



ICRC



Submission to the Parliamentary Joint Committee on Intelligence and Security regarding the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025

October 2025



ICRC

About us

The International Red Cross and Red Crescent Movement (**Movement**) is a worldwide humanitarian network which is guided at all times and in all places by seven [Fundamental Principles](#): Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality. These principles sum up our ethics and the way we work, and they are at the core of our mission to prevent and alleviate suffering.

The Movement has three components: the International Committee of the Red Cross (**ICRC**); the International Federation of Red Cross and Red Crescent Societies (**IFRC**); and 191 National Red Cross or Red Crescent Societies (including Australian Red Cross). Our work is based on the Geneva Conventions of 1949, their Additional Protocols of 1977, the [Statutes of the Movement](#) and the resolutions of the International Conferences of the Red Cross and Red Crescent.

The ICRC's exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC endeavours to prevent suffering by promoting and strengthening international humanitarian law (**IHL**) and universal humanitarian principles.

Established in 1914 and by Royal Charter in 1941, Australian Red Cross is auxiliary to the public authorities in the humanitarian field. Australian Red Cross has a unique humanitarian mandate to respond to disasters and emergencies. This partnership means governments can benefit from a trusted, credible, independent and non-political partner with local to global networks, who will work to implement humanitarian goals in a way that maintains the trust of government and Australian society.

Purpose

The Parliamentary Joint Committee on Intelligence and Security (**PJCIS**) has commenced a review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025 (the Bill) and invited written submissions to the inquiry.

Australian Red Cross and the ICRC welcome the opportunity to provide input to this review. We have focused our response on areas where we have extensive expertise and that align with our unique humanitarian mandate.

Summary of recommendations

With a view to ensuring impartial humanitarian organisations can undertake their humanitarian activities and preserving the integrity and purpose of IHL while not impeding counterterrorism objectives, we encourage the inclusion of a well-framed and standing humanitarian exemption in the Criminal Code and a clear IHL exclusion clause.

A humanitarian exemption aims at excluding from the scope of counterterrorism legislation exclusively humanitarian activities carried out by impartial humanitarian organisations. IHL exclusion clauses are designed to carve out from the scope of application of domestic laws and regulations certain actions in armed conflict that are governed by IHL and not prohibited by it, and to clarify that such instruments shall in no way be interpreted as derogating from IHL. Such clauses do not impact the discretion of authorities to prosecute acts committed in armed conflict that violate both the counterterrorism legal framework and IHL, as well as offences not regulated by any IHL provisions.

Recommendation 1

A well-framed and standing humanitarian exemption be included for each offence in Part 5.3 and Part 5.3A of the Criminal Code, to exclude from the scope of the legislation exclusively humanitarian activities carried out by impartial humanitarian organisations.

Recommendation 2

Amend sub-section 112.8(e) of the Bill so that the defence covers a person performing an official duty or function for “a component of the International Red Cross and Red Crescent Movement”, which would include Australian Red Cross in the defence.

Recommendation 3

An IHL exclusion clause be included in Part 5.3 and Part 5.3A of the Criminal Code, excepting those activities conducted in armed conflict by the parties thereto and persons acting on their behalf, which are regulated and not prohibited by IHL.

Recommendations

1. Humanitarian exemption: impartial humanitarian organisations

- 1.1 The proposed exemption recognises the right, under IHL, of impartial humanitarian organisations to offer their services to carry out humanitarian activities and reflects Australia’s obligation to allow and facilitate such activities and to respect and protect humanitarian personnel. It avoids the creation of a contradiction between the Criminal Code and Australia’s IHL obligations, ensuring that impartial humanitarian organisations can conduct ‘exclusively humanitarian’ activities without those activities being criminalised as terrorist acts or offences.
- 1.2 Humanitarian activities should be understood to mean assistance activities aimed at preserving life and security or seeking to restore or maintain the mental and physical wellbeing of victims of armed conflict and other crises. It would also include protection activities aimed at seeking to ensure that the authorities and other relevant actors fulfil their obligations to uphold the rights of individuals, and it would include the provision of IHL training.
- 1.3 The Movement’s Fundamental Principles, and our exclusively humanitarian mission under IHL, require that we seek to engage with all parties (*de jure* or *de facto*) with relevant obligations. It is essential for the ICRC and the Movement to engage with armed groups of humanitarian concern. Humanitarian engagement and subsequent coordination/cooperation with State and/or non-State armed groups party to an armed conflict, is a task foreseen and expected of the Movement, and other impartial humanitarian organisations, under the Geneva Conventions of 1949. The Conventions allow the Movement and other impartial humanitarian organisations to offer their services to the parties to armed conflict. Such engagement does not affect the legal status or confer legitimacy on any armed group.
- 1.4 Humanitarian exemptions are in line with the letter and spirit of IHL and allow States to harmonise their policies and legal obligations across the humanitarian and counterterrorism realms and rapidly scale up humanitarian activities when needed. The inclusion of a humanitarian exemption in Parts 5.3 and 5.3A would be consistent with the general legislative intent that the operation of the provisions does not prevent humanitarian activities. Introducing a humanitarian exemption would also be consistent with IHL, UN Security Council resolutions aimed at fighting terrorism (notably UNSCR 2462 which requires States to ensure that counterterrorism measures comply with international law, including IHL), Australia’s UN-mandated sanctions regime, and paragraphs 21.2.c and 21.2.d of the recently adopted [Declaration for the Protection of Humanitarian Personnel](#), developed under Australia’s leadership.
- 1.5 We note that there is a specific humanitarian exemption outlined in relation to the offence of ‘associating with a state sponsor of terrorism’ at section 112.7 of the Bill. The exemption outlines that the offence does not apply where ‘the association is only for the purpose of providing aid of a humanitarian nature’. We recommend that the humanitarian exemption is broadened to “aid or assistance of a humanitarian nature”,¹ which would more clearly encompass legitimate humanitarian activities such as IHL training. We also recommend acknowledging in the Explanatory Memorandum

¹ Section 80.1AA of the Criminal Code Act 1995 (Cth)

that the term “aid of a humanitarian nature” encompasses humanitarian activities beyond the distribution of aid and includes, for example, “providing advice or training about international humanitarian law”.² We strongly encourage the application of this humanitarian exemption to each offence in Parts 5.3 and 5.3A.

- 1.6 We note that there is a general defence for Division 112 and 113 offences which is applicable to persons performing official duties for the UN, agencies of the UN, or the International Committee of the Red Cross. This defence is drafted narrowly and does not extend to IFRC, Australian Red Cross Society or other National Societies in the Red Cross and Red Crescent Movement, which impacts the ability of the Movement to provide humanitarian support to international crises. The defence also does not extend to the broader humanitarian sector.
- 1.7 We recommend the inclusion of a humanitarian exemption rather than a defence, to make it clear that humanitarian activities performed by impartial humanitarian organisations are not regarded as a counterterrorism offence under the Act.
- 1.8 Australia can look to other Commonwealth Countries, notably Canada, for examples of humanitarian exemptions from the application of domestic counterterrorism legislation.³
- 1.9 We recognise that counterterrorism measures are legitimate legal and policy tools to increase global security and mitigate the threat of acts of terrorism which are prohibited under IHL. However, the absence of an explicit, standing humanitarian exemption across all terrorism offences in Part 5.3 and the proposed Part 5.3A of the Criminal Code creates unintended consequences for neutral and impartial humanitarian organisations like Australian Red Cross and the ICRC:
 - 1.9.1 Discourages humanitarians from deploying to certain areas, due to facing a personal risk of criminal prosecution for undertaking humanitarian activities, including those activities outlined in IHL. For example, an Australian logistician recently decided not to deploy with the ICRC to provide humanitarian logistics assistance in Gaza after weighing up the personal risk regarding the possible application of the counterterrorism offences in the Criminal Code.
 - 1.9.2 Inadvertently impacting our provision of funds and delegates to support the exclusively humanitarian mandate of the Movement, despite the impartial, neutral and independent nature of our work and our role under the Geneva Conventions to respond in times of armed conflict.
 - 1.9.3 Creates delays and obstacles to urgent humanitarian activities. For example, humanitarian organisations may be unable to swiftly respond to a new crisis because of the need to seek legal advice regarding counterterrorism offences that capture the provision of ‘support’ or ‘resources’ or ‘assistance’ to, or ‘association’ with, persons or entities involved in state-sponsored terrorism. Humanitarian organisations may also need to take extensive de-risking measures to meet the expectations of donors and partners.
 - 1.9.4 Diverts humanitarian assistance away from areas that have significant humanitarian needs, undermining our ability to operate on the basis of impartiality. For example, humanitarian organisations (or major donors to those organisations) may choose to earmark funds away from certain contexts if there are concerns about the application of counterterrorism offences.
 - 1.9.5 Discourages humanitarian organisations from providing IHL training to military and non-State armed groups.

² Supplementary Explanatory Memorandum to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, para. 154

³ The Canadian Criminal Code at section 83.03 (dealing with terrorism financing) provides that the offences “do not apply to a person who carries out any of the acts referred to in those subsections for the sole purpose of carrying out humanitarian assistance activities conducted under the auspices of impartial humanitarian organisations in accordance with international law while using reasonable efforts to minimize any benefit to terrorist groups”.

- 1.10 For further detail on our recommendation for a consistent and well-framed humanitarian exemption across sanctions and counter-terrorism frameworks, we refer the PJCIS to our recent submission to [the Independent National Security Legislation Monitor made in October 2025](#), along with our earlier submissions on these matters.⁴

Recommendation 1

A well-framed and standing humanitarian exemption be included for each offence in Part 5.3 and Part 5.3A of the Criminal Code, to exclude from the scope of the legislation exclusively humanitarian activities carried out by impartial humanitarian organisations.

Recommendation 2

Amend sub-section 112.8(e) of the Bill so that the defence covers a person performing an official duty or function for “a component of the International Red Cross and Red Crescent Movement”, which would include Australian Red Cross in the defence.

2. IHL exclusion clause: belligerents that comply with IHL

- 2.1 The proposed IHL exclusion clause ensures that actions by belligerents that comply with IHL, whether State or non-State parties to the armed conflict including non-State organised armed groups designated as terrorist groups, are not labelled or criminalised as terrorist acts or offences. When IHL applies (i.e. when acts of terrorism occur during and in connection with an international or non-international armed conflict), criminalising conduct that is lawful under IHL would create a contradiction between the Criminal Code and Australia’s IHL obligations. Moreover, punishing lawful acts under IHL as terrorism risks discouraging non-State armed groups and their members from respecting IHL, and would also conflict with Australia’s obligations under article 6(5) of Additional Protocol II to the Geneva Conventions.
- 2.2 The clause aims to preserve the integrity of IHL and its delicate balance between humanitarian imperatives and military necessity, particularly when acts of terrorism occur in the context of armed conflict. It would in no way prevent Australia from prosecuting individuals who commit violations of IHL or acts not governed by IHL but classified as terrorist offences under domestic law. The applicability of IHL does not confer any legitimacy on armed groups.
- 2.3 The inclusion of an IHL exclusion clause has been the subject of previous recommendations including to the 2012 Independent National Security Legislation Monitor Review. That review recommended in Recommendation VI.3 that ‘[a]cts committed during an armed conflict governed by international law should be excluded from the definition of terrorist act’ in the Code. Additionally, it was a recommendation made to the 2013 Council of Australian Governments Review.
- 2.4 We note the proposed exclusion from the definition of a terrorist act in sub-section 110.1(3)(b) of conduct that takes place in the context of, and is associated with, an international armed conflict. We recommend the inclusion of an IHL exclusion clause which includes both international and non-international armed conflict.

⁴ Senate Standing Committee on Foreign Affairs, Defence and Trade [Inquiry into the review of the operation of the amendments made by the Autonomous Sanctions Amendment \(Magnitsky-style and Other Thematic Sanctions\) Act 2021](#) (2025); Senate Standing Committee on Foreign Affairs, Defence and Trade [Inquiry into Australia’s Sanctions Regime](#) (2024); DFAT [Review of Australia’s legal framework for autonomous sanctions](#) (2023); Senate Standing Committee on Foreign Affairs Defence and Trade [Inquiry into Defence Trade Controls Amendment Bill 2023](#); and Parliamentary Joint Committee on Intelligence and Security [Review of the Defence Amendment \(Safeguarding Australia’s Military Secrets\) Bill 2023](#).

- 2.5 IHL exclusion clauses have been almost systematically included in international and regional instruments since the 1979 UN Hostages Convention. An IHL exclusion clause is also now included in the legislation of other Commonwealth Countries, notably Canada and New Zealand.
- 2.6 Furthermore, Australia's ratification of the 1997 UN International Convention for the Suppression of Terrorist Bombings – which includes an IHL exclusion clause in Article 19(2) – could be interpreted as creating a treaty obligation to incorporate such a clause domestically.
- 2.7 To prevent circumvention of the object and purpose of an IHL exclusion clause, it is essential to clarify its key elements and underlying considerations:
- 2.7.1 Legal definitions must be IHL-based: The content of the IHL exclusion clause must be determined exclusively by IHL. The notion of 'armed conflict' must be assessed according to the conditions set out in IHL, as derived from common Articles 2 and 3 of the Geneva Conventions of 1949 (for international and non-international armed conflicts, respectively), as well as customary international law. Similarly, the expression 'armed forces' must be understood in the context of common Article 3 of the Geneva Conventions of 1949, which encompasses not only State armed forces but also non-State parties to an armed conflict.
 - 2.7.2 Scope of activities: The IHL exclusion clause does not need to cover all activities in armed conflict. An IHL exclusion clause that fully excludes all activities carried out in armed conflict is unnecessary and counterproductive from a judicial standpoint, and may lead to interpretation by judges aimed at limiting or nullifying the effects of the clause with a view to ensuring the applicability of counterterrorism laws to certain behaviours in armed conflict. Sole reliance on IHL to regulate terrorist-related conduct in such contexts may leave gaps, which the counterterrorism legal framework can effectively fill by criminalising conduct not covered by war crimes – for instance, preparatory offences such as financing, recruitment, training, membership, or travel. Additionally, the counterterrorism framework may address specialised offences (e.g. civilian aircraft hijacking) or acts committed during an armed conflict that lack a nexus to it.
 - 2.7.3 Focus on actors and activities: In defining which acts in armed conflict should be excluded from the scope of counterterrorism legislation, the proposed IHL exclusion clause should emphasise two key elements: Who: The parties to an armed conflict. This ensures that the clause is interpreted in light of IHL and applies not only to members of State armed forces but also to non-State armed groups that are parties to an armed conflict. What: Activities carried out during armed conflict that are regulated and not prohibited by IHL.
 - 2.7.4 Preserving policy and legislative space: The IHL exclusion clause leaves space for criminalising activities in armed conflict that are not governed by IHL. By specifying which acts should be excluded from the scope of domestic counterterrorism legislation, the proposed IHL exclusion clause reserves the policy and legislative space of States. This is particularly relevant for counterterrorism offences related to preparatory activities, which are not regulated by IHL. These include, for instance, the financing of terrorism, travel to join groups designated as terrorist, training, and recruiting.
 - 2.7.5 Prosecutorial discretion: The IHL exclusion clause enables prosecutorial discretion regarding acts committed in armed conflict that are prohibited under both IHL and the counterterrorism legal framework. By excluding only those activities that are governed by IHL and not prohibited by it, the clause allows State authorities to choose whether to prosecute such acts under counterterrorism laws or IHL, depending on the nature of the violation.

Recommendation 3

An IHL exclusion clause be included in Part 5.3 and Part 5.3A of the Criminal Code, excepting those activities conducted in armed conflict by the parties thereto and persons acting on their behalf, which are regulated and not prohibited by IHL.

Conclusion

The inclusion of a well-framed and standing humanitarian exemption and an IHL exclusion clause in Part 5.3 and Part 5.3A of the Criminal Code would safeguard humanitarian action and preserve the integrity and purpose of IHL while not impeding counterterrorism objectives. It would also clarify that the Criminal Code shall in no way be interpreted as derogating from IHL.

Australian Red Cross and the ICRC respectfully share this submission for the Committee's consideration, and we thank you again for the opportunity to engage on this issue.

References

International Committee of the Red Cross, '[Humanitarian exemptions in domestic counterterrorism legislation](#)' (Guidance Note, 15 July 2025)

Contact Details


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