

## The criteria for listing an organisation

### The legal criteria

- 2.1 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code Act 1995, the Minister:

Must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); or

Advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).<sup>1</sup>

- 2.2 To provide further clarification of this definition, Section 102.1 (1A) of the Criminal Code Act 1995 states that an organisation advocates the doing of a terrorist act if:

The organisation directly or indirectly counsels or urges the doing of a terrorist act; or

The organisation directly or indirectly provides instruction on the doing of a terrorist act; or

The organisation directly praises the doing of a terrorist act in circumstances where there is risk that such praise might have the effect of leading a person (regardless of his or her age or mental impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act.<sup>2</sup>

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1 Paragraphs 102.1(2) (a) and (b) of the *Criminal Code Act 1995*.

2 Paragraphs 102.1 (1A) (a) (b) and (c) of the *Criminal Code Act 1995*.

2.3 As previously stated by the Committee in its report, *Review of the re-listing of Al-Qa'ida and Jemaah Islamiyah* (October 2006):

The Committee believes that it is important that the Parliament seek to establish as accurate a picture as possible of the nature, size, reach, and effectiveness of organisations that are subject to section 102.1 of the Criminal Code and that these reviews should reflect the most current information available about the organisations under review.

2.4 This report is a consideration of the re-listing of organisations under the Criminal Code. On past occasions of consideration of a re-listing, the Committee has stated that it is preferable to see information which relates to the activities of the organisation since the last re-listing. This view understated the position, that the Committee believes information on activities since the last re-listing, whilst not in itself conclusive, is a necessary consideration in the process of re-listing. Whilst historical background is important to consider, and will be noted, evidence for a re-listing should focus on what has changed since the last review. The issue of currency of evidence was discussed in the Committee's report, *Review of the re-listing of Al-Qa'ida and Jemaah Islamiyah* (October 2006):

The re-listing of an organisation is a fresh exercise of executive discretion and the Committee believes that there must, therefore, be a sufficient degree of currency in the evidence to warrant the use of the power.<sup>3</sup>

## ASIO's guidelines for consideration of listing

2.5 At the hearing on 1 February 2005 for the *Review of the listing of six terrorist organisations*, the Director-General of ASIO advised the Committee of ASIO's evaluation process in selecting entities for proscription under the Criminal Code. Some of the factors include:

- engagement in terrorism;
- ideology and links to other terrorist groups or networks;
- links to Australia;
- threat to Australian interests;
- proscription by the UN or like-minded countries; and

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3 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of Al-Qa'ida and Jemaah Islamiyah*, October 2004, p. 3.

- engagement in peace/meditation processes.<sup>4</sup>
- 2.6 The Committee notes that these guidelines are indicators only and are not formally set out in the Act. However the Committee has found these to be a useful tool in reviewing the listing of terrorist organisations.
- 2.7 The Committee also notes that, at its hearing into the re-listing of Abu Sayyaf Group, Jamiat ul-Ansar and Al Qaeda in Iraq, in relation to these criteria ASIO noted:
- . . . the six criteria previously presented to the Committee have not been explicitly incorporated into the statements of reasons for re-listing, because ASIO uses these criteria as internal guides for assessment purposes and statements of reasons address the legislative test in the Criminal Code.<sup>5</sup>
- 2.8 The Committee continues to use these guidelines to assist its reviews of all listings.

## Links to Australia

- 2.9 The Federation of Community Legal Centres (Vic) Inc has made the point that:

In the case of the six organisations, the Statements of Reasons do not identify that any of the organisations in question have any links to Australia. All of the six organisations are geographically remote from Australia and there is not suggestion that any of the organisations have Australian members, receive financing from Australians or have been supplied by Australian personnel.

This criterion does not seem to have been applied in respect of the six organisations and they do not appear to have any 'links to Australia', as that criterion has been defined by the Committee. In our submission, the listing of organisations with no identifiable links to Australia exceeds the scope of the legislative intent behind the listing provisions and represents a misuse of the power to list organisations.<sup>6</sup>

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4 Confidential exhibit, ASIO, tabled 1 February 2005.

5 *Classified transcript*.

6 Federation of Community Legal Centres (Vic) Inc, *Submission 3*, p. 11.

- 2.10 It is a misunderstanding of the statutory scheme to suggest that the listing of an organisation 'with no identifiable links to Australia exceeds the scope of the legislative intent...' or is 'misuse of the power to list'.
- 2.11 The Committee takes the view that, while direct links to Australia are not a statutory prerequisite for listing an organisation, links to Australia are an appropriate consideration in selection of an organisation for proscription.

## Threats to Australian Interests

- 2.12 The Committee has previously taken evidence about the threat posed to Australian citizens and Australian interests extending beyond the territorial boundaries of the Commonwealth. In its hearing into the re-listing of Al Qa'ida, Jemaah Islamiah and AQIM the Committee accepted the following statement from ASIO in relation to terrorist organisations being a threat to Australia:

If they attack the United Nations, as they have, that is an attack on Australian interests. If they attack our colleagues in other parts of the international system such as Canadians and the French, and so on, that affects Australian interests. Australia has a big tourist industry. We have people out there in business and there is a whole range of Australians around the world. The idea that we try to protect them in one part of the world but not in other parts of the world when we see an organisation dedicated to causing harm would be a very difficult concept to advocate.<sup>7</sup>

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7 *Classified transcript.*