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The Hon Peter Khalil MP
Committee Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

By email: pjcis@aph.gov.au

Dear Mr Khalil

Review of the Counter-Terrorism and Other Legislation Amendment Bill 2023

Thank you for the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security's (the PJCIS) review of the Counter-Terrorism and Other Legislation Amendment Bill 2023 (the Bill). The Office of the Commonwealth Ombudsman (the OCO) supports the Bill on the basis that the amendments do not alter a person's existing ability to make a complaint or the functions of the OCO.

The purpose of the OCO is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly; and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independently and impartially reviewing complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive
- assisting people to resolve complaints about government administrative action; and
- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

The Bill would make two amendments to Division 3A the *Crimes Act 1914* (Crimes Act) which concern the Commonwealth Ombudsman. The two amendments would implement recommendation 1 of the PJCIS report on the *Review of police powers in relation to terrorism, the control order regime, the preventative detention order regime and the continuing detention order regime*.

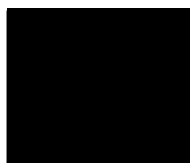
Specifically, the Bill would amend s3UD of the Crimes Act to require police officers who stop and detain a person to search a person for a terrorism related item under s 3UD(1)(b), to inform the person of their right to complain to the OCO about the conduct of the police officer in exercising

these powers. The OCO's complaints jurisdiction over police officers is limited to those employed by the Australian Federal Police (AFP) and does not extend to state or territory police officers.

Currently, anyone subject to a search under s3UD(1) has a right to complain to the OCO. However, the OCO's standard practice is to first refer complainants to the agency responsible for the administrative action for its consideration and possible investigation. In the case of a complaint about the use of s3UD(1) powers, the OCO would usually ask the person to first make a complaint to the AFP's Professional Standards team, unless in the particular circumstances it would be unreasonable to ask the person to do so. The amendment would not affect this existing practice.

The Bill would also amend s3UJ of the Crimes Act by adding a requirement that the AFP Commissioner notify the Ombudsman, the Independent National Security Legislation Monitor and the PJCIS that a Commonwealth place has been declared by the Minister as a prescribed security zone under s 3UJ. The Bill does not impose any further responsibilities on the Ombudsman after it receives this notification. The Ombudsman is not authorised to investigate the actions of Ministers (section 5(2)(a) of the *Ombudsman Act 1976*); this would include a declaration of a prescribed security zone under s3UJ of the Crimes Act. Accordingly, the notification would be provided to the OCO as context ahead of any potential complaints about the conduct of the police officer in exercising the s3UD(1)(b) powers.

Yours sincerely



Iain Anderson
Commonwealth Ombudsman

Influencing systemic improvement in public administration