

Submission to the Parliamentary Joint Committee on Intelligence and Security

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

Dear PJCIS members,

I am thankful for the opportunity to make this submission. I support the purpose of the Bill to address the rising risk of state-sponsored terrorism, and I offer two recommendations: the first is case-agnostic, and the second is about the specific case of the Islamic Revolution's Guard Corps (IRGC).

Recommendations:

- 1- The current amendment Bill grants the Minister for the Foreign Affairs a veto power, such that even if the Minister for the AFP is convinced on reasonable grounds that a foreign entity must be listed, the Minister for the Foreign Affairs can refuse to sign off the listing purely based on discretion. I recommend the Bill not to grant such veto power to the Minister for the Foreign Affairs. If such veto power is needed for check and balance, it could be granted to a higher authority (e.g. National Security Cabinet, or the Prime Minister), and the law should not leave that decision to pure discretion of the vetoing authority.
- 2- With regards to the specific case of the IRGC, I believe the Government must not wait for this Bill to proceed. Instead, as the IRGC is NOT an organ — or a fully formed part — of the Islamic Republic of Iran (IRI), but an organ of a non-state that operates under the name “Islamic Revolution”, the Government can and must immediately list the IRGC under the existing version of the Criminal Code. Below I explain why the Islamic Revolution and the IRI are distinct entities, why the IRGC is not an organ of the IRI, and why the IRGC is an organ of the Islamic Revolution (an entity that is not recognised as a state by Australia or any other state). But first a short background:

Background

Relying on a view formed by the Attorney-General's Department based on a DFAT-led advice, the first Albanese Government refused to list the IRGC, under the existing legislation, as a terrorist organisation, arguing:

“As an organ of a nation-state, the IRGC is not the kind of entity that is covered by the terrorist organisation provisions in the Criminal Code.”

Through multiple FOI applications to various government agencies, and numerous parliamentary discussions including Senate Estimates, it has become clear that the Attorney-General's Department's flawed determination of the IRGC as an “organ” or “fully-formed part” of the Islamic Republic of Iran (IRI) was based on an “IRGC Background/Brief” document provided by DFAT on 12 December 2022 (see FOI [LEX11493](#)). In that document, DFAT reported that the IRGC's “primary objective is to defend Iran's Islamic Republic system.”

Perhaps unsurprisingly, the Attorney-General's Department inferred that an organisation whose “primary objective” is to defend the IRI must be an organ of the IRI.

However, according to Article 143 of the IRI Constitution, guarding the Islamic Republic system is the primary objective of the Army of the IRI—not the IRGC. The IRGC's own charter clearly defines its primary objective as “guarding the Islamic Revolution and its achievements.”

Why the Islamic Revolution is an entity distinct from the IRI:

The Islamic Revolution is a non-state entity, distinct from the Islamic Republic of Iran. This distinction is not abstract—it is legal and operational:

- Each entity needs its own military force: the Army of the IRI defends the IRI, while the Islamic Revolution's Guard Corps (IRGC) guards the Islamic Revolution. Were these two entities not distinct, they would not need two distinct and parallel force.
- The Constitution of the IRI mandates that its President, personnel of the Army, police, and security services must be Iranian nationals. No such requirement exists for the Leader of the Islamic Revolution or the personnel of the IRGC.
- Both Ali Khamenei—who consistently refers to himself as the *Leader of the Islamic Revolution*—and senior IRGC commanders have repeatedly stated that the Islamic Revolution [unlike the IRI] is not confined to Iran's borders.

Why the IRGC is not an Organ of the IRI:

As discussed in a previous [submission](#) to the committee for the review of the listing of Ansarallah:

“A study¹ of over 50 Australian case laws has shown that to be a ‘state’, ‘state entity’, ‘government entity’ or an ‘emanation of state’, following principle conditions have to be satisfied²:

- The entity must be in full control and ownership of the state.
- Membership of the entity must be limited to citizens of the state.
- The entity must be obliged to solely pursue the interests of the state.

”

As DFAT experts agree, not even the President of the IRI is in control of the IRGC. In fact, it is the IRGC that can and does exercise control the IRI and its officials (See the IRGC [letter](#) to the President of the IRI for an example).

Membership of the IRGC is not limited to citizens of Iran. There have been notable non-Iranians in the IRGC. (See those enlisted [here](#) for an example: Wassim Saeed Jaba'I, Qassem Saleh al-Hussaini, Mohammad Shaib, Hussein Mohammad Ali kabir, Zidan Ali Tuwail, and a long list of non-Iranians who have been members of the IRGC). Note that this is in line with the article 34 of the IRGC charter that lists the requirements of members without putting any limit on their nationality.

The IRGC is not at all obliged to solely pursue the interests of the IRI. In fact, according to the IRI officials, including but not limited to Hassan Rouhani, Mahmoud Ahmadinejad, Javad Zarif, the IRGC has repeatedly sacrificed the interests of the IRI. This is because the IRGC is tasked with “expanding” the rule of Sharia (See the IRGC charter, article 2).

It is important to note that the IRGC was established before the IRI and the IRI provides only a portion of the IRGC budget. While this can make the IRI “a state” that sponsors terrorism, it is not enough to make the IRGC “a part” of the IRI.

Why the IRGC is an organ of the Islamic Revolution (a non-state):

The IRGC is in full control of the Leader of the Islamic Revolution and is obliged to solely pursue the interests of Islamic Revolution. Notice that the primary objective of the IRGC, as

¹ See [Commissioner's Interpretation Statement: Meaning of 'Government Entity' | ACNC](#). Many of the legal arguments and conclusions of this elaborate interpretation statement can be readily adjusted to allow assessment of entities in other contexts, including foreign entities.

² SGH Ltd v Federal Commissioner of Taxation [2002] HCA 18; 210 CLR 51 [22].

outlined in the article 2 of its charter, is to guard the Islamic Revolution. Unlike the Army of the IRI, whose primary objective, according to article 143 of the IRI's Constitution, is to guard the country's "Islamic Republic system."

The reason that neither the Leader of the Islamic Revolution nor the members of the IRGC have to satisfy a nationality requirement is that the Islamic Revolution sees itself an organisation whose vision is to form a global Islamic State.

The IRGC is not an organ of the IRI, but rather of a transnational, non-state organisation that calls itself the Islamic Revolution. As such, it falls squarely within the type of entity the *Criminal Code* is intended to capture—without requiring legislative amendment.

Considering the risks of the IRGC to Australia's national security, and the fact that it is not an organ of a recognised state, I strongly recommend that the government must immediately list the IRGC under the existing legislation.

I thank the committee for its service to Australia's national security.

Sincerely yours,
Arash Behgoo

24 October 2025