

Tuesday, 2 March 2021

## Resumption of INSLM inquiry a positive move

*All comments to be attributed to Law Council President, Dr Jacoba Brasch QC*

“Today’s announcement, that an inquiry into certain facets of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (**NSI Act**) will continue, is welcomed by the Law Council of Australia.

This inquiry, to be resumed by the Fourth Independent National Security Legislation Monitor (**INSLM**), Mr Grant Donaldson SC, will focus on aspects of the ‘Alan Johns’ matter, in which the NSI Act was invoked in the prosecution of a Commonwealth official for secrecy offences.

The Law Council believes that the principle of open justice is particularly important in criminal proceedings. It goes to the heart of a person’s right to a fair trial, in that justice according to law must not only be done but must be seen to be done.

The application of the NSI Act in the ‘Alan Johns’ matter led to a person being charged, arraigned, pleading guilty, being sentenced and completing their sentence with minimal-to-no public knowledge of the details of the offending, due to consent orders being made under the NSI Act.

The resumption of this inquiry will allow independent examination of whether the NSI Act should, as a matter of policy, applied in this way, especially in the prosecution of official secrecy offences by current or former Commonwealth officials and others such as their legal advisors.

Such review is particularly important, given that recent expansion of official secrecy offences in Commonwealth legislation could lead to further prosecutions.

The Law Council remains supportive of the reform options that were floated by the third INSLM, Dr James Renwick SC, when he originally initiated this inquiry in March 2020. This included considering a minimum requirement for at least some details of charges and orders to always be publicly disclosed.

The Law Council welcomes the opportunity to participate in the resumption of the INSLM’s important inquiry.”

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Contact: Dr Fiona Wade, P. 0403 810 865 E. [Fiona.Wade@lawcouncil.asn.au](mailto:Fiona.Wade@lawcouncil.asn.au)