



Tasmania



PREMIER

16 FEB 2007

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

Submission No:.....	28
Date Received:	26-207
Secretary:	

Dear Mr Jull

I write in reply to your letter dated 27 November 2006, inviting the Tasmanian Government to make a submission to the *Parliamentary Joint Committee on Intelligence and Security* regarding the legislative power to proscribe terrorist organisations.

The consequences of listing an organisation as a 'terrorist organisation' are significant. A number of offences in the Commonwealth *Criminal Code 1995* relate specifically to terrorist organisations. These offences incur severe penalties, with imprisonment for up to 25 years.

I am cognisant that these offences exist as a result of the referral of powers by Tasmania and other jurisdictions. Given the extraordinary nature of these provisions and the role all states have had in their development, it is appropriate that we all be involved in regular reviews of their application.

I note that s102.1A(2) only mandates a single review 'as soon possible after the third anniversary' of the commencement the relevant section of the *Criminal Code*. I recommend that reviews such as this be conducted every three to five years while the legislation remains in force.

Please find attached the Tasmanian Government submission to the review.

Yours sincerely

Paul Lennon
Premier

Tasmanian Government submission to the Parliamentary Joint Committee on Intelligence and Security review of the proscription of terrorist organisations

102.1(1) – *Definition of a terrorist organisation*

Recent reports of the Committee regarding the listing of terrorist organisations have highlighted some issues with the definition of a *terrorist organisation*.

The definition is very broad. ASIO has advised that its evaluation process takes the following factors into account:

- Engagement in terrorism;
- Ideology and links to other terrorist groups/networks;
- Links to Australia;
- Threat to Australian interests;
- Proscription by the UN or like-minded countries; and
- Engagement in peace/mediation processes.

In relation to re-listing of Al-Qa'ida and Jemaaah Islamiyah (tabled: 16 October 2006) the Committee stated that it "continues to use these criteria as the basis of its reviews of all listings." However there is some question as to whether these policy considerations are being consistently applied.

An additional policy consideration could be the consequences of listing for ethnic communities in Australia.

Tasmania also recognises the issue of an organisation with a legitimate political (or even charitable) purpose having a military wing. In such cases it can be difficult to separate the two wings for the purposes of section 102.1(1). The Committee addressed this issue in relation to the listing of Hizhollah and Hamas.

Tasmania does not propose any specific legislative amendments to address these issues but recommends that these matters be further considered by the Committee in its review.

102.1 (2A) – *Briefing the Leader of the Opposition*

Tasmania supports the retention of this subsection in its current form.

102.1 (4), (6), (17) & (18) – *Cessation of listing*

Although the *Intergovernmental Agreement on Counter-Terrorism Laws* (25 June 2004) requires the Commonwealth to consult the first ministers of states and territories regarding the proposed listing of an organisation as a terrorist organisation, there is no requirement for consultation regarding the de-listing of such an organisation.

It is Tasmania's view that States and Territories should at least be advised of an intention to de-list an organisation to ensure that there are no transitional law-enforcement issues.

Intergovernmental Agreement (IGA) on Counter-Terrorism Laws

The IGA on counter-terrorism laws requires the Commonwealth to consult the First Ministers of States and Territories regarding the proposed listing of an organisation and to give states/territories a reasonable time to consider and to comment on the proposed regulation (Division 3, Clause 3.4).

The position of the Commonwealth is that these provisions do not apply to its decisions to re-list organisations. Tasmania has previously expressed its view that this interpretation undermines an important safeguard on the exercise of the listing power.

In relation to the 'reasonable time' requirement, Tasmania notes that in relation to the listing of Palestinian Islamic Jihad (PIJ) Tasmania was provided with just four days to consider relevant materials and provide a response. This is not considered to be a 'reasonable time' in the context of the Prime Minister's undertaking.