

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Output 2.3

Question No. 54

Senator Ludwig asked the following question at the hearing on 23 May 2007:

- a) Can the Department provide an update of the case of the two Tamil-Australians who have been arrested and charged with allegedly providing financial support to the Liberation Tigers of Tamil Eelam (LTTE)?
 - What have those person been charged with?
 - Under what Acts have they been charged?
- b) Why is it that the LTTE is not proscribed, yet these persons were arrested for alleged terrorist financing offences in relation to the group?
- c) Have there been any applications for any form of order under the *Anti-Terrorism Act (No.2) 2005*? If so, give details.

The answer to the honourable senator's question is as follows:

- a) On 1 May 2007 the Australian Federal Police (AFP) arrested Mr Aruran Vinayagamoorthy and Mr Sirajah Yathavan and charged each of them with three offences under the *Criminal Code Act 1995* (Criminal Code):
 - Intentionally being a member of a terrorist organisation contrary to s 102.3 of the Criminal Code
 - Intentionally making funds available to a terrorist organisation contrary to s 102.6(1) of the Criminal Code
 - Intentionally providing support or resources to a terrorist organisation contrary to s 102.7(1) of the Criminal Code.

On 18 May 2007 both men were also charged with one offence under the *Charter of the United Nations Act 1945*, the offence of intentionally making an asset available to a proscribed entity contrary to s 21 of the Act.

The organisation alleged to be a terrorist organisation, to which these charges relate, is the LTTE.

The two men are remanded in custody until 24 July 2007.

- b) Under the Criminal Code an organisation can be identified as a *terrorist organisation* by two methods:
 - the listing of the organisation by a regulation under the Criminal Code; or
 - by the organisation meeting the definition of a *terrorist organisation* under the Criminal Code (s 102.1).

Before a regulation is made listing an organisation as a terrorist organisation under s 102.1(2) of the Criminal Code the Attorney-General 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 a terrorist act occurs) or advocates the doing of a terrorist act (whether or not a terrorist act occurs)*.

An organisation may still be found to be a 'terrorist organisation' under s 102.1(a) of the Criminal Code if the prosecution can prove beyond reasonable doubt, that the organisation is *directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs)*.

The charges laid by the police on 1 May 2007, were related to each person's membership of a terrorist organisation, even though the organisation in question was not listed by regulations under the Criminal Code.

It is up to the prosecution in these cases to prove to the Court that the organisation was a terrorist organisation.

The LTTE is listed as a terrorist organisation for the purposes of asset freezing under the *Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002* (UN Charter Regulations).

The effect of the listing under the UN Charter Regulations is that the assets of the LTTE become a 'freezable asset'. It is an offence to deal with a freezable asset. It is also an offence to, directly or indirectly, make an asset available to a listed entity or organisation. Each of these offences is punishable by up to five years' imprisonment.

- c) Applications for orders under the *Anti-Terrorism Act (No.2) 2005* are a matter for the AFP. Only one order has been made but it does not relate to a person allegedly associated with the LTTE.

Sections 104.29 and 105.47 of the Criminal Code require an annual report about the operation of the control order and preventative detention order Divisions in the Criminal Code to be provided to the Attorney-General as soon as practicable after 30 June and tabled within 15 sitting days of the report being completed and received by the Attorney-General. The report for the period ending 30 June 2006 was tabled on 16 August 2006.