

Submission to the Parliamentary Joint Committee on Intelligence and Security

Review of the Counter-Terrorism Legislation Amendment (Declared Areas) Bill 2024

Dear committee,

Thank you for your work on making Australia a safer place by strengthening counter-terrorism laws. I appreciate the opportunity to make a submission.

1. No threat is countered by this bill

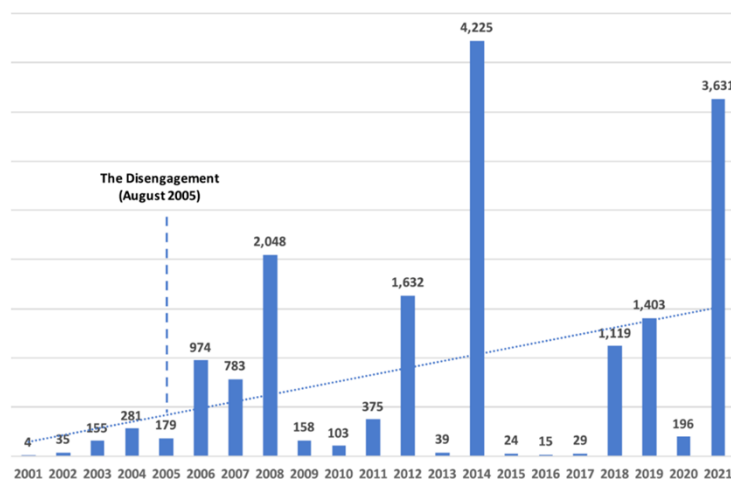
The bill, apart from extending the timeline of currently non-existent 'declared areas' for another three years, brushes up some minor details in the current legislation, for instance, by removing obsolete sections or providing extensions to align timeline of various functions of the legislation.

Currently there are no declared areas. New major hubs of terrorist activity such as Gaza strip remain undeclared. Other changes proposed in the bill have no tangible impact, neither in combating terrorism, nor in protecting individual freedoms.

To justify the lack of utility of the legislation, the Guideline asserts:

"Declarations have only been used in the context of the Islamic State, as this has been the only conflict since the commencement of the declared areas framework which warranted the use of the power."

This conveniently ignores the ongoing conflict in the Middle East. 7 October was not the first major terrorist event that greatly undermined regional and global peace since the introduction of the bill.



From Wikipedia: number of rockets Hamas fired at Israel by year.

While housekeeping changes are welcome in an ideal world, I find it deeply troubling that by introduction of such a bill, the Attorney General's Department spends its finite resources as well as those of the PJCIS committee on pure cosmetics.

At the same time, other departments liberally import people with little to no security checks from the same terrorist strongholds and in return, send millions of taxpayer's dollars to regions governed by a listed terrorist organisation. Our ambassador in Iraq meets a "specially designated global terrorist" and snaps smiling photos with him to discuss furthering of mutual cooperations.

The bill is out of touch with the reality of terrorism and where the threats lie. It is a waste of time. Those who worked on it must be assigned to useful tasks.

2. New threats are fabricated by the AGD

One of the prerequisites of declaring areas is for the area to be used by a listed terrorist organisation. Listing terrorist organisations is, hence, an integral part of 'declared area' legal tool. The AGD has previously pointed out a 'view' according to which, it identifies two major technical problems with legislations that enable and enforce listing. I personally do not believe the AGD is right and honest in any of the two. Rather, I believe the AGD is only reluctant to use the already capable legal framework. However, if the AGD is of the view that its 'view' is valid, it must immediately withdraw the current bill, and direct its resources to fixing these two alleged problems.

Here are the two major issues Attorney-General and the AGD claim exist:

1. In his ministerial response to the Parliament petition EN4540, the Attorney-General wrote:

"I also note that listing an organisation as a terrorist organisation under the Criminal Code does not enliven new powers for the Australian Federal Police or the Australian Security Intelligence Organisation, nor expand the range of offences that can be investigated by law enforcement."

In writing these lines in response to weakly worded petition that only 39 people signed, the Attorney General joined a number of actors in his party¹ to falsely undermine the Criminal Code and downplay the importance of listing terrorist organisations.

As rightly argued in previous submissions to counter-terrorism legislation enquires, if the Attorney General truly believes in his statement, he must direct the department to stop wasting resources on listings and all its downstream measures. Instead, he must focus on measures that work. Alternatively, Attorney General and other public figures who make such evidently false and dangerous claims must swiftly take back their words and publicly correct the wrong records they have created.

2. In a submission to a Senate inquiry, the AGD wrote on 31 January 2023:

"the Attorney-General's Department is of the view that, as an organ of a nation state, the Islamic Revolutionary Guard Corps is not the kind of entity that is covered by the terrorist organisation provisions of the Criminal Code."

This alleges a massive loophole in Australia's counter-terrorism framework. Whilst the campaign for listing of IRGC is globally active, no like-minded nation has declared itself legally paralysed, like the Australian Government has.

Moreover, the AGD has refused to disclose any reason, legal advice or details that demonstrate how it developed such a "view", or any details showing how it established that IRGC is indeed an organ of a state.

¹ For instance, during a debate about listing IRGC on 20 March 2023, Mr Hill (MP) stated:

"I've said it before. I've said it in the intelligence and security committee [...], and I've said it externally [...] The listings here have almost no practical effect. They are symbolic. Politicians for decades have danced around and listed things as terrorist organisations in a way that has little to no practical effect in the real world."

Many people including myself see this as a sign that the AGD is spending our money on optimising useless or unused laws to portray itself as actively countering terrorism, while in practice, the Department and the Minister are perfectly happy with the presence of global terrorists in Australia and even go out of their way to legally protect it with lies, unfounded views and imaginary technical problems.

3. Recommendations

I recommend that the committee orders the Attorney-General to urgently take the following actions with respect to this bill and further amendments of counter-terrorism legislation:

- a. Postpone further work on this bill to after resolving more eminent and pressing issues in the counter-terrorism legislation framework.
- b. Comply with Senate orders and table the documents “Statement of Reason” and “Nomination Form – Criminal Code” related to a terrorist entity, as ordered by the Senate on 28 November 2023.
- c. Waive the ‘Legal Professional Privilege’ claim in FOI response (23-327) on the ‘Legal Advice’ he received on 27 January 2023 in relation to listing of an alleged “organ of a nation state”. This will clarify the basis for the claimed technicality and pave the way to amend the law should a loophole actually exist.
- d. Swiftly withdraw his misleading and dangerous remarks pertaining to lack of impact of listing terrorist organisations and amend his ministerial response.