




Senator the Hon Marise Payne
Minister for Foreign Affairs
Minister for Women

Senator the Hon Helen Polley
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
Canberra ACT 2600

Dear Chair 

Thank you for your letter of 26 August 2021, regarding the Charter of the United Nations Amendment Bill 2021 (the Bill).

Australia has an obligation under United Nations Security Council Resolution 1373 (2001) to prevent both assets being made available to terrorists, and the use of, or dealing with, assets owned by terrorists. This obligation is implemented in Australian law by listing persons and entities under section 15 of the *Charter of the United Nations Act 1945* (the Act) as subject to counter-terrorism financial sanctions (counter-terrorism listings).

Historically, counter-terrorism listings have been treated as administrative decisions that were not subject to registration requirements under the *Legislation Act 2003* (the Legislation Act). The Legislation Act requires legislative decisions be registered on the Federal Register of Legislation (FRL) to ensure their enforceability. Although the Department of Foreign Affairs and Trade was aware counter-terrorism listings had some legislative characteristics, it considered such listings were predominantly administrative in character, as, amongst other things, they concerned specific persons or entities listed pursuant to Australia's international obligations.

Australia's sanctions regimes are under constant review to ensure they are fit for purpose and in line with its international sanctions' obligations. Pursuant to this review process, on 26 May 2021, DFAT registered Australia's current counter-terrorism listings as legislative instruments on the FRL to put beyond doubt the enforceability of counter-terrorism listings, noting both their administrative and legislative characteristics. Following registration, the Government took steps to amend the Act to provide that future counter-terrorism listings be made as legislative instruments in order to protect counter-terrorism listings in the event a court were to determine they are legislative rather than administrative decisions. The Bill also includes transitional provisions to preserve the previous operation of the counter-terrorism listing framework.

Counter terrorism listings under section 15 are valid if made in accordance with the requirements of the Act. The Bill does not seek to retrospectively validate counter terrorism listings that were not made validly in accordance with the requirements of the Act at the time.

The Bill does not impose any new or different obligations retrospectively. The retrospectivity only applies in so far as the listings were not registered on the FRL, noting that they have always been publicly available (published in the Commonwealth Gazette and in the Consolidated List available on DFAT's website). It does not alter the sanctions scheme established by the Act or its review processes. The Bill merely establishes a new process by which counter-terrorism listings are made and includes transitional arrangements to put beyond legal doubt any questions of the enforceability of listings previously made by gazette notice for the period that they were not registered on the FRL.

The Bill does not disadvantage persons (past, present, or future) who have been, or who may be, prosecuted under the Act. There are no current or pending prosecutions under the Act. The new section 38A proposed by the Bill will mean that three people who received suspended sentences for providing funds to a listed terrorist entity cannot successfully contest those convictions *solely* on the grounds that the counter-terrorism listing relevant to the conviction was published in the Commonwealth Gazette rather than being registered on the FRL. The Bill will also mean that if authorities were to become aware that a person committed a sanctions offence at a time before the relevant listing was registered on the FRL, they could still be held accountable for their actions.

The Bill protects the integrity of Australia's counter terrorism sanctions regime. It will ensure that persons who fund terrorists continue to be held accountable for offences which are known and accessible. It will also ensure that Australia continues to comply with its international sanctions' obligations, notwithstanding a change in listing procedure.

I trust the information provided will assist you in concluding your consideration of the Bill.

Yours sincerely

MARISE PAYNE

02 SEP 2021