



Australian Government
Department of Home Affairs

31 May 2018

Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security

By email: pjcis@aph.gov.au

Dear Secretary

Supplementary information – PJCIS Review of the relisting of Hizballah's External Security Organisation (ESO) as a terrorist organisation under the Criminal Code

The Department of Home Affairs provides the following supplementary information to assist the Committee's review of the recent relisting of the Hizballah ESO. I note the Australian Security Intelligence Organisation (ASIO) will also separately provide you with supplementary classified information.

Attorney-General's authorisation signed on 20 December 2017

The Committee Secretariat requested additional information about the Attorney-General's Authorisation signed on 20 December 2017.

During the period 20 December 2017 to 11 May 2018 (the date of commencement of the *Home Affairs and Integrity Agencies Legislation Amendment Act 2018*), the Minister for Home Affairs exercised powers and functions under Part 5.3 of the Criminal Code and related regulation-making functions, in accordance with the **attached** authorisation signed by the Attorney-General on 20 December 2017.

The Attorney-General's authorisation reflected that the Attorney-General continued (and continues) to administer the Criminal Code under the Administrative Arrangements Order (AAO), but that with the transfer of responsibility for national security and law enforcement policy and operations, the Minister for Home Affairs would exercise relevant powers and functions, including in relation to counter-terrorism.

The powers that the Minister for Home Affairs exercised pursuant to the authorisation have now been made clear by amendments to Part 5.3 of the Criminal Code made by the Home Affairs and Integrity Agencies Legislation Amendment Act 2018.

The authorisation document provided at paragraph 2(a) that a Minister administering the Department of Home Affairs was authorised to exercise powers and functions under Part 5.3 of the Criminal Code (except for the power to appoint an issuing authority for the

purpose of preventative detention orders). This part of the authorisation enabled the Minister for Home Affairs to exercise most of the powers and functions under Part 5.3.

Part 5.3 of the Criminal Code relies on a referral of powers from states and territories, and provides at section 100.5(1) that any amendments to the *Acts Interpretation Act 1901* made after the commencement of the relevant provisions in Part 5.3 do not apply. In essence, this 'freezing' provision ensures the meaning or operation of the terrorism provisions as approved by states and territories are not indirectly or inadvertently altered when the Acts Interpretation Act is amended.

For this reason, paragraph 2(a) of the authorisation is based on the power to authorise under section 18C of the Acts Interpretation Act, as it was in force in May 2003, when this power was referred by the states.

The authorisation document further provided at paragraph 2(b) that a Minister administering the Department of Home Affairs was authorised as a rule maker for the purpose of recommending regulations be made by the Governor-General. This paragraph ensured the Minister for Home Affairs could recommend the making of regulations to the Governor-General in relation to terrorist organisations.

Paragraph 2(b) of the authorisation document is based on the power to authorise under section 19(4) of the Acts Interpretation Act (as it was in force at the time the authorisation was signed). This is because the regulation making power in the Criminal Code is at section 5 (that is, outside Part 5.3) and is not subject to the 'freezing' provision relating to the application of the Acts Interpretation Act.

This part of the authorisation document addresses section 6 of the *Legislation Act 2003*, which provides that a rule maker for an instrument made by the Governor-General is the Minister who administers the provision under the AAO (and during the relevant period this was, and continues to be, the Attorney-General).

I trust this information is of assistance.

Yours sincerley

Susan Williamson-de Vries
A/g Assistant Secretary
Counter-Terrorism Policy Branch



Authorisation from the Attorney-General to the Minister for Home Affairs 2017

I, CHRISTIAN PORTER, Attorney-General, make this Authorisation:

Dated

20 December

2017

Christian Porter
Attorney-General

1 Commencement

This authorisation commences from the date of this instrument, or from the day after a Minister is appointed to administer the Department of Home Affairs, whichever is later. It continues to have effect until another person is appointed as Attorney-General, or until responsibility for these matters is transferred to the portfolio of another Minister, or until the authorisation is revoked in writing.

2 Authorisation

- (a) Under subsection 18C(1) of the *Acts Interpretation Act 1901* as that Act was in force on 29 May 2003, a Minister administering the Department of Home Affairs is authorised to act on behalf of the Attorney-General in the performance of the Attorney-General's functions, and the exercise of the Attorney-General's powers, under Divisions 102, 104, 105 (except section 105.2) and 105A of Part 5.3 of the *Criminal Code Act 1995*.
 - (b) Under subsection 19(4) of the *Acts Interpretation Act 1901* as that Act is in force on the date of this instrument, a Minister administering the Department of Home Affairs is authorised to act on behalf of the Attorney-General as a rule-maker as defined by paragraph 6(1)(a) of the *Legislation Act 2003* to recommend to the Governor-General that regulations be made under section 5 of the *Criminal Code Act 1995* prescribing matters for the purposes of Part 5.3 (except Division 100) of that Act.
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