

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

Output 2.3

Question No. 64

Senator Ludlam asked the following question at the hearing on 20 October 2008:

In relation to the listing of organisations under Division 102 of the Criminal Code:

- a) what process is being used to determine which organisations, of the many that satisfy the statutory criteria, are considered for listing under Division 102 of the Criminal Code
- b) what methods of gathering information about organisations are used, and how are priorities set
- c) to what degree does the Department rely upon information provided by foreign governments, and
- d) what are the costs of keeping organisations (both listed ones, and potential new ones to be listed) under review?

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

(a) and (b)

Under section 102.1 of the Criminal Code, a 'terrorist organisation' is defined as:

- (a) an organisation that 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);
- (b) an organisation that is specified by the *Criminal Code Regulations 2002*.

Before an organisation can be listed as a terrorist organisation, 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 has occurred or will occur), or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

ASIO provides advice on relevant organisations. Cases are subject to a lengthy and comprehensive process of research and analysis, drawing on available reporting. A range of factors are considered in assessing a group for possible proscription, including but not limited to:

- engagement in terrorism
- ideology and links to other terrorist groups or networks
- links to Australia
- the threat to Australian interests
- proscription by the United Nations or like-minded countries, and
- engagement in peace or mediation processes.

These indicators assist in analysing whether the organisation meets the statutory criteria for proscription.

An unclassified Statement of Reasons is prepared by ASIO in consultation with the Attorney-General's Department, the Department of Foreign Affairs and Trade and Australian Government Solicitor. This Statement of Reasons details the case for why the organisation meets the criteria for proscription under Division 102 of the Criminal Code. It provides background on the history, leadership, ideology and terrorist attacks of an organisation. The Statement of Reasons is based on publicly available information which has been corroborated by classified material and from official reporting.

The Statement of Reasons is circulated to the States and Territories to seek their agreement to the listing in accordance with the *Inter-governmental Agreement on Counter-terrorism (IGA)*. Under the IGA a regulation listing an organisation as a terrorist organisation may only be made if a majority of the States and Territories do not object to its making. In addition, in accordance with the legislation the Leader of the Opposition is briefed prior to the making of a regulation.

All regulations listing terrorist organisations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security. If the regulation is reviewed by the PJCIS, the PJCIS must table a report of its findings in Parliament.

Currently, 18 organisations are listed under the Criminal Code Regulations. A list of proscribed terrorist organisations is available on the National Security website at <www.nationalsecurity.gov.au>.

Proscription is a matter which is kept under constant review.

(c) The opinions of foreign governments are not relevant to the Attorney-General's decisions about proscribing a terrorist organisation under the Criminal Code. An organisation may only be listed by the Attorney-General if it meets Australia's legislative test for proscription as set out in section 102.1(2) of the Criminal Code.

As noted in (a), the Attorney-General takes advice from Australian agencies prior to listing an organisation. The Statement of Reasons prepared by ASIO is based on publicly available information which has been corroborated by classified material and from official reporting. Often, the Statement of Reasons includes information regarding which foreign countries have also listed an organisation as a terrorist organisation.

(d) Maintaining the list of organisations proscribed under the Criminal Code is part of the core business of the Security Law Branch of the Attorney-General's Department through its administration of the counter-terrorism legislation. While it is difficult to provide an exact figure on the costs of administering the proscription regime, the two main costs include staff costs within the Security Law Branch (the current cost would be about 50% of a Senior Legal Officer – approximately \$58,000 per year) and obtaining legal advice from the Australian Government Solicitor (with these costs varying depending on the particular circumstances of each organisation).

ASIO provides advice to the Attorney-General regarding organisations for the purposes of listing or re-listing terrorist organisations. Details of resource allocation to operational areas of ASIO are classified. ASIO does not provide a breakdown of costs further to that provided in its Annual Report to Parliament.