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Department of Home Affairs Submission to the Review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025

Parliamentary Joint Committee on Intelligence and Security

22 October 2025

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Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) Review into the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025 (the Bill).

The purpose of this submission is to provide the PJCIS with information about the anticipated processes for the Department to support the Australian Government, and particularly the AFP Minister (being the Minister administering the *Australian Federal Police Act 1979*, currently the Minister for Home Affairs), in considering listing state sponsors of terrorism and in relation to other matters of relevance to the Department. The submission will also provide an overview of the necessary consequential amendments as a result of the Bill, as well as the broader impacts of the Bill on the community and social cohesion.

As the responsible Department, the Attorney-General's Department is preparing a separate submission on the development of, and the provisions in, the Bill. The PJCIS should refer to that submission in relation to these matters.

Need for legislative change

The Department acknowledges the achievements of the current proscription regime for Australia's counter-terrorism efforts. The Department also notes that the unprecedented recent actions of foreign state entities in Australia has prompted the Government to strengthen the existing counter-terrorism legislative framework. The Bill seeks to appropriately address the unique requirements and considerations of proscribing a foreign state entity.

Division 102 of the Criminal Code enables the Government to proscribe groups as terrorist organisations. Since 2002, the Government has listed 44 terrorist organisations under the Division 102 terrorist organisation listing framework, and currently there are 31 listed terrorist organisations. The Government lists terrorist organisations for the purposes of the relevant offences in the Criminal Code, and to serve as a deterrent for members of the public who would seek to interact with a listed organisation. In considering an organisation for listing, the AFP Minister considers advice provided by the Department which addresses both legislative criteria and non-legislative considerations. If a decision is made to list an organisation, that decision is supported by a Statement of Reasons, and the unclassified content of the Statement of Reasons is made publicly available. The Division 102 terrorist organisation listing framework has enabled listing of traditional terrorist entities, such as al-Qa'ida, and emerging terrorist threats such as Terrorgram, in a rapidly evolving online environment.

However, the current legislative framework does not capture foreign state entities. The Attorney-General's Department's 31 January 2023 submission to the Foreign Affairs, Defence and Trade References Committee's inquiry on Human rights implications of recent violence in Iran noted that, "as an organ of a nation state, the Islamic Revolutionary Guard Corps is not the kind of entity that is covered by the terrorist organisation provisions in the Criminal Code."

On 26 August 2025, the Prime Minister, accompanied by the Ministers for Foreign Affairs and Home Affairs, announced an intention to develop a new framework under the Criminal Code to enable the listing of the Islamic Revolutionary Guard Corps (IRGC) as a state sponsor of terrorism. This was alongside the Director-General of Security Mike Burgess' statement that the Australian Security Intelligence Organisation (ASIO) had assessed the Iranian government directed at least two, and likely more attacks, on Jewish interests in Australia.

This framework will allow the Government to consider listing the IRGC and other state sponsors of terrorism who advocate for, or look to target, terrorist attacks at Australia.

The Bill proposes a new framework within the Criminal Code which will target state sponsors of terrorism by criminalising certain interactions with or by the listed state sponsor of terrorism, criminalising support for the listed entity, and hardening the Australian environment against the activities of listed entities.

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Thresholds for specifying state sponsors of terrorism

The Attorney-General described that:

Responding to the actions of state sponsors of terrorism presents unique security challenges and foreign policy considerations, and therefore requires a framework which is specifically designed, including appropriate safeguards on its operation. ... The Bill will allow a foreign state entity to be listed as a state sponsor of terrorism where they have directly or indirectly engaged in, or otherwise supported or advocated for, the doing of terrorist acts targeted at Australia.

The thresholds outlined in the Bill appropriately respond to the challenges of proscribing foreign state entities as state sponsors of terrorism. The Department considers that the high threshold, including the requirement for a terrorist act to have been targeted at Australia, is appropriate given the serious diplomatic and legal consequences and the implications a listing may have on individual Australians.

The new framework is supported by a range of new criminal offences applicable to individuals engaging in activities related to state terrorist acts targeted at Australia, and dealings with a state sponsor of terrorism. Individuals who have certain dealings, including being a member of, associating with, directing the activities of, recruiting for, funding, providing support to, and training with a listed state sponsor of terrorism may be committing a criminal offence, punishable by harsh penalties up to imprisonment for life. New offences under the framework mirror offences that apply to individuals in relation to a terrorist organisation listing under Division 102.

To support the AFP Minister to appropriately exercise these powers with balanced safeguards, the Department will provide relevant information to the Minister about a foreign state entity for consideration. Any decision to list a foreign state entity as a state sponsor of terrorism will be informed by publicly accessible information, where possible, and tested to ensure the legitimacy and relevance of that information. Alongside the requirement for written agreement from the Minister for Foreign Affairs, this will ensure accountability for such decisions and appropriate consideration of any diplomatic impacts.

Anticipated processes to administer the proposed framework to list state sponsors of terrorism

The Department will work with Australian Government partners to develop appropriate processes for the administration of the proposed framework.

This may include developing processes and non-legislative criteria to support the identification of terrorist acts targeted at Australia which can be attributed to foreign state entities; the consideration of whether entities are foreign state entities; and whether a listing as a state sponsor of terrorism should be recommended to Government.

Initially, the Department expects to leverage the existing processes and Australian Government consultation mechanisms that are used to consider potential listing of groups as terrorist organisations. For example, undertaking consultation through established forums with representatives from the Attorney-General's Department, the Department of Foreign Affairs and other national security agencies to consider potential listings. The Department notes that there is no legislative requirement to consult First Ministers of state and territory governments under the proposed framework, as is required for listings under Part 5.3 (terrorist organisation listings). However, given the highly sensitive and complex nature of listing a state sponsor of terrorism, the Department will continue to consider how best to engage state and territory stakeholders as part of operationalising the framework.

Consistent with terrorist organisation listings, listed state sponsors of terrorism will be published on the National Security website with information about the reasons for their listing. Further, the Department will support the AFP Minister in providing relevant information to the PJCIS for its review of a listing.

Consequential amendments to legislation administered by Home Affairs

The Bill includes appropriate consequential amendments to legislation administered by Home Affairs. These amendments focus on ensuring existing functions, powers and frameworks that apply in relation to 'terrorist acts' apply in a similar and appropriate manner in relation to 'state sponsored' terrorist acts and are described further below. The Department supports these measures.

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- *Australian Citizenship Act 2007*;
- *Australian Crime Commission Act 2002*;
- *Australian Federal Police Act 1979*;
- *Australian Security Intelligence Organisation Act 1979*;
- *Counter-Terrorism (Temporary Exclusion Orders) Act 2019*;
- *Crimes Act 1914*;
- *Customs Act 1901*;
- *Maritime Powers Act 2013*;
- *Maritime Transport and Offshore Facilities Security Act 2003*;
- *Social Security Act 1991*;
- *AusCheck Act 2007*;
- *Surveillance Devices Act 2004*;
- *Telecommunications (Interception and Access) Act 1979*.

Potential impacts of the Bill

Australian Citizenship Act 2007

The Bill would make consequential amendments to the *Australian Citizenship Act 2007* to ensure consistency in the treatment of offences relating to terrorist organisations and terrorist acts, and offences relating to state sponsors of terrorism and state terrorist acts (with the exception of the proposed association offence), for the purpose of citizenship cessation orders made by the court.

This will result in amendments to the definition of 'national security offence' in section 3 of the *Australian Citizenship Act 2007*, to include an offence against Part 5.3A of the Criminal Code. It will also amend subsection 36C(3) to include an offence against Part 5.3A, other than section 112.7, as a serious offence for the purposes of this section.

Australian Crime Commission Act 2002

The Bill would make consequential amendments to subsection 4(1) (definition of terrorist act) of the *Australian Crime Commission Act 2002* (the ACC Act) to adopt the new definition of 'terrorist act' provided by section 100.1 of the Criminal Code. The Bill would ensure that 'state-sponsored' terrorist acts are captured alongside a 'terrorist act' for the purposes of section 24AC of the ACC Act. Section 24AC provides a framework for an issuing officer to make an order to retain or have an item forfeited to the Commonwealth if there are reasonable grounds to suspect that, if the returnable item is returned to a person, the item is likely to be used by that person or another person in the commission of a terrorist act, or a terrorism offence.

Australian Federal Police Act 1979

The Bill would make consequential amendments to subsection 4(1) (paragraph (d) of the definition of protective services offence) of the *Australian Federal Police Act 1979* (the AFP Act) to add the new offences in Division 111 of the Criminal Code to the definition of 'protective service offence'. These amendments will allow protective service officers of the Australian Federal Police (AFP) to arrest a person without a warrant if the protective service officer believes on reasonable grounds that:

- (a) the person has just committed, or is committing, the offence; and
- (b) the arrest of the person is necessary for the purpose of:
 - i. ensuring the appearance of the person before a court of competent jurisdiction for the offence; or

- ii. preventing the continuation of, or a repetition of, the offence or the commission of a further protective service offence; or
 - iii. preventing the concealment, loss or destruction of evidence of, or relating to, the offence; or
 - iv. preserving the safety or welfare of the person; and
- (c) proceedings by way of summons against the person for the offence would not achieve such a purpose¹.

The amendment will also allow a designated person (either a member or special member or a protective service officer of the AFP) to request the suspect of a Division 111 offence to provide the designated person with particular information including the suspect's name and address, and their reason for being in a particular place or in the vicinity of a person or place.

The designated person is able to do so if they suspect on reasonable grounds that the suspect might have just committed, might be committing, or might be about to commit, a protective service offence; and the suspect is in a place, or in the vicinity of a place, person or thing, in respect of which the Australian Federal Police is performing protective service functions. Failure to comply with such a request is an offence with a maximum penalty of 20 penalty units. A more serious offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the Criminal Code).²

The amendment will also allow a designated person to stop and detain the suspect in circumstances that would be likely to involve the commission of a protective service offence.³ There are a range of existing provisions in the AFP Act which guide the conduct of officers undergoing these processes and apply safeguards to this conduct.

Australian Security Intelligence Organisation Act 1979

The Bill would also make consequential amendments to the *Australian Security Intelligence Organisation Act 1979* to amend the definition of 'politically motivated violence' in section 4 of the Act. This would provide consistency in the treatment of offences relating to terrorist organisations and terrorist acts, and offences relating to state sponsors of terrorism and state terrorist acts, for the purpose of ASIO's powers and functions.

Counter-Terrorism (Temporary Exclusion Orders) Act 2019

Section 10 of the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* (TEO Act) enables the Minister for Home Affairs to make an order that prevents a person from entering Australia for a specified period (up to 2 years), where certain criteria are met and unless a return permit is granted. Temporary Exclusion Orders are used to support the managed return of Australian citizens of counter-terrorism interest to Australia, by providing time for agencies to make appropriate arrangements ahead of their return.

The Bill would make consequential amendments to the TEO Act to ensure that provisions which refer to 'terrorist act' also capture 'state-sponsored terrorist act', and those that refer to 'terrorist organisations' also capture 'state sponsor of terrorism' (e.g. ss 10, 16).

Crimes Act 1914

The Bill would make consequential amendments to the *Crimes Act 1914* to add Part 5.3A offences as a 'serious Commonwealth offence' in relation to controlled operations (carried out to obtain evidence that may lead to the prosecution of a person for a serious Commonwealth offence or a serious State offence that has a federal aspect), and:

- (a) capture Part 5.3A offences to facilitate the provision of evidence via video link in proceedings for terrorism and related offences.

¹ Section 14A of the *Australian Federal Police Act 1979*

² Section 14I of the *Australian Federal Police Act 1979*

³ Section 14J of the *Australian Federal Police Act 1979*

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- (b) ensure Part 5.3A state-sponsored terrorism offences are treated in the same way as existing Part 5.3 terrorism offences, so that references to a 'terrorist act' would include state-sponsored terrorism offences.
- (c) omit specified Part 5.3A offences, namely the section 112.7 association offence from the definition of 'serious terrorism offence', to mirror the treatment of the existing section 102.8 offence.

There are a range of existing safeguards throughout the Crimes Act which will apply to these

amendments. ***Customs Act 1901 and Maritime Powers Act 2013***

Legislation administered by the Department of Home Affairs, including the *Customs Act 1901* and the *Maritime Powers Act 2013*, provides powers to detain or seize ships, aircraft and goods linked to terrorist activity. Expanding the statutory definition will help ensure these powers can be applied to terrorist threats driven by a broader range of threat actors.

Complementary amendments to subordinate legislation will also be pursued to ensure consistency across related frameworks, ensuring Australia's border protection framework remains responsive to emerging threats, including those posed by foreign state actors.

Maritime Transport and Offshore Facilities Security Act 2003

The *Maritime Transport and Offshore Facilities Security Act 2003* adopts the definition of 'terrorist act' provided in Part 5.3 of the Criminal Code. This can be found in section 10 – definitions.

'Terrorist act' is then applied in subsection 170 of the *Maritime Transport and Offshore Facilities Security Act 2003* when defining a maritime transport or offshore facility security incident. The Bill would make consequential amendments to this Act, to ensure that state sponsored terrorist acts are captured alongside 'terrorist act' as applied in these sections.

Social Security Act 1991

The Australian Victim of Terrorism Overseas Payment (AVTOP) scheme is set out in Part 2.24AA of the *Social Security Act 1991* (Social Security Act). The scheme provides financial assistance of up to \$75,000 for Australian residents who are harmed or whose close family member is killed as a direct result of a declared overseas terrorist act both past and future.

The *Social Security Act* adopts the definition of 'terrorist act' provided by section 100.1 of the Criminal Code in section 23 – dictionary. Additionally, the declaration by the Prime Minister of a declared overseas terrorist act in section 35B relies on the term 'terrorist act'.

The Bill would make consequential amendments to the Social Security Act to ensure that a state sponsored terrorist act is captured alongside 'terrorist act' for the purposes of making a declaration under Part 2.24AA.

Home Affairs does not consider any changes to the title of 'Australian Victim of Terrorism Overseas Payment' to be necessary.

AusCheck Act 2007

Subsection 8(2) of the *AusCheck Act 2007* provides the purposes for which a national security background check must be conducted. One of those purposes is the prevention of conduct to which Part 5.3 of the Criminal Code applies.

The Bill would make consequential amendments to subsection 8(2) of the AusCheck Act, which outlines the purposes for which a national security background check must be conducted. This extends the existing purpose in paragraph 8(2)(d), which already includes existing terrorism offences under Part 5.3 and Part 5.5 of Chapter 5 of the Criminal Code, which deals with terrorism, foreign incursions and recruitment) applies.

Electronic surveillance framework

The Bill contains consequential amendments to ensure Australia's existing electronic surveillance framework applies to the new offences relating to state sponsored terrorism in Part 5.3A.

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The changes to the *Telecommunications (Interception and Access) Act 1979* will permit agencies to apply for warrants authorising the interception of telecommunications and access to stored communications for offences involving state sponsored terrorism. They will also ensure that telecommunications service warrants, named person warrants and international production orders are available for supervisory orders and post-sentence orders, in respect of serious Part 5.3A offences.

The changes to the *Surveillance Devices Act 2004* will allow law enforcement to apply for emergency authorisations for a surveillance device when investigating the new Part 5.3A offences; and make surveillance device warrants and computer access warrants available for supervisory orders and post-sentence orders, in respect of serious Part 5.3A offences.

The broader impact beyond legislation

Community engagement and potential impacts on social cohesion

The Office for Social Cohesion and the Office for Multicultural Affairs in the Department play critical roles in strengthening social cohesion and democratic resilience in Australia, including the cohesiveness of Australia's diverse, multicultural society.

The proposed amendments to the Criminal Code introducing a framework to designate state sponsors of terrorism could have notable community engagement and social cohesion implications. Such measures, particularly if they involve listing specific foreign state linked entities, may heighten sensitivities among diaspora communities, especially those with cultural, religious or familial ties to the states in question.

While the intent is to strengthen national security and deter foreign interference, there is a risk that public debate or media coverage could lead to stigmatisation or backlash against certain communities, potentially increasing community tension or even incidents of hate speech or vilification. In some cases, individuals may feel unsafe, unfairly targeted or pressured to distance themselves from their cultural or religious identity, undermining feelings of belonging and mutual trust in the broader community.

Proactive, transparent communication and engagement will be critical for government to mitigate these risks. Government messaging should clearly distinguish between actions targeting hostile state actors and the broader communities who share ethnic or religious identity with those countries.

Engagement with community leaders, civil society organisations and multicultural networks also actively reassures communities that the measures are directed at specific security threats, not at individuals or groups based on background or belief, and reinforce shared values of safety, inclusion and social cohesion.

Conclusion

The Bill represents the Government's intention to respond swiftly and unequivocally to foreign state-sponsored terrorism, and to keep the Australian community safe. It also reflects how Australia's counter-terrorism framework can be expanded to become stronger, and more responsive, to the evolving threat environment.

The Department notes that the appropriate processes, consultation and evidence required to support the consideration of any listing will depend on the specific circumstances and the sensitivity of the information being considered. While the Bill sets out legislative requirements (including the written agreement of the Minister for Foreign Affairs and arranging for the Leader of the Opposition to be briefed), it does not limit additional consultation as relevant and appropriate.

The Department welcomes the introduction of the Bill, and is ready to implement the framework, should it be successfully passed through the parliamentary process.

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