

¹ See e.g. Australian Broadcasting Corporation, 'Cyber crime on the rise during coronavirus pandemic': (Web Page, 23 May 2020) <<https://www.abc.net.au/news/2020-05-23/coronavirus-australia-live-news-covid-19-latest-cyberattack-rise/12278582>>; The Age, 'More than 7.4 million images of child abuse circulating in Victoria' (Web Page, 19 June 2020) <<https://www.theage.com.au/national/victoria/more-than-7-4-million-images-of-child-abuse-circulating-in-victoria-20200619-p554dy.html>>.