

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code). Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review a regulation specifying an organisation as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.2 Under section 102(3) of the Criminal Code regulations, the listing of organisations as terrorist organisations ceases to have effect on the second anniversary of the day on which they took effect. The organisations must, therefore, be relisted.
- 1.3 The Committee is currently conducting a full review of the operations, effectiveness and implications of the proscription powers and expects to report on this matter soon. A number of approaches to the proscription process are being examined and it is hoped that procedures may be refined as a result of the review. In particular, the criteria and the way in which they are applied will be addressed. In the meantime, in this review, the Committee has used the criteria and assessment methods which it has used throughout its consideration of listings and relistings over the last three years.
- 1.4 This review covers the relisting of Hizballah's External Security Organisation (ESO). The ESO (also known as Islamic Jihad Organisation and Hizballah International) was originally listed in 2003 under legislative arrangements which required that

organisations to be listed had to be on the United Nations list of terrorist organisations. In 2005, the ESO came up for review under new legislative arrangements, which had been passed by the Parliament in 2004. At that time, the Committee reviewed the relisting of the ESO and reported to Parliament in September 2005. This review is of the second relisting.

- 1.5 The Attorney-General wrote to the Chairman of the Committee on 7 May 2007 advising that he had decided to relist Hizballah's ESO as a terrorist organisation for the purposes of section 102.1 of the *Criminal Code Act 1995*.
- 1.6 The regulation was tabled in the House of Representatives on 29 May 2007 and in the Senate on 12 June 2007. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the first tabling. Therefore, the Committee is required to report to the Parliament by 15 August 2007.
- 1.7 The Committee advertised the inquiry in *The Australian* on 5 June 2007. Notice of the inquiry was also placed on the Committee's website. Two submissions were received from the public.
- 1.8 The Committee wrote to all Premiers and Chief Ministers inviting submissions. One response was received in which the Chief Minister of the Northern Territory advised the Committee that the Northern Territory did not wish to make a submission to the enquiry.
- 1.9 Representatives of the Attorney-General's Department, ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listings on 18 June 2007 in Canberra.
- 1.10 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits. This chapter will examine the Government's procedures in relisting the ESO and chapter 2 will consider the merits of the listing.

The Government's procedures

- 1.11 In a letter sent to the Committee on 29 May 2007, the Attorney-General's Department informed the Committee of its procedures in relation to the relisting of Hizballah's ESO. These procedures are set out in Appendix A.

- 1.12 An unclassified Statement of Reasons¹ for the relisting of the ESO was prepared by ASIO in consultation with DFAT. The Committee heard that DFAT was consulted at the initial stage of developing the statement of reasons and, also, 'there was consultation on the finalised document'².
- 1.13 There were twelve working days between the time when the Attorney-General sent letters to the Prime Minister, the Leader of the Opposition, the Attorneys of the States and Territories and the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 7 May 2007 and when the Governor-General made the regulation on 23 May 2007. The Committee notes, as it has in previous reports, that letters were addressed to Attorneys in the States and Territories rather than the Premiers and Chief Ministers as agreed under subclause 3.4(6) of the *Inter -Governmental Agreement on Counter-terrorism Laws*.
- 1.14 The Leader of the Opposition did not seek a briefing on the matter and, at the time of the hearing, two State governments (Western Australia and Queensland) had replied to the Attorney-General advising no objection to the relisting.³
- 1.15 On 24 May 2007, the Attorney-General issued a media release announcing the decision to relist Hizballah's ESO. There was no other community consultation regarding this relisting.
- 1.16 In his submission Dr Emerton noted that community consultation would have provided 'members of the Australian community who oppose the listing of the ESO as a terrorist organisation' with the opportunity to express their views.⁴ While the Committee agrees that community consultation would be desirable, it notes that, as

1 The *Statement of Reasons* is in Submission No.1 at Appendix B.

2 Transcript, private hearing 18 June 2007, p. 10.

3 During the course of this enquiry, the Committee secretariat was contacted by a staff member in the Chief Minister's Department of the Northern Territory government. The caller noted that because the Attorney-General's Department had sent the letter asking for comments about the relisting to the NT Attorney rather than to the Chief Minister, the letter did not enter the consultative process as it would have done if it had been sent to the Chief Minister. Therefore, the Chief Minister did not know of the relisting until she received the Committee's letter inviting submissions. It was then too late to respond to the Attorney-General if the Chief Minister so wished. On this occasion, the Chief Minister's office did not have any comments to make on the relisting, however the Chief Minister's office noted that it would be preferable if, as agreed under the *Inter - Governmental Agreement on Counter-terrorism Laws*, future notification of listings and relistings could be sent to the Chief Minister.

4 Dr Patrick Emerton, Submission No.5.

mentioned above, it placed an advertisement in *The Australian* calling for submissions from the public in order to provide a forum for members of the Australian community who oppose the listing of the ESO to do so but, apart from submissions by two academics, the Committee received no submissions from any other members of the Australian community.