


Our ref: A2232361

 February 2022

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 Protection) Bill 2022

Thank you for the opportunity to provide a brief submission to the Committee's review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022 (the current Bill).

The Department of Home Affairs (the department) consulted my Office prior to the introduction of the current Bill. I would like to record my appreciation of the constructive and collaborative manner in which the department undertook this consultation and received our input.

I am pleased the Bill addresses two of the key issues my Office identified in our submission to, and appearance before, the Committee last year in relation to the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (the 2020 Bill):

- Proposed new section 43AA of the *Security of Critical Infrastructure Act 2018* (the SOCI Act) will permit the Secretary of the department to disclose protected information to an Ombudsman official for the purposes of exercising powers, or performing duties or functions, as an Ombudsman official (see item 65 of Sch 1 to the current Bill).
- Proposed new subsection 46(5) of the SOCI Act will ensure an entity (as defined in the SOCI Act) is able to lodge a complaint with my Office, in that subsection 46(5) will permit an entity to disclose protected information to an Ombudsman official for the purposes of exercising powers, or performing duties or functions, as an Ombudsman official, without committing an offence under section 45 of the SOCI Act (see item 69 of Sch 1 to the current Bill).

There is one further very specific matter I would like to draw to the Committee's attention in relation to the current Bill.

At my Office's appearance before the Committee on 11 June 2021, and in our response to questions taken on notice at that hearing, we asked that section 47 of the SOCI Act be amended to ensure the SOCI Act does not interfere with our power under section 9 of the *Ombudsman Act 1976* (the Ombudsman Act) to require the production of information.

Subsection 47(1) of the SOCI Act provides that a person cannot be required to provide protected information to an authority with the power to request it. The *Security Legislation (Critical Infrastructure) Amendment Act 2021* amended section 47 to carve out an exception for the Inspector-General of Intelligence and Security (the IGIS) (see subsection 47(2)). At the 11 June hearing last year, I requested a similar exception for my Office to ensure we continue to have the ability to require the production of information where necessary to perform our functions.

I note my Office typically does not need to rely on section 9 of the Ombudsman Act to obtain information. Rather, we usually request that persons provide information to the Office voluntarily under section 8 of the Ombudsman Act. The current Bill will accommodate this practice, in that entities (as defined in the SOCI Act) may voluntarily provide information to my Office for the purpose of our functions without committing an offence due to proposed subsection 46(5) of the SOCI Act.

However, to preserve my Office's ability to require the production of information where necessary to perform our functions, and for consistency with the exception carved out for the IGIS by subsection 47(2) of the SOCI Act, I ask the Committee to consider recommending an amendment to provide a similar exception for the Ombudsman.

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

Yours sincerely



Penny McKay
Acting Commonwealth Ombudsman

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