

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Hearing date: 29 July 2024

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Andrew Wallace asked the following question:

Mr WALLACE: So a statutory definition of a terrorist organisation requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act. Here's an organisation that back in 2003 had this slogan that it used as its catchcry, 'God is great, death to America, death to Israel, a curse upon the Jews, victory to Islam.' Why wouldn't that have met the definition of a terrorist organisation back in 2003?

Ms Davidson: I think there have been some amendments to those provisions since 2003. I believe it was in 2023 that there were amendments made to that advocating provision, so it wasn't necessarily a case that that was the law as applied in 2003.

Mr WALLACE: So is it your evidence that prior to 2003 Ansar Allah did not meet the definition of a terrorist organisation?

Ms Davidson: I couldn't comment on that. I'm merely saying we can't necessarily apply today's legislation to work out what the case might have been back in 2003, because there have been some changes to that legislation.

Mr WALLACE: What was the legislation back in 2003 then? What was the definition of a terrorist organisation back then?

Ms Davidson: I'd have to take that on notice.

Mr WALLACE: I'm happy for you to do so. And, when you do that, can you provide some information to the committee as to whether it's the Attorney-General's Department's view that the threshold wasn't met back then. I appreciate this is a slogan, but I would have thought that that would have, or at least should have, started ringing alarm bells back then. It's a pretty significant slogan, I would have thought: 'Death to our closest political and defence ally, death to America, death to Israel'—another ally—a curse upon the Jews, victory to Islam.' I would have thought that that would have started to ring alarm bells, but I'll move on.

The response to the question is as follows:

As at [31 December 2003](#), s 102.1(1) of the *Criminal Code Act 1995* (Criminal Code) defined a terrorist organisation as:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs); or*
- (b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)); or*

- (c) a Hizballah organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (9)); or*
- (d) a Hamas organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10A)); or*
- (e) a Lashkar-e-Tayyiba organisation, if that organisation is specified by the regulations for the purposes of this paragraph (see subsections (7), (8) and (10C)).*

As at [31 December 2003](#), s 102.1(2) of the Criminal Code also required that:

*Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, the Minister must be satisfied on reasonable grounds that:*

- (a) the Security Council of the United Nations has made a decision relating wholly or partly to terrorism; and*
- (b) the organisation is identified in the decision, or using a mechanism established under the decision, as an organisation to which the decision relates; and*
- (c) the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).*

The department is not in a position to provide an opinion or legal advice about whether an organisation's historical conduct may have met the legislative thresholds for listing that were in force at the relevant time.