

Media Statement
National Legal Aid supports the findings of the
Independent National Security Legislation Monitor's Review
20 April 2023

National Legal Aid welcomes the release of the Independent National Security Legislation Monitor's (**INSLM's**) report into Division 105A of the *Criminal Code Act 1995 (Cth)* (**Criminal Code (Cth)**) and calls for urgent consideration of its recommendations.

Division 105A creates a scheme empowering State and Territory Supreme Courts to order that a person who has been sentenced to a term of imprisonment for one or other 'terrorist offences' remain detained or supervised beyond the expiry of their sentence. Under Division 105A, there are two types of post-sentence orders that can be made based on predictions about future risk of offending: a continuing detention order (**CDO**), and an extended supervision order (**ESO**). The INSLM's Report recommends the abolition of CDOs and amendments that aim to improve procedural fairness governing the admission and use of expert evidence in determining the risk posed by an offender.

Legal Aid NSW, one of the 8 Legal Aid Commissions within National Legal Aid, has specialist expertise in post-sentence detention and supervision orders, including in proceedings under the *Terrorism (High Risk Offenders) Act 2017 (NSW)* (**THRO Act**) and under the *Criminal Code (Cth)*.

Legal Aid NSW was invited to submit evidence at the public hearings of the INSLM's review, identifying several issues relating to the need for greater legislative safeguards to ensure that the Commonwealth scheme is appropriately targeted to meet its intended objectives, and to prevent disproportionate impact on offenders with mental and/or cognitive impairment and on First Nations people. Legal Aid NSW also highlighted issues related to the importance of establishing an independent body to oversee the validation of risk assessment tools.

National Legal Aid supports the findings of the INSLM's Report regarding non-disclosure of the report by Dr Emily Corner, which was provided to the Department of Home Affairs in May 2020 and raised concerns about the reliability and efficacy of terrorism risk assessment tools. Legal Aid NSW first became aware of the existence of the report when it was referred to publicly by the INSLM at the 21 November 2022 hearing. Between May 2020 and the November 2022 hearings, legal aid had been granted in 25 State and Commonwealth matters where these risk assessment tools had been used.

Following the November 2022 hearings, Legal Aid NSW requested disclosure of Dr Corner's report from the Australian Government Solicitor in Commonwealth proceedings which were underway. The report was disclosed as requested but subject to non-disclosure undertakings. It has been produced by the Commonwealth under subpoena in a number of subsequent State THRO Act proceedings.

National Legal Aid acknowledges that terrorism and violent extremism present unique challenges for Governments, law enforcement and courts. We welcome the INSLM's recommendations, remain committed to working constructively with the Commonwealth and NSW Governments in this area of law, and look forward to assisting in the implementation of the Report's recommendations.

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