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MEMBER FOR GINNINDERRA

Submission No:.....16.....

Date Received: 10-2-05

Secretary:

The Hon David Jull MP

Chair

Parliamentary Joint Committee on ASIO, ASIS and DSD

Parliament House

CANBERRA ACT 2600

Dear Mr Jull

I refer to the current inquiry of the Parliamentary Joint Committee on ASIO, ASIS and DSD into the re-listing under the provisions of the Commonwealth *Criminal Code Act 1995* (the Criminal Code) of certain overseas groups as terrorist organisations.

You will recall that on 9 August 2004 I wrote to the Parliamentary Joint Committee concerning the process of consultation between the Commonwealth and the States and Territories in relation to the listing of terrorist organisations under the Criminal Code.

In my letter I expressed concern about the short notice given to the States and Territories in relation to the listing of the Palestinian Islamic Jihad as a terrorist organisation. I further suggested that in the course of any future review of listings of terrorist organisations, the Parliamentary Joint Committee should *inter alia* examine the Commonwealth's consultation with the States and Territories under the provisions of the Intergovernmental Agreement on Counter-Terrorism Laws (IGA) which was signed at the Council of Australian Governments (COAG) meeting on 25 June 2004. (A copy of the IGA was enclosed with my letter of 9 August 2004.)

Paragraph 3.4(1) of the IGA provides that before making a regulation listing a terrorist organisation for the purposes of the Criminal Code, the Commonwealth Government will consult with the States and Territories about the proposed listing. If a majority of States and Territories object to the making of a regulation specifying a terrorist organisation within a timeframe nominated by the Commonwealth and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

Paragraph 3.4(3) of the IGA further provides that the Commonwealth Government will provide the States and Territories with the text of the proposed regulation and the Commonwealth is to use its best endeavours to give the States and Territories "a reasonable time" to consider and comment on the proposed listing.

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The Commonwealth is also required to provide the States and Territories with a written brief on the terrorist-related activities of the group to be listed and to offer an oral briefing by the Director-General of Security. The States and Territories are to use their best endeavours to respond within the time-frame nominated by the Commonwealth.

Paragraph 3.4(6) of the IGA provides that approval for regulations listing terrorist organisations must be sought by the Prime Minister and responses given by Premiers and Chief Ministers.

The IGA makes no differentiation between regulations which list a group as a terrorist organisation for the first time and regulations that "re-list" a group which already is or has been listed. The absence of any differentiation is appropriate given the fact that a "re-listing" has the same legal significance as an initial listing. Furthermore, just as it is appropriate for the States and Territories to be consulted in relation to the decision to list a group as a terrorist organisation, it would be appropriate for consultation to take place in relation to any decision to continue a current listing by means of a new regulation.

There is no objection to the Commonwealth's decision to re-list the six terrorist organisations: Al Qa'ida, Jemaah Islamiya, the Abu Sayyaf Group, Armed Islamic Group, Salafist Group for Call and Combat and Jamiat ul-Ansar (formerly known as Harakat ul-Mujahideen). All these groups clearly continue to satisfy the definition of a terrorist organisation set out in the Criminal Code.

It is equally clear, however, that the Commonwealth Government has failed to comply with the letter and spirit of the IGA in so far as it sets out the Commonwealth's obligations to consult with the States and Territories.

The Commonwealth did not consult with the States and Territories about making the regulations to re-list the six groups as terrorist organisations. Instead, in letters sent on 30 August and 1 November 2004, the Commonwealth Attorney-General, the Hon Philip Ruddock MP, merely advised the States and Territories of decisions that had already been taken. The making of regulations by the Commonwealth to re-list these various terrorist groups followed within two days of the letter dated 30 August and within six days of that sent on 1 November.

I would also draw the Parliamentary Joint Committee's attention to the Prime Minister's failure to fulfil his specific obligation under the provisions of the IGA to consult with and seek the agreement of Premiers and Chief Ministers prior to the making of the new regulations listing (or re-listing) terrorist organisations. (In contrast, albeit at very short notice, the Prime Minister previously wrote to Premiers and Chief Ministers seeking concurrence with the listing of the Palestinian Islamic Jihad as a terrorist organisation.)

The Commonwealth Government's failure to comply with the procedures set out in the IGA is surprising given the uncontroversial nature of the re-listings themselves and the absence of any urgency (i.e. the fact it was always known that the initial regulations would lapse on certain dates). No explanation for the Prime Minister's failure to consult with Premiers and Chief Ministers in relation to the re-listings in September and November 2004 has been given.

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The Commonwealth Government's neglect of due process in relation to these re-listings could set an unfortunate precedent for any future and possibly more controversial proposed listings of terrorist organisations.

As I indicated in my letter of 9 August 2004, I consider it an important part of the "checks and balances" of Australia's counter-terrorism laws that the Parliamentary Joint Committee should undertake a thorough review of the substantive merits and processes involved in all listings of terrorist organisations. This should include not only new listings, but also re-listings of terrorist organisations and the processes followed in implementing those listings.

While there is no argument about the decision to re-list these terrorist organisations, it is a matter of concern that the Commonwealth Government failed to carry out its COAG obligations to properly consult with the States and Territories, including the Prime Minister's duty to undertake such consultation.

Yours sincerely



Jon Stanhope MLA
Chief Minister

14 FEB 2005