



Australian Government

Department of the Prime Minister and Cabinet

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Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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Dear

**Review of proposed amendments to the Home Affairs and Integrity Agencies Legislation
Amendment Bill 2017 – additional submission**

Thank you for the opportunity to make an additional submission to the Committee to assist the review of proposed amendments to the Home Affairs and Integrity Agencies Legislation Amendment Bill 2017 (Home Affairs Bill).

This information has been prepared by the Home Affairs Taskforce in the Department of the Prime Minister and Cabinet (PM&C) in close consultation with the Attorney-General's Department (AGD) and the Department of Home Affairs (Home Affairs).

The Committee indicated interest (during the public hearings and in its report) in seeing upfront all of the amendments needed to implement the new Home Affairs portfolio and related changes strengthening the Attorney-General's integrity and oversight role. I indicated in the public hearing on 9 February 2018 that this work was well developed.

The Home Affairs Taskforce has brought forward this work so that the additional amendments could be considered by Parliament, as soon as possible and at the one time, rather than in different bills at different times. The proposed additional amendments are in line with paragraph 2.61 of the Committee's advisory report which states 'The Committee considers that these further legislative amendments should be introduced into the Parliament as soon as possible'. I understand it was agreed the Committee should have the opportunity to consider only those amendments which did not implement a specific recommendation in the advisory report.

In summary, except for minor, machinery changes, the proposed amendments do not change the substance or form of the amended provisions. The majority of the changes simply amend Ministerial and Departmental references in legislation to clarify the new arrangements. Those amendments do not create any new powers nor change the scope of existing powers.

Other amendments affect provisions that have become either redundant, unworkable or would operate less than optimally with the new arrangements, and can be categorised as follows:

- **Reframing provisions that no longer make sense given the change in Ministerial responsibilities.** For example, in social security legislation relating to the issue of notices resulting in the loss of payments and concessions on security grounds, it is now redundant that the 'Immigration Minister' must notify the 'Attorney-General' (now read as the 'Minister for Home Affairs' as set out in the Substituted Reference Order) of certain information because the Minister for Home Affairs has responsibility for both immigration and national security, and administrative processes will replace the notification requirement. The substance and integrity of the provisions are unaffected.
- **Deleting references that are redundant with the new arrangements.** For example in transport security-related Acts, references to security functions previously in AGD which are now in Home Affairs will be removed.
- **Ensuring more than one Minister or Department can exercise a function or power where appropriate.** For example, in telecommunications legislation relating to the granting of submarine cable licences, it is appropriate both the department responsible for national security and the department responsible for international law issues are consulted.

It is appropriate the Attorney-General continue to exercise functions and powers relating to his or her role as First Law Officer, with responsibility for the administration of criminal justice, as well as strengthened oversight and integrity functions. For example, some of the proposed amendments to the *Crimes Act 1914* clarify that even though administration of the Act is split, the Attorney-General will continue to receive reports from law enforcement agencies on authorities for assumed identities.

Similarly, it is appropriate certain functions and powers transfer to the Minister for Home Affairs, given that Minister's responsibility for national security (including counter terrorism), law enforcement and emergency management. For example, in social security legislation (*A New Tax System (Family Assistance) Act 1999*, *Paid Parental Leave Act 2010* and *Social Security Act 1999*) the power to issue a notice in respect of individuals who are of security concern is appropriately exercised by the Minister who is responsible for ASIO and national security more broadly.

We note you have a summary of the proposed additional amendments. To further assist the Committee's consideration, we have provided an explanatory document at **Attachment A**. Please note the items marked ** and *italicised* are provided for completeness only. As these items implement specific recommendations in the advisory report, they are not the subject of the Committee's current consideration.

Further to my letter to the Committee Secretariat dated 22 February 2018, I would like to clarify that amendments are proposed to **36 Acts in total**, rather than 37 as I advised. There are four Acts being amended by the Home Affairs Bill and the Government proposes additional amendments to 33 Acts. The total number of Acts that would be amended is 36, noting one of the four Acts being amended by the Home Affairs Bill, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, is also included in the number of Acts to which the additional amendments would be made.

Officers from PM&C, AGD and Home Affairs are on hand to brief Committee or Secretariat members on the proposed additional amendments. Should you require any further information or wish to arrange a briefing, please contact Ms Susie Williamson-de Vries [REDACTED]

We hope this information assists, and look forward to receiving the Committee's report.

Yours sincerely

Allan McKinnon

9 March 2018