Review of the listing of Hizb ut-Tahrir as a prohibited hate group under the Criminal Code

Parliamentary Joint Committee on Intelligence and Security

Submitter:

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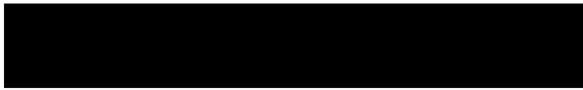

Introduction

I make this submission to the Parliamentary Joint Committee on Intelligence and Security in relation to the review of the listing of Hizb ut-Tahrir as a prohibited hate group under the Criminal Code. This review matters not only because of the particular organisation in question, but because Hizb ut-Tahrir is the first organisation listed under the new prohibited hate group framework. The Committee is therefore not merely assessing one executive decision. It is also testing the design, reach, proportionality and future credibility of a new coercive legislative scheme.

This submission does not minimise the seriousness of hate motivated conduct, extremist propaganda, or the real harms that can flow from organised ideological mobilisation. Nor does it deny that Hizb ut-Tahrir may be a deeply objectionable organisation. The question for the Committee, however, is narrower and harder. It is whether this legislative model is fit for purpose, proportionate, and capable of coherent application in the digital age. On that question there is reason for concern.

The right question is not whether Hizb ut-Tahrir is bad

The Committee should resist any slide into a symbolic or purely political inquiry. The proper task is to test whether the statutory threshold has been met and whether the framework itself is sound. Under section 114A.4, the AFP Minister must be satisfied on reasonable grounds that the organisation has engaged in, prepared or planned to

engage in, or assisted the engagement in conduct constituting a hate crime, or has advocated, whether or not in Australia, engaging in conduct constituting a hate crime, and that specification is reasonably necessary to protect the Australian community or part of it from the relevant harms. The Committee's own inquiry notice says the listing enlivens serious criminal offences for membership, recruitment and funding related conduct.

That means this is not a light touch mechanism. It is a serious executive power that activates a broad field of criminal liability. The Committee should therefore ask not only whether there is objectionable rhetoric, but whether the legal threshold is met with sufficient precision and whether the broader statutory architecture is justified.

The digital environment weakens any narrow organisation specific response

One of the central realities of the present security environment is that extremist influence is no longer bounded by geography. Australia's Counter Terrorism and Violent Extremism Strategy 2025 states that offshore actors remain the most dangerous enduring terrorism threat globally and that they can inspire or enable attacks in Australia through propaganda and direct communication with individuals onshore, whether religiously motivated or ideologically motivated. The same strategy says violent extremist content online now has wider reach and is harder to identify, contain and manage, and that government policy is focused in part on reducing violent extremist content online and reviewing laws and frameworks to ensure they remain fit for purpose in an evolving environment.

That reality has an important consequence for this review. If Parliament is creating a framework justified by digital age harms, cross border influence and online radicalisation, then the framework cannot credibly be treated as though the real problem begins and ends with one organisation from one ideological stream. A law presented as a response to modern extremist mobilisation must be capable of principled and even-handed application across materially comparable threats.

A one stream framework risks looking selective and therefore not fit for purpose

Australia's official threat picture is not confined to one faith, one organisation, or one ideological family. The national security framework currently includes 31 listed terrorist organisations, among them religiously motivated organisations such as Islamic State, Al-Qaeda and Hizballah, and also nationalist and racist violent extremist organisations such as The Base, National Socialist Order and Terrorgram. The broader strategy likewise describes enduring threats from both religiously motivated violent extremism

and ideologically motivated violent extremism, particularly nationalist and racist violent extremism.

That does not mean every listed terrorist organisation should automatically become a prohibited hate group, nor does it require a crude one for one symmetry across religions. It does mean, however, that a framework defended as necessary for organisations that promote hatred, normalise extremist rhetoric and risk social cohesion cannot remain credible if, in practice, it is applied in an obviously narrow or selective way. If the legislation is to be fit for purpose, the Committee should require the Government to explain the principled basis on which comparable movements across ideological streams are or are not considered for similar treatment. Otherwise, the scheme risks appearing more political than coherent.

There is a serious overreach concern

There is also a substantial argument that this framework is broader than the task requires. Australia already has direct criminal offences dealing with advocacy and threats of violence against groups, members of groups and their close associates, as well as offences concerning threats or advocacy of damage to places of worship or property. Those offences are already matters for investigation and prosecution through ordinary criminal process. The national strategy also emphasises the central role of Joint Counter Terrorism Teams, made up mainly of state and territory law enforcement, the AFP and ASIO, in managing investigations, disruptions and support to prosecutions of terrorist activity.

Against that background, it is fair to ask whether the prohibited hate group regime adds a necessary tool, or whether it pushes criminal law too far into the terrain of association, status and symbolic prohibition. Once a listing is made, Division 114B criminalises directing activities, membership, recruitment, training, funding and support. The support offence reaches support or resources intended to help an organisation expand or continue to exist. The definition of member expressly includes informal members and persons who have merely taken steps to become a member. The general defences are very narrow, being confined to Commonwealth arrangements and official duties, with only limited offence specific carve outs elsewhere.

The breadth of the scheme is sharpened further by the fact that conviction is not required before the AFP Minister may be satisfied that relevant conduct occurred, and the Act expressly says procedural fairness need not be observed by the AFP Minister in making that satisfaction or by the Director General in providing advice. That is a significant concentration of executive power, especially given that the regulations are

exempt from the default ten-year sunsetting period and continue unless actively ceased.

Taken together, that creates a serious concern that the legislation may be at once too narrow and too broad. Too narrow in its apparent application across the real threat environment. Too broad in the legal consequences it imposes once activated.

There is also a risk of counterproductive effect

The Committee should also consider whether the framework may, in some cases, risk promoting grievance rather than subduing it. The national strategy states that significant global events and instability overseas can be exploited to fuel grievance narratives domestically. It also recognises that online environments are less conducive to moderation and more conducive to radicalisation. In that setting, highly publicised prohibitions may sometimes be repurposed as evidence of persecution, selective state action or ideological double standards, particularly where application appears uneven.

That does not mean the state should refrain from acting. It means the state should act with care. A framework that confers martyr status, validates grievance narratives or appears selectively performative may be less effective than targeted policing, direct prosecution of actual criminal speech or conduct, online disruption, and focused intelligence work.

The explanatory statement itself reveals the tension

The Government's own explanatory material exposes the central tension. The stated case is that Hizb ut-Tahrir has praised attacks that would constitute hate crimes if carried out in Australia and that there is an unacceptable risk that such praise may lead others to engage in hate crime conduct. The Government then says the listing is reasonably necessary because it will prevent the organisation from operating in Australia and reduce its impact and influence in Australian society. That is a preventive and associative theory of criminalisation, not simply a policing of completed offences.

The Committee should test that theory rigorously. If the real mischief is direct advocacy, threat, recruitment, incitement, financing or support for unlawful conduct, much of that is already amenable to direct criminal law and police response. The Committee should not assume that organisational prohibition is automatically the least excessive or most effective means of addressing the risk.

Conclusion

This review should not be treated as a simple endorsement or rejection of Hizb ut-Tahrir. It should be treated as an early and important test of whether the new prohibited hate group framework is coherent, proportionate and fit for purpose.

In my view, there is a serious risk that the present approach is not yet shown to be fit for purpose. In a borderless digital environment, extremist influence can originate offshore and move across religious and ideological streams with speed and force. A framework that is justified by that reality cannot credibly be narrow in practical application while at the same time being legally expansive once triggered. Nor should Parliament be comfortable with a scheme that activates broad associative offences on an executive satisfaction standard, without procedural fairness, without any conviction requirement, with only narrow general defences, and without ordinary sunsetting.

The Committee should therefore use this review to do more than ask whether Hizb ut Tahrir is objectionable. It should ask whether the legislative framework is being applied on principled, even handed and genuinely necessary grounds, whether it adds value over existing policing and criminal offences, and whether it risks becoming a selective and overbroad instrument in an environment that demands precision, neutrality and restraint.