
The Parliament of the Commonwealth of Australia

Inquiry into the proscription of ‘terrorist organisations’ under the Australian Criminal Code

Parliamentary Joint Committee on Intelligence and Security

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Foreword

Combating international terrorism has become a high priority for national governments since the tragic loss of thousands of innocent lives in the terrorist attacks by Al Qa'ida on the US in 2001. Over the past five years terrorist violence has claimed hundreds more lives in attacks in Bali, Jakarta, Madrid and London. These events have signalled an increased threat to Australian interests, and several prosecutions for alleged terrorist activity are currently before the courts.

The power to list a 'terrorist organisation' under the Criminal Code was one element of a package of reforms adopted in 2002. Australia has listed nineteen organisations but so far proscription has not been an element in any of the prosecutions for terrorist organisation offences. No listed entity has applied to the Minister to be de-listed or sought judicial review in the courts. Despite this, it was evident throughout the inquiry that some sectors of the community continue to have concerns about the impact of proscription and, in particular, the breadth of terrorist organisation offences. Several witnesses called for reform that would see proscription transferred to the judiciary or a new advisory panel to advise the Minister on possible listings.

The Committee considers that the current model of executive regulation and parliamentary oversight provides a transparent and accountable system that is consistent with international practice. However, there is clearly room to improve the public information available about the implications of listing and data on the application of the new terrorism laws. The appointment of an Independent Reviewer would make a significant contribution to those efforts.

The Hon David Jull MP
Chair

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Membership of the Committee

Chair The Hon David Jull MP

Deputy Chair Mr Anthony Byrne MP

Members Mr Stewart McArthur MP

 The Hon Duncan Kerr SC MP

 Mr Stephen Ciobo MP

Senator Alan Ferguson (until
14 August 2007)

Senator the Hon Robert Ray

Senator the Hon John Faulkner

Senator Fiona Nash

Senator the Hon Sandy Macdonald
(from 17 August 2007)

Committee Secretariat

Secretary Mr Stephen Boyd
 (from 4 June 2007)

 Ms Margaret Swieringa
 (till 1 June 2007)

Inquiry Secretary Ms Jane Hearn

Executive Assistant Mrs Donna Quintus-Bosz



Terms of reference

Under Section 102.1A (2) of the *Criminal Code Act 1995* (Cth) the Parliamentary Joint Committee on ASIO, ASIS and DSD has the following function:

- (a) to review, as soon as possible after the third anniversary of the commencement of this section, the operation, effectiveness and implications of subsection 102.1(2),(2A),(4)(5)(6)(17) and (18) as in force after the commencement of this section;
- (b) to report the Committee's comments and recommendations to each House of the Parliament and the Minister.

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List of abbreviations

AAT	Administrative Appeal Tribunal
ADJR	Administration Decisions Judicial Review Act 1977
AFP	Australian Federal Police
AGD	Attorney-General's Department
AMCRAN	Australian Muslim Civil Rights Advocacy Network
ASIO	Australian Security Intelligence Organisation
ATA (No.2)	Anti-Terrorism Act No.2 2005
ATRAC	Australian Tamil Rights Advocacy Council
COAG	Council of Australian Governments
Committee	Parliamentary Joint Committee on Intelligence and Security
Criminal Code	Criminal Code Act 1995
DIAC	Department of Immigration and Citizenship
DPP	Director of Public Prosecutions
DFAT	Department of Foreign Affairs and Trade
EM	Explanatory Memoranda
ESO	External Security Organisation

FCLC (Vic)	Federation of Community Legal Centres (Victoria)
FRLI	Federal Register Legislative Instruments
HREOC	Human Rights and Equal Opportunity Commissio
ICCPR	International Covenant on Civil and Political Right
IGA	Inter-Governmental Agreement on Counter-Terrorism Laws 2004
IGIS	Inspector-General of Intelligence and Security
IISCA	Islamic Information and Support Centre of Australia
IS Act	Intelligence Services Act 2001
LCA	Law Council of Australia
LTTE	Liberation Tigers of Tamil Eelam
NSW CCL	New South Wales Council of Civil Liberties
PIJ	Palestinian Islamic Jihad
PKK	Kurdistan Workers Party
RCOA	Refugee Council of Australia
SAD	Security Appeals Division
SLRC	Security Legislation Review Committee
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution



List of recommendations

3 The implications and community impacts of proscription

Recommendation 1

The Committee recommends that:

- the Attorney-General's Department develop a communication strategy that is responsive to the specific information needs of ethnic and religious communities;
- there be direct consultation on the management of visa security assessments between the Australian Intelligence Security Organisation, the Inspector General of Intelligence and Security and the UN High Commission for Refugees.

4 Selection of Entities

Recommendation 2

The Committee recommends that the criteria 'ideology and links to other networks and groups' be restated so that:

- the link between acts of terrorist violence and the political, ideological or religious goals it seeks to advance is clearly expressed; and
- links to other networks and groups that share the same world view is identified as a separate criteria.

5 Procedural Issues

Recommendation 3

The Committee recommends that the mandate of the Committee to review the listing and re-listing of entities as ‘terrorist organisations’ for the purpose of the Criminal Code be maintained.

Recommendation 4

The Committee recommends that the Government give consideration to reverting to the initial legislative approach of postponing commencement of a listing until after the disallowance period has expired.

The Committee recognises that the Attorney-General should, in exceptional cases, retain the power to begin the commencement of a listing on the date the instrument is lodged with the Federal Register of Legislative Instruments where the Attorney-General certifies that there are circumstances of urgency and the immediate commencement of the listing is required for reasons of national security.

6 Other Issues

Recommendation 5

The Committee recommends that strict liability not be applied to the terrorist organisation offences of Division 102 of the Criminal Code.

Recommendation 6

The Committee recommends that:

- a regulation listing an entity should cease to have effect on the third anniversary of the date it took effect.
- the Government consult with the Committee on streamlining the administration of proscription to enable periodic review of multiple listings during the parliamentary cycle.

Recommendation 7

The Committee:

- recommends that the Attorney-General's Department be responsible for the publication of comprehensive data on the application of terrorism laws.
- reiterates that an Independent Reviewer be established to monitor the application of terrorism laws, including the use of special police and intelligence powers, on an ongoing basis. In addition, that the Independent Reviewer report annually to the Parliament and the responsibility for examining those reports be conferred on the Committee.
- recommends that the application of the proscription power be included in the review of counter terrorism laws scheduled for 2010 under the auspices of the Council of Australian Governments.