

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 purpose 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 The regulations under review have specified Hizballah's External Security Organisation (ESO) as a terrorist organisation for the purposes of section 102.1 of the *Criminal Code Act 1995*.
- 1.3 This is a review of the re-listing of this organisation.
- 1.4 In a letter received by the Committee on 8 May 2009, the Attorney-General advised that he intended to re-list this organisation prior to the lapsing of their current listing as provided for in section 102.1(3). The Attorney provided statements of reasons for the re-listing. This was accepted as submission number one to this review.
- 1.5 The regulations were tabled in the House of Representatives and the Senate on Monday, 25 May 2009. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore the Committee has conducted its review to enable it to report to the Parliament by Thursday, 25 June 2009.
- 1.6 The Committee advertised the inquiry in *The Australian* on Wednesday, 27 May 2009 (see Appendix C). Notice of the review was also placed on the Committee's website. In addition to usual

submissions from the Attorney-General's Department the Committee received submissions from:

- Submission 4 – Federation of Community Legal Centres (Vic) Inc
- Submission 5 – Dr Patrick Emerton
- Submission 6 – Australia/Israel & Jewish Affairs Council

Committee comment on submissions 4 and 5

- 1.7 As stated above the Committee received submissions 4 from the Federation of Community Legal Centres (Vic) Inc and submission 5 from Dr Patrick Emerton. Both of these submissions contained detailed criticism of the proscription regime itself. For example, of Dr Emerton's 27 page submission only 5 pages deal with Hizballah's ESO.
- 1.8 This report deals only with the re-listing of Hizballah's ESO.
- 1.9 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.
- 1.10 The Committee continues to regard this as a useful approach in the discharge of its responsibilities.

The Government's procedures

- 1.11 In a letter received by the Committee on Wednesday, 27 May 2009, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of re-listing the organisation:
- Unclassified Statement of Reasons was prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing ESO.
 - On 19 March 2009 Mr George Witynski, Deputy Chief General Counsel provided written advice with respect to the Statement of Reasons for ESO.
 - The Acting Director-General of Security wrote to the Attorney-General on 20 March 2009 outlining the

background, training activities, terrorist activities, and relevant statements of ESO.

- A submission was provided to the Attorney-General on 31 March 2009 providing the following documents:
 - ⇒ copy of the Statement of Reasons received from ASIO with respect to the organisation
 - ⇒ advice from the Chief General Counsel, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement with respect to ESO confirming that he is satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the act has occurred or will occur.
- The Attorney-General also signed the Criminal Code Amendment Regulations 2009 in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minutes and explanatory statement.
- The Attorney-General wrote to the Prime Minister advising of his intention to list ESO as a terrorist organisation.
- The Attorney-General wrote to the Director-General of Security, in response to the Acting Director-General's letter dated 20 March 2009.
- On 9 April 2009 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to re-list ESO as a terrorist organisation.
- The following responses were received from the Premiers and Chief Ministers of the States and Territories:
 - ⇒ Western Australia - 28 April 2009
 - ⇒ Northern Territory - 6 May 2009
 - ⇒ Australian Capital Territory - 7 May 2009
 - ⇒ Victoria - 7 May 2009
 - ⇒ Queensland - 13 May 2009
- All responses were supportive of the proposed re-listings.
- Note: On 8 May 2009, the NSW Department of Premier and Cabinet advised that it was not possible for the Premier to provide a response to the Prime Minister's

proposal within the timeframe requested. However, NSW did indicate that they supported the re-listing.

- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to re-list ESO as a terrorist organisation.
- The Attorney-General advised the Leader of the Opposition of the proposed re-listing of ESO as a terrorist organisation by letter, and offered a briefing in relating to this re-listing.
- On 14 May 2009 the Governor-General made the Criminal Code Amendment Regulations 2009 (No. 7) with respect to the re-listing of ESO.
- The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 15 May 2009 with the following FRLI Reference Number:
 - ⇒ F2009L01297 - Criminal Code Amendment Regulations 2009 (No. 7).
- The Regulations came into effect on 16 May 2009, the day after they were registered on FRLI.
- The Attorney-General issued a Media Release on 15 May 2009 announcing the re-listing of the terrorist organisation and attaching a copy of the Statement of Reasons.
- The Attorney-General's Department's National Security website was also updated.

Procedural comments

- 1.12 The Committee is satisfied with the procedures undertaken by the Government and notes the responses of the States and Territories.