

Improving Procedures

Provision of information on the de-listing of an organisation

- 4.1 The Committee received notice that the Attorney-General recently considered advice from the Director-General of Security and the Australian Government Solicitor that the Egyptian Islamic Jihad (EIJ) did not meet the requirements for listing under the Criminal Code. He stated he would not be re-listing EIJ as a terrorist organisation under the Criminal Code after the current listing expired on 30 March 2009.
- 4.2 The Attorney-General's advice noted that there was a lack of contemporaneous information from either classified or open sources to demonstrate that the EIJ continues to meet the legislative criteria under the Criminal Code.
- 4.3 There is no requirement on the Attorney-General to provide the Committee with a public statement of reasons for de-listing an organisation, as is required when listing or re-listing an organisation., The Committee, however, feels that it would be useful if, where the Attorney-General has decided he will not be re-listing as organisation as a terrorist organisation under the Criminal Code, a statement of reasons is provided to the Committee and a public statement of reasons.
- 4.4 Public listing of a terrorist organisation brings with it serious consequences as the following sections of the Criminal Code show:
- 102.2: Directing the activities of a terrorist organisation - 15- 25years imprisonment
 - 102.3: Membership of a terrorist organisation - 10 years imprisonment

- 102.4: Recruiting for a terrorist organisation – 15- 25 years imprisonment
- 102.5: Training a terrorist organisation or receiving training from a terrorist organisation – 25 years imprisonment
- 102.6: Getting funds to, from or for a terrorist organisation – 15- 25 years imprisonment
- 102.7: Providing support to a terrorist organisation – 15- 25 years imprisonment
- 102.8: Associating with terrorist organisations – 3 years imprisonment

4.5 In addition, those convicted of training with an organisation can be, subjected to a control order under section 104.4 of the Criminal Code.

4.6 These are restrictions not generally applied in Australian law and their application must always be balanced against the principles of liberty and democracy upon which our society is based. It is therefore important to ensure that there is transparency in identifying where the balance lies in determining whether an organisation should be listed.

Recommendation 7

The Committee recommends that where a decision to de-list an organisation is made, that the Attorney-General provide a statement of reasons to the Committee and a public statement of reasons.

Improving the statement of reasons

4.7 It is the Committee's view that the non-statutory guidelines used by ASIO are useful tools in evaluating the evidence supporting a listing or re-listing. As a result the Committee has requested that the statements of reasons be written in a way that directly links the evidence with ASIO's guidelines.

4.8 The Committee reiterates that it understands ASIO's guidelines are used as internal guidelines and are not the legislative test. However, given the broad nature of the legislative test, the Committee finds these guidelines useful and continues to use them.

4.9 The Committee believes the format of statements of reasons could be improved. Information in a statement of reasons needs to be as precise, informative and authoritative as possible. For example, statements relying

on BBC coverage of an interview on a small independent website are not, in themselves compelling or convincing.

- 4.10 The Committee has requested that future statements of reasons be drafted, at least in part, in such a way that the information is directly referable to the statutory criteria for listing contained within the Criminal Code.

Hon Arch Bevis, MP

Chairman

