

Our ref: A2152976

24 March 2021

Senator James Paterson
Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email to: pjcis@aph.gov.au

Dear Senator Paterson

Review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020

Thank you for the opportunity to provide a brief submission to the Committee's review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (the Bill).

The Bill includes provisions that will amend the *Security of Critical Infrastructure Act 2018* (the Act) to allow the Secretary of the Department of Home Affairs (on authorisation of the Minister) to give a direction to an entity to take steps to prevent or mitigate a threat, or restore functionality, in relation to critical infrastructure. Information about the making of such a direction will be included in the expanded definition of 'protected information', specifically subsections (bb) and (bj) – (bl) in s 5 of the Act. It is an offence to disclose protected information under s 45 of the Act.

I am concerned these proposed amendments will have the effect of limiting the ability of an entity that is subject to a direction, or its staff, to make complaints to my Office about the Secretary's use of the direction power or the conduct of the Department of Home Affairs and Australian Signals Directorate staff in giving effect to a direction. This is because information about the making of a direction will be protected information, which is subject to the offence provisions in s 45 of the Act, and the making of a complaint would necessarily be based on the use or disclosure of information about the direction.

Whilst the Bill includes provisions that explicitly permit the Inspector General of Intelligence and Security to disclose protected information to my Office (and vice versa), it does not permit an entity (or its staff) to do so, even for the purposes of making a complaint to my Office.

If an entity that is subject to a direction of the Secretary, or its staff, is unable to make a complaint to this office without breaching the protected information provisions in the Act, this would undermine the capacity of my Office to provide the level of oversight anticipated in the Explanatory Memorandum (the EM) to the Bill. For example, paragraph 1074 of the EM says: "*Importantly, an entity that is subject to a direction, or to whom an intervention request relates, will be permitted to make a complaint to either of these oversight bodies [i.e. the IGIS or Ombudsman], as relevant.*"

Accordingly, the Committee may wish to consider recommending changes to the Bill to ensure that an entity that is subject to a direction of the Secretary, or its staff, can make a complaint to my Office without breaching the protected information provisions in the Act.

I would be happy to appear before the Committee to answer questions or provide additional information if this would assist the review.

Yours sincerely



Michael Manthorpe PSM
Commonwealth Ombudsman

Influencing systemic improvement in public administration