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Committee Secretary

Parliamentary Joint Committee on Intelligence & Security

Parliament of Australia, via pjcis@aph.gov.au

Dear Committee Secretary,

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

Further to the call for submissions to the review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025 [hereafter, 'the Bill'], our submission to the review follows. In line with ASPI's Charter, this submission does not reflect a singular ASPI perspective and is the opinion of the authors alone.

In our view, the Bill appropriately addresses a significant gap in Australian national security law, namely the ability for the Australian Government to designate foreign government entities as state sponsors of terrorism, and on the basis of that listing make that state sponsorship, and various means of support to that sponsorship, criminal offences (largely mirroring existing laws in relation to non-state terrorist organisations).

Instigation: exposed activities in Australia of Iran's Islamic Revolutionary Guard Corps

Instigation for the Bill has come from the announcement by the Prime Minister and the Director-General of the Australian Security Intelligence Organisation (ASIO) on 26 August of this year that two arson attacks in 2024 – on the Adass Israel synagogue in Melbourne and the Lewis Continental Kitchen in Sydney – had been ordered and organised by Iran's Islamic Revolutionary Guard Corps (IRGC) using Australian criminals as proxies.¹ Those attacks came at a time of significant social tensions in Australia related to the 7 October 2023 terrorist attacks in Israel and Israel's military response against Hamas in Gaza, and appear to have had the intention of targeting Jewish Australians and of further inflaming those social tensions. As a result, the Australian Government expelled Iran's Ambassador to Australia and withdrew staff from the Australian Embassy in Tehran.

The Islamic Republic of Iran has been a noted supporter and promoter of terrorism globally since the revolution of 1979.² Iranian proxies, notably Hizballah, have been responsible for terrorist atrocities throughout the Middle East and elsewhere, including (in a putative organisational form) the targeting of American, French and Italian peacekeepers in Lebanon in 1983. Iran has also funded and directed listed terrorist groups such as Hamas and the Houthis. The Iranian state has itself, through the auspices of the IRGC and other officials, been credibly accused of responsibility for the 18 July 1994 suicide bombing of a Jewish community centre in Buenos Aires, which killed 85 people and wounded many hundreds more. In April 2024 Argentina's Court of Cassation ruled

¹ Prime Minister, Minister for Foreign Affairs and Minister for Home Affairs, 'Response to Iranian Attacks', 26 August 2025, as at <https://www.pm.gov.au/media/response-iranian-attacks>; Tom Crowley, 'ASIO says Iran behind Australian antisemitic attacks, diplomatic ties cut', ABC News, 26 August 2025, as at <https://www.abc.net.au/news/2025-08-26/iran-behind-antisemitic-attacks-asio-says/105697762>

² See, for example, the accounts from 'State Sponsors of Terrorism: an examination of Iran's global terrorism network', US House of Representatives Subcommittee on Counterterrorism and Intelligence, 17 April 2018, as at <https://www.congress.gov/115/chrg/CHRG-115hrg30897/CHRG-115hrg30897.pdf>

that Iran and Hezbollah were responsible for the bombing.³ And as of several months ago there was media reporting that Argentina was preparing to try in absentia the suspected organisers of the bombing, including senior Iranian government officials.⁴

Such activities did not cease in the 1990s. In 2018 the Danish government recalled its ambassador from Tehran and démarched Iran's Ambassador to Copenhagen following exposure of an Iran-backed plot to assassinate a dissident in Denmark.⁵ Iran has also been implicated in recent terrorist attacks and planning in Albania, France, India, Kenya, the Netherlands, Sweden and the United States, and across the Middle East.

Our own region has not been immune. Notably, in February 2012 an Iranian plot apparently targeting Israeli diplomats in Bangkok was foiled after the premature detonation of an explosive device.⁶ Three of the perpetrators, subsequently gaoled by Thai authorities for their involvement, were evidently exchanged with Tehran for the release of unjustly imprisoned Australian national Kylie Moore-Gilbert in 2020.⁷

Historic and contemporary state sponsorship of terrorism

While shocking, the promotion and support of terrorism directed against Australia by foreign states (and through their intelligence services) is not wholly unprecedented. For example, as John Blaxland and Rhys Crawley's third volume of the official history of ASIO notes, an apparent 1979 plot against targets in Australia, including Sydney water facilities, that resulted in the conviction (and subsequent release) of the 'Croatian Six', was provoked and organised as a 'false flag' operation by Yugoslav intelligence.⁸

Regrettably, Iran has not been the only state to have used sponsorship of terrorism as a perverse tool of statecraft. Muammar Gaddafi's regime in Libya was notorious for supporting and arming terrorists internationally during the 1970s and 1980s. Indeed, Libyan authorities were directly responsible for the bombing of the La Belle discotheque in (then) West Berlin in April 1986, killing three people (including two US military servicemen) – and resulting in US air strikes targeting Tripoli and Benghazi. This was in addition to other terrorist attacks in Europe and Africa linked to Libya (including the 1988 Lockerbie bombing, the attack on a USO facility in Naples also in 1988, and the downing of UTA flight 772 over Niger in 1989).

This is in addition to the documented support for terrorist groups in those same decades by Soviet Bloc intelligence services, and the disastrous support provided by elements of Pakistani intelligence to Al-Qa'ida prior to – and after – the 9/11 terrorist attacks. And this is by no means an exhaustive list.

Worryingly, Russian intelligence has more recently shown itself to be an enthusiastic user of witting and unwitting criminal proxies in sabotage operations in Europe targeting defence industries and materiel support to Ukraine. This is reflective of a broader trend in hybrid warfare that has particular implications for Australia, given that historically our relative geographic isolation made support to such activities here more difficult. A proxy would need to be recruited here, someone sent here, and/or material brought into Australia by a foreign intelligence service. Use of criminal proxies readily collapses this isolation – as seems apparent in the Adass Israel and Lewis Continental Kitchen cases.

³ Debora Rey & Isabel Debre, 'Argentine court blames Iran and Hezbollah for 1994 Jewish center bombing', Associated Press, 17 April 2024, as at <https://apnews.com/article/argentina-1994-jewish-center-bombing-iran-investigation-36b4f9cbe20900d39d8f28477589a444>

⁴ AFP, 'Argentina to try 10 suspects in 1994 bombing of Jewish center in absentia', *Barrons*, 26 June 2025, as at <https://www.barrons.com/news/argentina-to-try-10-suspects-in-1994-bombing-of-jewish-center-in-absentia-court-47adbc5b>

⁵ 'Denmark calls for fresh EU sanctions on Iran after alleged assassination plot foiled', ABC News, 31 October 2018, as at <https://www.abc.net.au/news/2018-10-31/denmark-calls-for-new-eu-sanctions-against-iran/10450246>; Euan McKirdy, 'Denmark accuses Iran of 'political assassination plot' on its soil', CNN, 31 October 2018, as at <https://edition.cnn.com/2018/10/31/europe/denmark-iran-asmla-assassination-accusation-intl>

⁶ 'Thailand court jails Iranians over bomb plot', BBC news, 22 August 2013, as at <https://www.bbc.com/news/world-asia-23781857>

⁷ Tassanee Vejpongsa & Nick Perry, Associated Press, 'Thailand approved transfer of 3 Iranians as Australian freed', 26 November 2020, as at <https://apnews.com/article/tehran-thailand-australia-iran-041704ca6749f853281a967fd3493020>

⁸ John Blaxland & Rhys Crawley, *The Secret Cold War: The Official History of ASIO Volume 3, 1975-1989*, pp.138-139

Diplomatic and other challenges

Given this historical and contemporary context, why then was there a gap in Australian law prior to the introduction of this Bill?

Although the actions occasioned by state sponsorship were criminal (at least as, for example, arson) the sponsorship itself and support to that sponsorship, for example by persons in Australia, was not. This contrasts sharply with the robust nature of Australian laws as they relate to non-state terrorist organisations and their supporters.⁹ Ironically, if the perpetrator was acting on behalf of Iran-sponsored terror groups - Hamas or Hezbollah or the Houthis - the action would be covered by existing law, but the direct relationship between the perpetrator and the IRGC (as Iran's state service rather than a non-state actor) is where the gap is found.

In part this reflects the inherent complexity and challenges associated with addressing alleged state sponsorship of terrorism – indeed as DFAT's submission to this review notes: 'Australia's national security, diplomatic, foreign policy, legal, and humanitarian interests'.¹⁰ Although other, like-minded states have long had their own arrangements. For example, Iran has been designated as a 'State Sponsor of Terrorism' in US law since 1984.¹¹ And in 2019 the US Secretary of State designated the IRGC as a 'Foreign Terrorist Organization'.¹² Likewise, Canada listed the IRGC as a terrorist organisation in June 2024.¹³

Hence our support for the approach taken in the Bill to create a whole new Part 5.3A to the Criminal Code for state sponsorship of terrorism, rather than simply amending the existing laws applicable to non-state terrorist organisations. And providing additional elements and exceptions to capture the unique requirements and circumstances associated with state sponsorship. In our view, the most critical of those are the requirement for a specific nexus with Australia and the explicit carve out of 'international armed conflict', which we address in further detail below.

More generally, those additional elements and exceptions are a prudent pre-emption of the risk associated with criminalising the state sponsorship of terrorism: namely potential listing of foreign state entities as state sponsors as an understandable but unhelpful political response to actions of foreign governments that the Australian government and/or public might find distasteful or outrageous – but which do not actually constitute support to terrorism. For example, the actions of the Russian state and its military in Ukraine since the invasion of February 2022 (and indeed since the annexation of Crimea and the shooting down of Malaysian Airlines flight MH17 by Russian proxies in 2014).

Indeed, there is a broad range of activities (overt, covert and clandestine) potentially carried out by states to harm others – from influence to interference, intelligence collection, sabotage, military action, etc – that nonetheless remain distinct from terrorism. And which are better addressed through alternative legislative and non-legislative means. An example of which is Australia's own review of ADF actions taken in Afghanistan – which has been to the credit of Australia in being willing to review and hold our own actions in war time to account, even where they may be examined as war crimes. Maintaining terrorism's distinctive status is vital to preserving proportionality in Australian law as it relates to terrorism.

⁹ See the Independent National Security Legislation Monitor's *Defining Terrorism: Issues Paper*, 11 August 2025, as at <https://www.inslm.gov.au/publications/issues-paper-review-definition-terrorist-act-section-1001-criminal-code-act-1995>

¹⁰ Department of Foreign Affairs & Trade, submission to the PJCS review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025, 16 October 2025, p.2

¹¹ US Department of State, *Country Reports on Terrorism 2021: Iran*, as at <https://www.state.gov/reports/country-reports-on-terrorism-2021/iran#:~:text=In%20this%20section-,Iran,elsewhere%20throughout%20the%20Middle%20East.>

¹² 'US officially designates Iran's Revolutionary Guards a terrorist group', Reuters, 15 April 2019, as at <https://www.reuters.com/article/us-usa-iran-idUSKCN1RR1BE/>

¹³ Nadine Yousef, 'Canada lists Iran's revolutionary guards as a terrorist group', BBC news, 20 June 2024, as at <https://www.bbc.com/news/articles/cn00nd1n4y2o>

The Bill: nexus with Australia

Whereas the Criminal Code provides for the listing of non-state terrorist organisations even where there is not a specific nexus to Australia (hence, for example, the listing of West African terrorist group Boko Haram), the Bill requires that there be just such a nexus. That is, the Minister responsible for the Australian Federal Police must be satisfied on reasonable grounds that the foreign state entity in question ‘has directly or indirectly engaged in, prepared, planned, assisted in or fostered the doing of a terrorist act that was targeted at Australia’ or ‘has advocated the doing of a terrorist act that was targeted at Australia’. It is the historic instance of such an act that forms the basis for a listing of a foreign state entity as a state sponsor of terrorism – and the criminalisation of subsequent activities associated with that entity.

It is appropriate that ‘targeted at Australia’ is defined broadly to capture acts undertaken outside of Australia itself. This reflects the historical experience of terrorism directed at Australian interests (and Australians), most notably in Indonesia between 2002 and 2005. Although, as noted by members of the committee during the public hearing on 16 October, this geographic extension does open up potential application in circumstances where Australians might be inadvertently harmed – that is the intention had not been to harm Australians (which is worth noting given the more everyday usage of ‘targeting’). In this regard we note the evidence provided by the Attorney-General’s Department (AGD) to the committee highlighting the additional, necessary elements of a terrorist act (from section 100.1 of the Criminal Code) to include that:

‘(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the action is done or the threat is made with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

(ii) intimidating the public or a section of the public.’ [our emphasis]

What we would note, to complement AGD’s evidence, is that under the Bill the intention of the act in question need not have a nexus to Australia. Rather that nexus might be satisfied simply by the action’s effect – that is by *inter alia* causing serious physical harm or death to, or endangering the life of, an Australian (including permanent residents).

The Bill: exclusion of ‘international armed conflict’

The second important element provided for in the Bill that is distinct from the laws related to non-state actors is the specification that conduct in the context of, or associated with, ‘international armed conflict’ does not constitute a terrorist act for the purposes of Part 5.3A. This will be a particularly relevant brake on the misapplication of the laws to non-terrorist international circumstances of the kind described above.

Why is this important? For one, it seeks to avoid ‘tit for tat’ allegations of supporting ‘terrorism’ that might unjustly be directed at the Australian Defence Force during armed conflict. It also reflects that (to quote AGD’s submission to the review) ‘the actions of states in international armed conflict are regulated by international humanitarian law, with breaches of those laws already criminalised through Division 268 of the Criminal Code’.¹⁴

It is worth noting that there are some limitations and ambiguities associated with this exclusion and which were surfaced during the public hearing of 16 October. These include the non-application in circumstances of civil war. We would observe in this regard that there are increasingly common instances of conflict internationally that defy traditional Western conception of a binary distinction between ‘peace’ and ‘war’. Although it is also

¹⁴ Attorney-General’s Department, submission to the PJCIS inquiry of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025, October 2025, p.5

worth noting that while the Criminal Code doesn't have a legislative definition for 'international armed conflict' (beyond its ordinary meaning) it does explicitly include within it circumstances of 'occupation'.¹⁵

On a related matter we note that subsection 112.8(1)(e) of the Bill provides for a general defence for persons who happen to be performing an official duty or function for certain, specified international organisations – namely the United Nations (and its agencies) or the International Committee of the Red Cross.¹⁶ We note too that other public submissions have argued for significant extensions to defences for 'humanitarian' actors from not just the new offences under this Bill but those associated with non-state terrorist organisations.¹⁷ By contrast we concur with the evidence provided to the committee by DFAT that this is so substantive an issue in and of itself (and getting it wrong so problematic for national security) that those questions should be dealt with separately and not shoehorned into this Bill. Over-extension of 'humanitarian' exemptions risks generating operational loopholes for adaptive hostile actors to prejudice Australia's national security.

Implementation and future guidance

Despite our support for the amendment of the law to enable the listing of the IRGC as a terrorist entity, we do have some lingering concerns about the possibility of future politicisation. Not least because listing a foreign state entity as a 'state sponsor of terrorism' does potentially offer a simpler way of performative political demonstration than pursuing legal options through Australia's existing Criminal Code offences in relation to armed conflict. In this regard we acknowledge that the specific instance of Gaza was discussed at the 16 October hearing, directly addressed during AGD's evidence to that hearing, and acknowledged as a hypothetical possibility. We are of the view that no matter individual views on the Gaza conflict and Israel's military actions, that the findings of this review should make it explicit that other avenues of domestic and international laws – from the UN to Magnitsky sanctions – are the correct ones for handling conflicts such as Gaza, the Iraq and Afghanistan Wars, or even Russia's illegal war on Ukraine and China's systemic crimes against humanity in relation to minorities in Xinjiang. This would also reduce the potential for future social division created by claims and counter claims about whether the Australian government should list a national defence force as a state sponsor of terrorism for its role in certain conflicts.

An option to further bolster the precautions would be, as suggested by the Deputy Chair during the public hearing, that the Minister for Foreign Affairs be provided legislative guidance as to the (non-exclusive) criteria upon which to base their considerations in providing (or not providing) written agreement to the listing of a foreign state entity (as required under the Bill). This could include considerations such as the national interest, national security, Australia's foreign relations (bilateral and multilateral), Australia's economic security, defence capabilities and so forth. Such guidance on criteria is not currently provided for. Inclusion of criteria has merit in so far as it would not unduly constrain the exercise of this approval by the Foreign Minister but would confirm the Parliament's intentions with regard to the exercise of the listing of a foreign state entity.

In our view the application of a listing should focus on the systematic use of terrorism as a tool of statecraft rather than necessarily singular acts. In this regard the example of the IRGC is illustrative – it is clearly a foreign state entity that has been used by the Islamic Republic of Iran for decades to carry out and support international terrorism, and has now done so targeting Australia.

Ultimately it will fall to governments to exercise this new law appropriately and prudently, beyond the precautions provided for in the Bill. Governments should continue to be encouraged to use their existing range of tools (including legislative tools) to respond to international actions which they find objectionable but which do not actually constitute terrorism. This includes the application of sanctions provided for under the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021*.

¹⁵ Criminal Code Act 1995 – Dictionary: '**international armed conflict** includes a military occupation'.

¹⁶ And there is a narrow exemption in relation to the offence of 'association' where 'only for the purpose of providing aid of a humanitarian nature' (Bill's section 112.7). See Department of Foreign Affairs & Trade, submission to the PJCIS review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025, 16 October 2025, p.8

¹⁷ For example, Save the Children's submission to the review dated 9 October 2025

We commend the Bill to the committee as an improvement to Australia's national security laws but note the opportunities for further honing of the Bill through amendment and the need for subsequently empowered governments to wield the new Part 5.3A of the Criminal Code in a prudent and targeted fashion.

Kind regards,

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