



12 July 2023

Mr Peter Khalil MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
Canberra

Dear Mr Khalil

**Review of the Counter-Terrorism Legislation Amendment
(Prohibited Hate Symbols and Other Measures) Bill 2023**

Thank you for the opportunity to make a submission to the Committee's review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023. In this submission we wish to highlight a provision in the Bill which would allow the Committee to report to a Minister instead of the Parliament, and provide some background information that may assist the Committee in its consideration of this matter.

Item 18 of Schedule 4 of the Bill proposes to amend Paragraphs 102.1A(2)(a) and (b) of the *Criminal Code Act 1995*, which provide that the Committee may review a regulation specifying an organisation as a terrorist organisation and report its comments and recommendations to each House of the Parliament.

The provision to amend Paragraph 102.1A(2)(b) would have the effect of allowing the Committee to report its comments and recommendations to the Minister responsible for the Australian Federal Police instead of, or in addition to, each House of the Parliament.

In examining this provision, the Committee may wish to consider the following points.

As a general principle, parliamentary committees report their conclusions and recommendations to the Parliament. This reflects the fact that, in respect of their formal proceedings, committees are extensions of the Houses themselves. Committees derive their powers and authorisations from the Parliament, including the authority to present reports.

The importance of committees reporting to the Parliament is clear when considering that the principal purpose of committees is to conduct inquiries on behalf of the Parliament, a function which the whole Houses themselves are not well suited to perform, and which enables the Parliament to be better informed about policy, legislative and financial measures.

There are no current or recent circumstances in which a parliamentary committee has had the discretion to report directly to a Minister without reporting to the Parliament. On rare occasions a committee has been authorised or directed to disclose its report to Ministers

before its presentation to the Parliament. However, on every occasion where this power was exercised, the committee was required to inform the Parliament that it had reported.¹

In respect of the Committee specifically, the functions of the Committee prescribed by section 29 of the *Intelligence Services Act 2001* include 'to report the Committee's comments and recommendations to each House of the Parliament, to the responsible Minister and to the Attorney-General'. The Committee is required to obtain the advice of the responsible Minister or Ministers as to whether the publication of any part of a report would or might disclose certain matters prior to presenting the report to the Parliament.

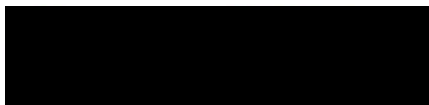
Lastly, we note that the principle that parliamentary committees report to the Parliament does not preclude committees from resolving to disclose certain documents to persons on a confidential basis, or informing persons, including Ministers, of the conclusions and recommendations contained in reports that are presented to the Parliament. Such existing powers would appear to satisfy the purpose of the proposed provision as stated in the Explanatory Memorandum to the Bill:

New paragraph 102.1A(2)(b) would expand the jurisdiction of the PJCIS to allow it to report its comments and recommendations directly to the AFP Minister instead of, or in addition to, each House of Parliament. This would support the ability of the PJCIS to directly refer its findings to the AFP Minister. Such a report is important noting the AFP Minister's obligations... to make a declaration that would cease the effect of the regulations should the Minister cease to be satisfied the relevant legislative threshold continues to be met in relation to the listed organisation.

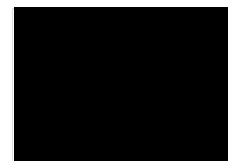
Having regard to these points, should the Committee consider that an arrangement in which it is able to report directly to a Minister is desirable, the Committee may wish to consider the merits of a requirement that the Parliament be notified when a report is presented to the Minister and that the report be presented to the Parliament as soon as practicable thereafter.

Please let me know if we can be of any further assistance.

Yours sincerely



Claressa Surtees
Clerk of the House



Richard Pye
Clerk of the Senate