



Joint submission of  
Australian Red Cross, the International Committee of the Red Cross and the  
International Federation of Red Cross and Red Crescent Societies  
to the Parliamentary Joint Committee on Intelligence and Security

*Review of the Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023*

International Red Cross and Red Crescent Movement

The International Red Cross and Red Crescent Movement (the Movement) is a worldwide humanitarian network that is guided in its mission by its [Fundamental Principles](#), including humanity, impartiality, neutrality and independence. The Movement is made up of 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). The work of Australian Red Cross, the ICRC and the IFRC is based on the Geneva Conventions of 1949, their Additional Protocols of 1977, the Movement Statutes and the resolutions of the International Conferences of the Red Cross and Red Crescent.<sup>1</sup>

Australian Red Cross has been a critical part of Australian life since 1914, mandated by the [Royal Charter of 1941](#) as an auxiliary to Australia's public authorities in the humanitarian field, including during emergencies and armed conflict. Its mission is to prevent and alleviate vulnerability, including by championing the importance of international humanitarian law (IHL) in Australia.

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 IHL and universal humanitarian principles.

The IFRC is the global network of the 191 National Societies, which includes Australian Red Cross. The IFRC's mission is to bring relief to all disaster-affected people, including victims of armed conflicts and internal strife, and support its members in carrying out and strengthening their humanitarian work.

Australian Red Cross, the ICRC and the IFRC welcome the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security on its Review of the Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023 (the Bill). This submission and its recommendation are based on our significant global experience in humanitarian action and on the legal frameworks governing our humanitarian activities, in particular IHL.

## Introduction

We understand that proposed sections 115A and 115B of the Bill (Proposed Offences) would create offences under Australia's *Defence Act 1903* that would apply to:

- certain former Australian defence staff members, referred to as "foreign work restricted individuals", if they perform work for, or on behalf of, militaries or government bodies of relevant foreign countries; and

<sup>1</sup> Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25<sup>th</sup> International Conference of the Red Cross at Geneva in 1986 and amended by the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent at Geneva in December 1995 and by the 29<sup>th</sup> International Conference of the Red Cross and Red Crescent at Geneva in June 2006 (Statutes of the Movement).

- any other Australian citizens or permanent residents, if they provide training to militaries or government bodies of relevant foreign countries relating to either: goods, software or technology within the scope of Part 1 of the Defence and Strategic Goods List; or military tactics, military techniques or military procedures.

As we understand it, the Bill is not intended to regulate impartial humanitarian activities, including the work of the Movement.<sup>2</sup> This is reflected by proposed sub-sections 115A(6) and 115B(6), which exclude from the scope of the Proposed Offences activities for the purpose of providing “aid of a humanitarian nature” and/or the performance of official duties for the United Nations, its agencies, or the ICRC. We understand that the exceptions are intended to cover *all* humanitarian activities. This includes IHL training and other forms of humanitarian action, in addition to the direct provision of aid.

Australian Red Cross, the ICRC and the IFRC all, from time to time, employ Australians, including former “defence staff members”, in various roles to fulfil their humanitarian mandate. As such, the Movement has an interest in the scope of the Proposed Offences, including the humanitarian exceptions.

### Summary of recommendations

Our view is that these humanitarian exceptions could be explicitly strengthened by:

1. Amending sub-sections 115A(6)(a) and 115B(6)(a) of the Bill to clarify that the conduct of all humanitarian activities is excluded from the Proposed Offences.
2. Amending sub-sections 115A(6)(b)(ii) and 115B(6)(b)(ii) of the Bill to clarify that performing an official duty for “a component of the International Red Cross and Red Crescent Movement” is excluded from the operation of the Proposed Offences.

### Recommendation 1: Amend sub-sections 115A(6)(a) and 115B(6)(a) of the Bill to clarify that the conduct of all humanitarian activities is excluded from the Proposed Offences

The components of the Movement, in alignment with international legal frameworks and their Fundamental Principles, engage in a range of humanitarian activities, including but not limited to:

- IHL training for military and non-state armed groups.<sup>3</sup>
- Disseminating and assisting governments in disseminating IHL.
- Dialogue with authorities on the implementation of IHL in national law, policy and practice.
- Dialogue with authorities, including regular armed forces, police and irregular armed forces, on the humanitarian situation and security and access for humanitarian operations.
- Humanitarian activities involving fieldwork in militarised zones, such as responding to unexploded ordnance.
- Monitoring and improving the condition and treatment of detainees.
- Working with states to draft and consult on the development of laws, policies and plans such as disaster laws, disaster risk reduction strategies and national adaptation plans.
- Working with states to agree on Early Action Protocols that are needed to agree triggers and processes for anticipatory action to support communities (often to evacuate or protect homes and livelihoods) in advance of forecasted extreme weather events.

<sup>2</sup> See Explanatory memorandum to the Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023 (Bill EM), paras 41 and 44, which reflect a policy intent to prevent individuals from performing work or providing training “that would directly or indirectly support foreign militaries and the transfer of defence secrets, information and knowledge relating to defence capability, platforms, materiel, tactics, techniques, procedures, personnel or operations personnel or operations.”

<sup>3</sup> Our view is that the provision of IHL training does not constitute prohibited “training” as defined under proposed section 113 of the Bill, which is intended to cover training that would “directly or indirectly support foreign militaries and the transfer of defence secrets, information and knowledge relating to defence capability, platforms, materiel, tactics, techniques, procedures, personnel or operation.” IHL training involves education around limits on the use of means and methods of warfare, including discussions around disarmament and does not in any way support transfer of any defence information.

- First-aid and medical training.
- Delivery and distribution of humanitarian aid including food and other essential items.
- Provision of medical and health care, including medical assistance to the wounded and sick, distribution of medical supplies and support to health facilities such as hospitals, medical transport, physical rehabilitation centres and limb fitting services.
- Facilitating access to essential services and infrastructure, including access to clean water and temporary shelter.
- Tracing services to reconnect separated families.<sup>4</sup>

We are of the view that the scope of the exceptions at proposed sub-sections 115A(6)(a) and 115B(6)(a) should be clarified in the Bill to acknowledge that all humanitarian activities (including but not limited to the activities listed above) are excluded from the operation of the Proposed Offences. In the alternative, and at a minimum, this should be clarified in the associated Explanatory Memorandum.

In recent legislative reforms, the Government has clarified the scope of humanitarian exceptions to comparable national security-based offences by:

- using broader terms, such as “aid or assistance of a humanitarian nature”<sup>5</sup> as an exclusion to an offence, which is understood to “include activities that are humanitarian in character”;<sup>6</sup> or
- acknowledging in explanatory material 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.”<sup>7</sup>

### Recommendation 2: Amend sub-sections 115A(6)(b)(ii) and 115B(6)(b)(ii) of the Bill to clarify that performing an official duty for “a component of the International Red Cross and Red Crescent Movement” is excluded from the operation of the Proposed Offences

As currently drafted, the exceptions at proposed sub-sections 115A(6)(b) and 115B(6)(b) cover the official duties of the ICRC and the United Nations and its agencies. We welcome the exception for individuals performing official duties for the ICRC in view of its mandate in relation to armed conflict and other situations of violence. Australians who work for other components of the Movement, notably the IFRC or Australian Red Cross, as well as other National Societies, should also be expressly excluded from the Proposed Offences.

Delegates with military experience, who may qualify as “foreign work restricted individuals,” bring unique competencies that can be an asset in humanitarian responses. For example, approximately three per cent of Australian Red Cross’ delegate register has some military background. There is a risk that the Proposed Offences would lead to a reluctance to engage former defence staff members as delegates due to compliance risk, as well as a reluctance from former defence staff members to join as delegates, resulting in a lost opportunity to leverage their skills to support humanitarian action.

National Societies increasingly find themselves responding to emergency situations in their own countries which could include armed conflicts and other situations of violence. As these situations might call for international support in the form of specific technical expertise, humanitarian responses will often include IFRC delegates as well as delegates from sister National Societies. Recent examples of contexts that have required coordinated Movement responses include Libya, Pakistan, Sudan, Ukraine and Israel and the Occupied Palestinian Territories. Increasingly, Movement personnel are involved in war games and civil-military training and exercises not only in relation to armed conflict but disaster preparedness and response.

<sup>4</sup> In addition to the above, the ICRC also relevantly provides training in relation to Humanitarian Mine Action activities and to Chemical, Biological, Radiological and Nuclear (CBRN) related activities. These activities are undertaken in accordance with the ICRC’s mandate and expertise.

<sup>5</sup> Section 80.1AA of the *Criminal Code Act 1995* (Cth).

<sup>6</sup> [Revised Explanatory Memorandum](#) to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, para. 59-60.

<sup>7</sup> [Supplementary Explanatory Memorandum](#) to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, para. 154.

See also Parliamentary Joint Committee on Intelligence and Security, [Advisory Report on the National Security Legislation Amendment \(Espionage and Foreign Interference\) Bill 2017](#), June 2018, pp. 315-16; Parliamentary Joint Committee on Intelligence and Security, [Review of the ‘declared area’ provisions: Sections 119.2 and 119.3 of the Criminal Code](#), February 2018, p. 38.

In these scenarios, Movement delegates would be engaging in humanitarian activities and would need to benefit from an exception in the legislation so that there is no doubt that these humanitarian activities by all Movement delegates are excluded from the Proposed Offences.

In recent legislative reforms, the Government has acknowledged that “it is appropriate that individuals undertaking official duties for the [International Red Cross and Red Crescent Movement] have confidence that, in fulfilling their official mandate, they are not contravening the [offence]”.<sup>8</sup>

## Other considerations

We note that similar issues regarding humanitarian exceptions arise with respect to Australia's counter-terrorism offences, related citizenship loss laws and sanctions. For example:

- Offences under sections 83.3, 102.8, 119.2, 119.4 and 119.5 of the Criminal Code all refer to, “providing aid of a humanitarian nature”<sup>9</sup> and could benefit from amendment, or at a minimum, umbrella guidance clarifying that the scope of such exceptions include all humanitarian activities.
- Counter-terrorism offences under sections 102.2-102.7 of the Criminal Code have no humanitarian exceptions and may benefit from the inclusion of such provisions, particularly to ensure that these provisions do not have an unintended chilling effect on the exclusively humanitarian activities of impartial humanitarian organisations.
- The Government is in the process of considering potential humanitarian exceptions in Australia’s autonomous sanctions laws.

Providing well-framed and consistent humanitarian exceptions across all regulatory frameworks would promote greater clarity and cohesion, to the benefit of humanitarian organisations and government alike.

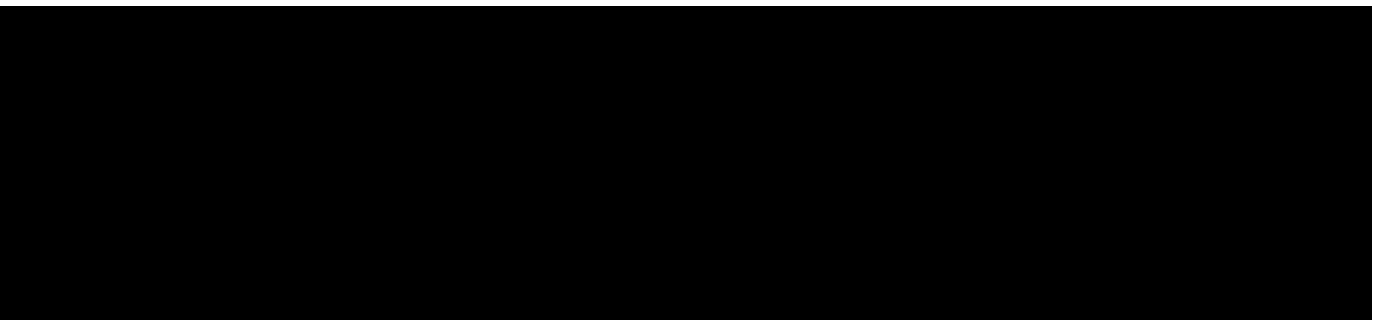
## Conclusion

Australian Red Cross, the ICRC and the IFRC are grateful for the opportunity to make a submission to the review of the Bill. The Bill and its Explanatory Memorandum reflect an intention that the proposed amendments to the *Defence Act 1903* should not hinder impartial humanitarian activities. The above recommendations are respectfully submitted in support of achieving that outcome.

We take the opportunity to convey the Movement’s appreciation for Australia’s support and engagement on matters related to the humanitarian consequences of armed conflict, other emergencies and protracted crises, and the protection and assistance of people affected by them.

16 November 2023

## Contacts



<sup>8</sup> See paragraph 411 of the [Revised Explanatory Memorandum](#) to the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017.

<sup>9</sup> Of these provisions, there are express exceptions for the ICRC in sections 83.3 and 119.2 of the Criminal Code.