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Submission on the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025

Focus: Preventing Political Bias, Embedding Defence Leadership, and Ensuring Public Accountability

Executive Summary

The Bill, as drafted, grants excessive discretionary power to Ministers in designating “state sponsors of terrorism.” This risks politicisation of national security decisions, undermining both Australia’s credibility and its human rights obligations.

Key Recommendations:

1. Require binding advice from Defence leadership and intelligence agencies before any listing.
2. Subject listings to parliamentary and judicial review within a fixed timeframe.
3. Give Parliament the power to disallow or overturn listings through a formal disallowance process.
4. Make it mandatory for Ministers responsible for listing decisions to appear before a parliamentary committee for public questioning.
5. Publish clear statements of reasons for listings, with classified details provided to a parliamentary security committee.
6. Narrow definitions of “support” and “association” to protect humanitarian, journalistic, and diplomatic engagement.
7. Include a sunset clause requiring periodic renewal of designations.

Australia must remain vigilant against state-sponsored terrorism, but vigilance must not come at the cost of fairness, transparency, and the rule of law. Embedding Defence leadership, parliamentary oversight, and mandatory public interrogation of Ministers will ensure decisions are credible, objective, and free from political misuse.

Full Submission

Introduction

I welcome the opportunity to provide a submission on the *Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025*. While I support strong measures to protect Australia from state-sponsored terrorism, I

am concerned that the Bill, as drafted, grants excessive discretionary power to Ministers. This creates a risk that designations of “state sponsors of terrorism” could be influenced by political bias or foreign policy sympathies, rather than objective security assessments.

Risk of Political Bias

- The Bill allows the Governor-General to act on the advice of the AFP Minister and the Foreign Affairs Minister.
- Without stronger safeguards, this process risks being politicised, particularly in contexts where international disputes or ideological divisions exist.
- Such politicisation could undermine the credibility of Australia’s counter-terrorism framework, damage trust among communities within Australia, and weaken Australia’s reputation internationally.

The Role of Defence Leadership

- Decisions of this magnitude should be grounded in the expertise of Defence leaders and intelligence agencies, who are best placed to assess threats objectively.
- Defence leadership should have a binding role in the decision-making process, ensuring that listings are based on security assessments rather than political preference.
- Ministers should act only on the basis of formal Defence and intelligence advice, not unilateral discretion.

Parliamentary Oversight and Blocking Power

- To prevent misuse of ministerial discretion, Parliament should have the ability to disallow or overturn a listing of a “state sponsor of terrorism.”
- This could be achieved by requiring that all listings be tabled in Parliament within a fixed timeframe (e.g. 15 sitting days), with the option for either House to disallow the listing.
- Such a mechanism would mirror existing disallowance procedures for regulations and delegated legislation, ensuring democratic accountability.
- This safeguard would guarantee that no single Minister or small group of Ministers could unilaterally impose such a designation without parliamentary scrutiny.

Mandatory Public Interrogation of Ministers

- Ministers responsible for recommending the designation of a “state sponsor of terrorism” should be required to appear before a parliamentary committee in a **public hearing**.
- This process would mirror oversight practices in the U.S. Congress, where executive decision-makers are subject to questioning and scrutiny.
- Public interrogation of Ministers would:
 - Provide Parliament and the public with insight into the evidence and reasoning behind the decision.
 - Deter politically motivated or biased listings by requiring Ministers to defend their actions openly.
 - Strengthen democratic accountability by ensuring that such significant national security decisions are not made behind closed doors.
- These hearings should occur within a fixed timeframe after a listing is made (e.g. within 30 days), with provisions for classified evidence to be presented in closed session if necessary.

Transparency and Review

To ensure accountability and public confidence, I recommend that:

- All listing decisions be subject to parliamentary review within a fixed timeframe.
- Listings be open to judicial review to ensure compliance with human rights obligations.
- A public statement of reasons accompany each listing, with classified details provided to a parliamentary intelligence/security committee.

Human Rights Safeguards

- Vague or politically motivated listings could disproportionately affect diaspora communities, humanitarian organisations, and journalists.
- The Bill should include clearer definitions of “support” and “association” to prevent criminalising legitimate humanitarian, journalistic, or diplomatic engagement.

Recommendations

1. Require binding advice from Defence leadership and intelligence agencies before any listing decision.
2. Introduce parliamentary and judicial review mechanisms for all listings.
3. Give Parliament the power to disallow or overturn listings through a formal disallowance process.
4. Make it mandatory for Ministers responsible for listing decisions to appear before a parliamentary committee for public questioning.
5. Publish clear statements of reasons for listings, with oversight by a parliamentary security committee.
6. Narrow the definitions of “support” and “association” to protect legitimate activities.
7. Include a sunset clause requiring periodic renewal of listings to prevent indefinite designations.

Conclusion

Australia must remain vigilant against state-sponsored terrorism, but vigilance must not come at the cost of fairness, transparency, and the rule of law. By embedding Defence leadership, judicial oversight, parliamentary blocking powers, and mandatory public interrogation of Ministers into the process, Parliament can ensure this Bill strengthens national security while upholding Australia’s democratic and human rights obligations.

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