



Law Council
OF AUSTRALIA

Office of the President

22 October 2018

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: picis@aph.gov.au

Dear Mr Hastie

Crimes Legislation Amendment (Police Powers at Airports) Bill 2018

Thank you for the opportunity for the Law Council to provide an additional written submission to the Parliamentary Joint Committee on Intelligence and Security's (**the Committee**) review of the Crimes Legislation Amendment (Police Powers at Airports) Bill 2018 (**the Bill**) following the Law Council's appearance before the Committee on 17 October 2018.

During the Law Council's appearance before the Committee, you asked the following question:

I have a question on move-on directions, which you haven't mentioned in your submission. Approval from a senior officer is only required if the duration of a move-on direction is greater than 12 hours or a second direction will be issued in a seven-day period. Are you satisfied with the approval levels for a direction to be given, noting that a protective services officer or a constable may issue a direction?

Proposed new subsection 3UO(1) would enable *constables* and *protective service officers (PSOs)* to issue a move-on direction on the premises of a *major airport* in certain circumstances. Proposed subsection 3UO(4) would provide that a direction covering a period of more than 12 hours must only be given, or authorised by, a *senior police officer*. The *senior police officer* may authorise the direction orally or in writing.

Proposed subsection 3UO(5) would define a *senior police officer* as a *constable* with the rank of sergeant or an equivalent rank (or higher), or performing the duties of a *constable* having such a rank.

Proposed subsection 3UO(6) would specify that only one subsequent direction (the later direction) can be given to a person within 7 days of the first move-on order being issued. The second direction can only be given if another assessment is made and the legal requirements in subsection 3UO(1) are satisfied, no more than one later move-on direction is given within the 7 day period, the direction is given or authorised by a *senior*

police officer, and the second period of exclusion would end no later than 7 days after the first direction was given. An authorisation by a *senior police officer* for this purpose can be given orally or in writing.

The Law Council's initial written submission to the Committee dated 12 October 2018 expressed concern regarding the breadth of the powers in proposed sections 3UN, 3UO and 3UQ (identification, stop and move on directions powers) which may be exercised to ensure the 'good order' of an airport, its premises, and flights. It noted that these powers appear to leave a broad discretion to a constable or a PSO to exercise the powers in a broad range of circumstances, including for example to intervene or prevent a peaceful protest.

Given the breadth of the powers, the Law Council is concerned that they generally allow, including in the case of the move-on direction powers, a constable or a PSO to exercise the powers. The low-level ranking highlights the need to ensure that:

- the powers are appropriately confined as indicated in the Law Council's initial written submission;
- that there is adequate training of both constables and PSOs to exercise the powers; and
- there is adequate oversight and reporting of the use of the powers.

The Law Council supports a greater level of oversight of the move-on direction powers where a *senior police officer* is required if the duration of a move-on direction is greater than 12 hours or a second direction will be issued in a seven-day period.

However, proposed paragraph 3UO(5)(b) is unclear and should be tightened to ensure that there is clarity as to who may be a *senior police officer* with the power to authorise a move-on direction that is greater than 12 hours or a second direction issued in a seven-day period. As noted, proposed paragraph 3UO(5)(b) would define a *senior police officer* as a *constable* with the rank of sergeant or an equivalent rank (or higher), or performing the duties of a constable having such a rank [emphasis added]. It is not clear what this may relate to and therefore who may be considered a *senior police officer*. Proposed paragraph 3UO(5)(b) of the Bill should be amended to clearly articulate what kind of officers may be considered to be performing the duties of sergeant or an equivalent rank (or higher).

I trust this assists the Committee's consideration of the Bill.

Thank you for the opportunity to provide a supplementary submission on these matters.

Please contact Dr Natasha Molt, Director of Policy, Policy Division
in the first instance, if you require further information or clarification.

Yours sincerely

Morry Bailes
President