

C. Letter from the Attorney-General dated 13 October 2016



ATTORNEY-GENERAL

CANBERRA

13 October 2016

Michael Sukkar MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT

Dear Chair

A handwritten signature in blue ink that reads 'Michael'.

I am writing to you regarding the Parliamentary Joint Committee on Intelligence and Security (the Committee) inquiry into the provisions of the *Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016* (the HRTTO Bill).

Previously, I wrote to you regarding the interaction between the regime under the HRTTO Bill and the control order regime in Division 104 of the *Criminal Code Act 1995*. In that letter, I suggested that detailed consideration of how the two regimes might better interact with each other could be deferred for consideration by the reviews of the control order regime by the Independent National Security Legislation Monitor and the Committee on 2017 and 2018 respectively.

There is, however, a pressing matter which you may wish to consider as part of the current inquiry. As you are aware, under the HRTTO Bill, the Court will not be able to make a control order as an alternative to a continuing detention order. This is because the two regimes are distinct with different procedural and threshold requirements. If a Court does not make a continued detention order, the Australian Federal Police (AFP) will need to consider whether to seek a control order. A fundamental practical issue will be the timing of seeking a control order.

The control order regime is premised on an assumption that the persons who may pose a terrorist risk are already in the community. Currently, Division 104 requires the AFP to apply first for an interim control order (so that conditions can be applied to mitigate the risk) before a full hearing to confirm the order (so that the conditions can apply for the full duration of the order). It is unclear whether the legislation would support the AFP applying for a control order while a person is serving a sentence of imprisonment, with the conditions of the control order to apply on release.

I would encourage you to explore these issues with the AFP when they appear before the Committee at the hearing on 14 October 2016, and consider whether appropriate amendments might be pursued to address this issue.

Yours faithfully

(George Brandis)