



Katy Gallagher MLA

DEPUTY CHIEF MINISTER

MINISTER FOR HEALTH

MINISTER FOR CHILDREN AND YOUTH

MINISTER FOR DISABILITY AND COMMUNITY SERVICES

MINISTER FOR WOMEN

MEMBER FOR MOLONGLO

Submission No:..... 18
Date Received: 12-2-07
Secretary:

The Hon David Jull MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600



Dear Mr Jull

Thank you for your letter of 27 November 2006 to the ACT Chief Minister, Mr Jon Stanhope MLA, seeking a submission from the ACT Government to the current inquiry by the Parliamentary Joint Committee on Intelligence and Security into the terrorist organisation listing provisions of the *Criminal Code Act 1995*.

As you note in your letter the Inter-Governmental Agreement on Counter-Terrorism Laws requires the Commonwealth Government to consult with the Premiers of the States and the Chief Ministers of the ACT and Northern Territory prior to the making of a regulation to list a group as a terrorist organisation for the purposes of the *Criminal Code*.

You will recall that on 14 February 2005 the Chief Minister wrote to you in your capacity as Chair of the then Parliamentary Committee on ASIO, ASIS and DSD concerning the process of Commonwealth-State consultation on the proposed listing of terrorist organisations. In that letter Mr Stanhope specifically expressed concern about the Commonwealth Government's compliance with the provisions of the Intergovernmental Agreement as it applies to the re-listing of terrorist organisations. I take the opportunity provided by your present inquiry to reiterate the ACT Government's concerns in relation to this matter and a copy of the Chief Minister's letter of 14 February 2005 is attached for your information.

I also note the recommendations of the Commonwealth Government's Security Legislation Review Committee, concerning the process of listing of terrorist organisations. As you will be aware, the Committee recommended that:

Recommendation 3: Reform of the process of proscription

The SLRC recommends that the process of proscription be reformed to meet the requirements of administrative law.

The process should be made more transparent and should provide organisations, and other persons affected, with notification, unless this is impracticable, that it is proposed to proscribe the organisation and with the right to be heard in opposition.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0840 Fax (02) 6205 3030 Email: gallagher@act.gov.au

Recommendation 4: Process of proscription

The SLRC recommends that either:

i. The process of proscription continue by way of regulation made by the Governor-General on the advice of the Attorney-General. In this case there should be built into that process a method for providing a person, or organisation affected, with notification, if it is practicable, that it is proposed to proscribe the organisation and with the right to be heard in opposition.

An advisory committee, established by statute, should be appointed to advise the Attorney-General on the case that has been submitted for proscription of an organisation. The committee would consist of people who are independent of the process, such as those with expertise or experience in security analysis, public affairs, public administration and legal practice. The role of the committee should be publicized, and it should be open to the committee to consult publicly and to receive submissions from members of the public.

or

ii. The process of proscription become a judicial process on application by the Attorney-General to the Federal Court with media advertisement, service of the application on affected persons and a hearing in open court.

The ACT Government strongly recommends that your Committee give careful consideration to these recommendations with a view to making the process of listing of terrorist organisations more transparent and less open to criticism that the decision to list or not list an organisation is solely in the hands of the Commonwealth Attorney-General.

Whatever model is preferred the ACT Government would also strongly recommend that the States and Territories continue to be consulted prior to any decision to proceed to list a terrorist organisation, and be similarly consulted prior to the proposed re-listing of a terrorist organisation, as such a consultative arrangement reflects both the constitutional underpinnings of the relevant provisions of the *Criminal Code Act 1995* and the desirability of securing broad governmental support for the exercise of such powers with such potentially severe consequences for groups and individuals.

Yours sincerely

Katy Gallagher
Katy Gallagher MLA
Acting Chief Minister

6 February 2007