



**RULE OF LAW**  
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Dr James Renwick SC  
Acting Independent National Security Legislation Monitor  
Independent National Security Legislation Monitor  
Box 6500  
Canberra ACT 2600

**RE: SUBMISSION TO INSLM INQUIRY**

To the Independent National Security Legislation Monitor

The Rule of Law Institute of Australia is an independent, non-partisan, not-for-profit body formed to promote and uphold the rule of law in Australia. The Patron of the Institute is The Honourable James Spigelman AC QC, and the Governing Committee includes Robin Speed, Malcolm Stewart, Richard McHugh SC, Professor Geoffrey de Q. Walker, David Lowy AM, Nicholas Cowdery AM QC, Professor Martin Krygier, and Hugh Morgan AC. The objectives of the Institute include promoting good governance in Australia by the rule of law, and encouraging transparency and accountability in State and Federal government. In addition our organisation operates significant school education programs to increase trust, respect and awareness in our legal system, further information can be found at [www.ruleoflaw.org.au/education](http://www.ruleoflaw.org.au/education)

In relation to Division 3A of Part IAA of the Crime Act , Offences relating to entering and remaining in 'declared areas' under division 119 and division 104/5 of the criminal code, the Institute highlights that key rule of law principles must be incorporated wherever possible as follows:

- All people are presumed to be innocent until proven otherwise and are

- entitled to remain silent and are not required to incriminate themselves.
- The judicial system is independent, impartial, open and transparent and provides a fair and prompt trial. Note, the onus of proof on the prosecution.
  - The separation of powers between the legislature, the executive and the judiciary.
  - The law is made in an open and transparent way.
  - The law and its administration is subject to open and free criticism by the public.
  - The law is applied equally and fairly, so that no one is above the law.
  - The law is capable of being known to everyone, so that everyone can comply.
  - No one is subject to any action by any government agency other than in accordance with the law and the model litigant rules.
  - No one can be prosecuted, civilly or criminally, for any offence not known to the law when committed.
  - No one is subject adversely to a retrospective change of the law.

The Institute understands the difficulties facing the agencies tasked with uncovering and prosecuting terrorism and security crimes. However, from a rule of law perspective, the complete omission of these principles above seriously undermines the fairness and integrity of the criminal justice system for all Australians. It's about finding a balance between effectively managing these terrorism and security risks whilst ensuring that our Australian way of life and democratic values aren't diminished and these powers don't filter down into other legislative reforms (through setting of legal precedences).

A mechanism needs to be provided (with the results being made public) for when any powers are misused or unintended consequences occur to ensure amendments are made to prevent further mistakes or unintended consequences from recurring. This isn't aimed at blaming individuals or departments but rather to ensure best practice and continual improvement which will ultimately lead to increased public confidence, transparency and improved legislation.

The Rule of Law Institute of Australia thanks the Australian Government for the opportunity to make a submission regarding the INSLM. The Institute respects and understands the significance of counter terrorism and security legislation and would like to ensure that key rule of law principles are always considered and adopted.

Kind regards,



**Peter McLean**  
**Chief Executive Officer**