

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 2.2**

**Question No. 70**

**Senator Stott-Despoja asked the following question at the hearing on 31 October 2005:**

The most recent proscription of organisations as terrorist organisations began with the Attorney-General announcing his intention to re-list ESO, HAMAS' Izz al-Din al-Qassam Brigades, LeT and PIJ on 25 May 2005. In doing so, the Attorney-General stated that "the Government continues to be satisfied on reasonable grounds that they are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act". In the information submitted by the Attorney-General's Department on each of the listed organisations, there is no reference to a security threat to Australian interests at home or abroad or any other policy imperative to justify the proscription and continued proscription of the organisations. However, part of the information on each of the listed organisations included an indication of whether comparable jurisdictions, such as the United States, the United Kingdom, Canada and the European Union, have listed the organisation as a terrorist organisation.

- (a) Does the Department understand the power to proscribe terrorist organisations to be a measure to protect Australia's security interests, or rather, as a foreign policy imperative?
- (b) Can you explain why it is not considered appropriate for the Attorney-General to be required to be explicit about his motivation to proscribe an organisation as a terrorist organisation?
- (c) If it is to ensure a harmonised global posture in relation to a particular organisation, why is it not considered appropriate that the Attorney-General should detail why that is a desirable outcome for Australia and its interests.
- (d) If it is to ensure that Australia's interests are protected from identifiable terrorist threats, why is it appropriate that the Attorney-General is not required to detail why the organisation poses such a threat to Australian interests?

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

- (a) The Australian Government takes very seriously its responsibility to protect Australians and Australian interests against terrorist attack and is committed to ensuring that every possible measure is in place to deal with terrorist threats. The power to proscribe terrorist organisations under the Criminal Code is one of these measures. The test at section 102.1(2) of the Criminal Code for listing a terrorist organisation is quite clear. It states that 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 the terrorist act has occurred or will occur.
- (b), (c) and (d) In determining whether an organisation satisfies the requirements of section 102.1(2) of the Criminal Code, the Attorney-General considers an unclassified

Statement of Reasons prepared by the Australian Security Intelligence Organisation (ASIO). The Statement of Reasons is based on publicly available information and outlines the activities, methods and aspirations of an organisation. The Statement of Reasons is published on the national security website.

In preparing the Statement of Reasons, ASIO takes into consideration a number of matters including threats to Australia and Australian interests. However, there is no requirement in the Criminal Code for links to Australia or threats to Australian interests to be established in proscribing an organisation as a terrorist organisation.