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30 September 2018

Ann Palmer
Senate Finance and Public Administration Legislation Committee
By email: fpa.sen@aph.gov.au

Dear Secretariat,

Intelligence Services Amendment (Enhanced Parliamentary Oversight of Intelligence Agencies) Bill 2018 (Cth)

Thank you for the opportunity to provide a submission on the Intelligence Services Amendment (Enhanced Parliamentary Oversight of Intelligence Agencies) Bill 2018 (Cth) (**'the Bill'**), which seeks to amend the *Intelligence Services Amendment Act 2001* (Cth) (**'the Act'**).

Liberty Victoria is committed to the defence and advancement of human rights and civil liberties. We are a frequent contributor to federal and state committees of inquiry, and we campaign extensively for better protection of human rights in the community. More information on our organisation and activities can be found at: <https://libertyvictoria.org.au/>.

Liberty Victoria is essentially supportive of the reforms contained in the Bill. We note that there has been a significant expansion in the powers and activities of Australia's national security and intelligence organisations over the past two decades, without a corresponding increase in review or scrutiny of such bodies. Accordingly, Liberty Victoria supports the expansion of the functions of the Parliamentary Joint Committee on Intelligence and Security (**'PJCIS'**) to include scrutiny of the activities of Australia's national security and intelligence agencies.

However, Liberty Victoria considers that there are two components of the proposed amendments that should be reconsidered to strengthen these important reforms.

1. Decisions of the relevant Minister to prohibit investigations should be open to scrutiny in Court

Under the reforms proposed in the Bill, s 29A will give the relevant Minister the power to issue a certificate to prohibit investigation by the PJCIS in certain circumstances. This includes situations where there is an ongoing operation, or where a review would prejudice Australia's national security or international relations. Importantly, pursuant to s 29A(5), such a decision will not be able to be questioned in a court or tribunal.

First, Liberty Victoria considers that s 29A(5) is unnecessarily and unjustifiably contrary to the rule of law. The rule of law requires that all people are subject to the law; that is, decisions of government must be open to adjudication in courts that are independent from the executive arm of government. By exempting decisions of the Minister under s 29A from review, the reforms do not provide any adequate check on the exercise of executive power.

Secondly, the insertion of s 29A(5) gives the criteria set out in s 29A less utility; while s 29A sets out strict and limited criteria under which a certificate may be granted, s 29A(5) explicitly prohibits the use of a mechanism that would allow scrutiny if the Minister failed to make a decision according to that criterion.

To be consistent with the rule of law, and vital democratic principles more broadly, Liberty Victoria considers that s 29A(5) should be removed.

2. Matters should not be exempted from scrutiny if a foreign government does not consent to the disclosure of information, as contained in the proposed new s 29(3) of the Act.

It is unclear how many, if any, foreign governments will consent to the disclosure of information that has been provided in the context of intelligence and national security. As such, this provision may have the capacity to significantly undermine the capacity of the PJCIS to review the work of agencies, and it is an unnecessarily wide exemption.

Relevantly, one of the purported aims of the Bill is to address a historical reluctance by past governments and intelligence agency officials to trust Members of Parliament outside the executive with sensitive intelligence information. To ensure the utility of the Bill, and in light of the exemptions available under s 29A, the exemption in s 29(3) should be removed.

Conclusion

Finally, we note concerns that have been raised, including by The Hon Margaret Stone, Inspector-General of Intelligence and Security in her submission dated 27 September 2018, regarding the potential compulsion to reveal operationally sensitive information under the mandatory review function outlined in the Bill. While we do not take a view on that matter in a broad sense, we are concerned about the potential compulsory disclosure of information

that might adversely impact on individuals, including operatives, targets and informants. Where there is increased access to information relating to individuals, care should be taken to protect their privacy and safety as individuals, and to ensure that access to and dissemination of such information is limited.

If you have any questions, please do not hesitate to contact Liberty Victoria President Jessie Taylor or the Liberty office on 9670 6422 or via info@libertyvictoria.org.au.

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