
The Parliament of the Commonwealth of Australia

Review of the re-listing of Hizballah's External Security Organisation

Parliamentary Joint Committee on Intelligence and Security

June 2015
Canberra

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Membership of the Committee

Chair Mr Dan Tehan MP

Deputy Chair Hon Anthony Byrne MP

Members Hon Jason Clare MP

Senator David Bushby

Hon Mark Dreyfus QC, MP

Senator the Hon Stephen Conroy

Mr Andrew Nikolic AM, CSC, MP

Senator David Fawcett

Hon Philip Ruddock MP

Senator John Williams



Terms of reference

This inquiry and report is conducted under the following powers:

Criminal Code Act 1995

Section 102.1A Reviews by Parliamentary Joint Committee on Intelligence and Security

Review of listing regulation

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1, the Parliamentary Joint Committee on Intelligence and Security may:
 - (a) review the regulation as soon as possible after the making of the regulation; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period.

and

Criminal Code (Terrorist Organisation – Hizballah's External Security Organisation) Regulation 2015, Registered 1 May 2015 (FRLI: F2015L00621)



List of abbreviations

ASIO	Australian Security Intelligence Organisation
Criminal Code	<i>Criminal Code Act 1995</i>
ESO	External Security Organisation



List of recommendations

1 Hizballah's External Security Organisation

Recommendation 1

The Committee recommends that the regulations, made under the Criminal Code section 102.1, to list Hizballah's External Security Organisation as a terrorist organisation not be disallowed.

Hizballah's External Security Organisation

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code).
- 1.2 Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security may review a regulation specifying an organisation as a terrorist organisation for the purpose of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.3 On 5 May 2015, the Attorney-General advised the Committee that Hizballah's External Security Organisation had been re-listed as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code.
- 1.4 The regulation for the re-listing was made by the Federal Executive Council on 30 April 2015 and came into effect on 2 May 2015, the day after it was registered on the Federal Register of Legislative Instruments.
- 1.5 The regulation was tabled in the Senate on 11 May 2015 and the House of Representatives on 12 May 2015.

The Committee's review

- 1.6 The Attorney-General's letter, which included a statement of reasons for the re-listing and the process of listing undertaken by the Attorney-

General's Department, was accepted as a submission to the review and can be found on the Committee's website.

- 1.7 Notice of the review was placed on the Committee website and a media release was issued on 14 May 2015. No further submissions were received.
- 1.8 A private hearing with representatives of the Attorney-General's Department and the Australian Security Intelligence Organisation (ASIO) was held in Canberra on 28 May 2015.
- 1.9 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee established procedures for reviewing terrorist listings. It also decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits.¹ The Committee has again adopted this approach in this report.
- 1.10 Where an organisation is to be listed for the first time, the Committee will assess the adequacy and appropriateness of the evidence presented in the statement of reasons as well as the procedures followed by the Government. Where an organisation is to be re-listed, the Committee expects the evidence presented to demonstrate a continuation of activities.
- 1.11 The remainder of this chapter will examine the Government's procedures for the re-listing of each group as a terrorist organisation, followed by the merits of the listing, based on the evidence provided to the Committee.

The Government's procedures

- 1.12 The Attorney-General's letter outlined the procedures followed by the Attorney-General's Department, with input from other agencies, for the listing of Hizballah's External Security Organisation. The process of listing was accepted as a submission to the inquiry and is included at Appendix A to this report.

Committee comment

- 1.13 The Committee reviewed the process of listing and was satisfied with the appropriateness of the procedures undertaken by the Government.

1 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of listing of the Palestinian Islamic Jihad (PIJ) as a Terrorist Organisation under the Criminal Code Amendment Act 2004*, June 2004.

The re-listing

The criteria for listing an organisation

- 1.14 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Minister 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).²
- 1.15 In addition to these legislative criteria, ASIO may have regard to non-legislative factors, including:
- engagement in terrorism,
 - ideology and links to other terrorist groups or networks,
 - links to Australia,
 - threats to Australian interests,
 - proscription by the UN or like-minded countries, and
 - engagement in peace/mediation processes.
- 1.16 The Committee was first advised of ASIO's evaluation process, including its use of these non-legislative factors, at a private hearing in 2005. Since then, the Committee has used these criteria as the basis for its reviews of listings of terrorist organisations under the Criminal Code.
- 1.17 The Committee has again used these criteria to assess the appropriateness and adequacy of evidence provided to it in this review.
- 1.18 In reviewing the listing, the Committee has taken into account the Attorney-General's statement of reasons and other publicly available information. The Committee's evaluation of the appropriateness and

2 Subsection 102.1(2) of Division 102, Subdivision A of the Criminal Code. A full list of proscribed terrorist organisations is available at the Australian Government's National Security website at:
<<http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>>.

adequacy of the evidence it has received is then considered against the criteria listed in paragraph 1.15.

Hizballah's External Security Organisation

1.19 Hizballah is a multi-faceted organisation that includes political, social and military components. Representing the Lebanese Shia community in Lebanon, Hizballah maintains a social welfare network, including education and health services. It also maintains

a highly capable and well-resourced militia structured ostensibly to resist Israeli aggression, but also to defend and promote Shia interests in the context of Lebanon's historical and ongoing sectarian divisions.³

1.20 Hizballah's External Security Organisation (ESO)⁴ is described in the statement of reasons as

a discrete branch within Hizballah responsible for the planning, coordination and execution of terrorist attacks against Hizballah's enemies outside of Lebanon.⁵

1.21 The statement of reasons then notes that:

Since entering the Lebanese Parliament in 1992 and the government in 1995, Hizballah has sought to strengthen its public image as a respected resistance movement and lessen its reputation as a terrorist group. This reinforces Hizballah's need to distance the organisation from any activity that could be construed as terrorism. Consequently, Hizballah is unlikely to either claim responsibility for a terrorist attack or acknowledge any ESO activities.⁶

1.22 Although ASIO concludes that the ESO has been involved in at least three significant attacks against Israeli/Jewish interests outside Lebanon, the ESO has not publically admitted responsibility for any terrorist attack.⁷ The statement of reasons notes that it is difficult to gather information about the group's role and activities due to its secretive nature, but states

3 Statement of Reasons, Hizballah's External Security Organisation, p. [1].

4 Also known as Foreign Action Unit, Hizballah ESO, Hizballah International, Islamic Jihad Organisation, Revolutionary Justice Organisation and Special Operations Branch.

5 Statement of Reasons, Hizballah's External Security Organisation, p. [1].

6 Statement of Reasons, Hizballah's External Security Organisation, p. [1].

7 Statement of Reasons, Hizballah's External Security Organisation, p. [2].

'there is no indication that ESO's role has changed in recent times'.⁸ Since the last re-listing, several alleged or probable ESO operatives have been arrested around the world.⁹

1.23 Jane's Counter Terrorism and Insurgency Centre, while not distinguishing between the ESO and other parts of Hizballah, lists a number of attacks outside Lebanon with alleged Hizballah involvement.¹⁰ The Committee noted in its previous report the difficulty in attributing specific attacks to the ESO.¹¹

1.24 The ESO is listed by the United Kingdom, European Union and New Zealand. The United States, Canada, the Netherlands and Israel list the entire Hizballah organisation.¹²

1.25 Noting the different approach taken by some countries to proscription, the Committee questioned agencies about the ongoing basis for the listing of the ESO rather than Hizballah in its entirety. The Committee was assured that, for this listing and all previous listings, the Government had considered the extent of the organisation that should be proscribed. In doing so, agencies had taken into consideration the Committee's stated view that:

Where an organisation has a degree of legitimacy through popular support and has a wide ethnic or national constituency it is important that listing only be applied to the component that is directly responsible for acts of terrorist violence.¹³

1.26 ASIO advised that:

[Hizballah] is one where we can very clearly define a structure in that level of detail and identify a very distinct part of the organisation that is purely responsible for its terrorist activities ... in a way that it is not possible to do – at least at this stage – with other groups.¹⁴

8 Statement of Reasons, Hizballah's External Security Organisation, p. [2].

9 Statement of Reasons, Hizballah's External Security Organisation, p. [3].

10 Jane's Counter Terrorism and Insurgency Centre, *Hizbullah*, <<http://janes.ihs.com>> viewed 4 May 2015.

11 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of Hizballah's External Security Organisation*, June 2012, Canberra, pp. 6-7, 11.

12 Statement of Reasons, Hizballah's External Security Organisation, p. [4]; *Classified Committee Hansard*, 28 May 2015, p. 3.

13 Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, Canberra, p. 28.

14 *Classified Committee Hansard*, 28 May 2015, p. 3.

1.27 Further:

The other issue that we looked at is the practical effect that we are seeking to achieve by proscribing. Proscribing the whole would not necessarily have the intended effect. If the intent of the listing is to criminalise any involvement with or support for terrorist activities or planning that might threaten our interests then proscribing the ESO is achieving that intent.¹⁵

1.28 The Committee questioned agencies about those matters that were considered during formulation of the most recent listing, including political and security issues.¹⁶ The Committee also noted the implications arising from the association offences in the Criminal Code.¹⁷

Committee comment

1.29 As with its previous reviews of the listing of Hizballah's External Security Organisation as a terrorist organisation, the Committee has again used ASIO's criteria (as outlined in paragraph 1.15) to assess the information provided to support the listing. The Committee notes the difficulties arising from the secretive nature of the organisation, but has assessed, on the basis of the evidence provided, that Hizballah's External Security Organisation engages in terrorist acts.

1.30 In this review, the Committee sought information about the rationale for the ongoing listing of the ESO rather than Hizballah in its entirety. The Committee acknowledges the evidence provided by agencies and accepts that careful consideration has been given to the form the listing should take.

1.31 The Committee also accepts that the Australian Government's current approach to proscription provides flexibility by allowing competing interests to be considered and unintended consequences that may hinder counter terrorism efforts to be avoided.

1.32 Finally, the Committee notes that any activity that is relevant to security may be subject to investigation by ASIO, regardless of whether an entity is proscribed or not.

15 *Classified Committee Hansard*, 28 May 2015, p. 3.

16 *Classified Committee Hansard*, 28 May 2015, pp. 3-5.

17 *Classified Committee Hansard*, 28 May 2015, p. 6.

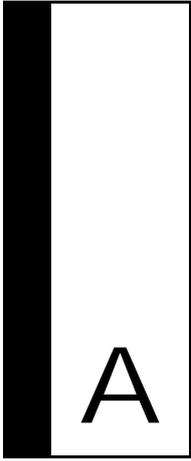
- 1.33 On this basis, the Committee therefore supports the re-listing of Hizballah's External Security Organisation as a terrorist organisation under section 102.1 of the Criminal Code.

Recommendation 1

The Committee recommends that the regulations, made under the Criminal Code section 102.1, to list Hizballah's External Security Organisation as a terrorist organisation not be disallowed.

Dan Tehan MP
Chair

June 2015



Appendix A – Process of listing

Source: Attorney-General, *Submission 1*

Process for the 2015 proscription of Hizballah's External Security Organisation as a 'terrorist organisation' under the Criminal Code

The National Security Law and Policy Division of the Attorney-General's Department (the department) facilitates the process by which the Attorney-General makes a decision to list, re-list or de-list a terrorist organisation under the *Criminal Code Act 1995* (the Criminal Code). This includes obtaining a written Statement of Reasons from the Australian Security Intelligence Organisation (ASIO) that assess organisations and seeking the advice of the Australian Government Solicitor in relation to ASIO's assessments. This information is included in a package of information submitted to the Attorney-General to assist him in deciding whether or not to list, re-list or de-list an organisation as a terrorist organisation under the Criminal Code.

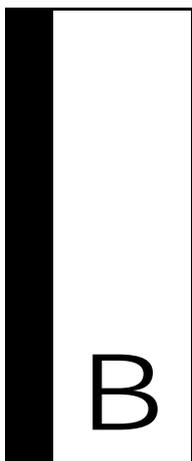
The following processes were undertaken for the purpose of re-listing Hizballah's External Security Organisation (ESO) as a terrorist organisation.

1. An unclassified Statement of Reasons was prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, outlining the case for re-listing ESO and identifying ESO as a discrete branch within Hizballah.
2. On 30 March 2015, the Australian Government Solicitor provided written advice that the Attorney-General could, on the basis of the statement, be satisfied on reasonable grounds that the matters specified in section 102.1(2) of the Criminal Code have been met in relation to ESO, as distinct from Hizballah.
3. On 15 April 2015, the Director-General of Security wrote to the Attorney-General outlining the background, training activities, terrorist activities and relevant statements of ESO.
4. On 16 April 2015, the department provided a submission to the Attorney-General containing a copy of the following documents:
 - the Statements of Reasons with respect to ESO and
 - legal advice from the Australian Government Solicitor.
5. On 22 April 2015, having considered the information provided in the submission, including strong grounds to list ESO (as distinct from Hizballah), the Attorney-General approved and signed a Statement that he is satisfied on reasonable grounds that ESO is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.
6. On 23 April 2015, the Attorney-General wrote to the Prime Minister advising of his decision to re-list ESO as a terrorist organisation.
7. On 23 April 2015, the Attorney-General wrote to the Leader of the Opposition on the proposed re-listing of ESO as terrorist organisation, offering a briefing in relation to the re-listing.
8. On 23 April 2015, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to re-list ESO.
9. On 23 April 2015, State and Territory officials and members of the Australia-New Zealand Counter-Terrorism Committee were advised by email of the proposed re-listing of ESO and issued an advance copy of the Statement of Reasons.

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10. The Premiers of the States and Chief Ministers of the Territories responded on the dates recorded below in relation to ESO:
 - New South Wales – response dated 29 April 2015
 - Victoria – response dated 5 May 2015
 - Queensland – response dated 28 April 2015
 - Western Australia – response dated 24 April 2015
 - South Australia – response dated 27 April 2015
 - Tasmania – response dated 28 April 2015
 - Australian Capital Territory – response dated 24 April 2015 and
 - Northern Territory – response dated 23 April 2015.
11. None of the State and Territory responses objected to the proposed re-listing of ESO.
12. On 22 April 2015, the Attorney-General signed the *Criminal Code (Terrorist Organisation— Hizballah's External Security Organisation) Regulation 2015* and approved associated Federal Executive Council (ExCo) documentation, including an ExCo Minute, Explanatory Memorandum and Explanatory Statement for consideration by the Governor-General at a meeting of ExCo on 30 April 2015.
13. On 24 April 2015, in accordance with subsection 102.1(2A) of the Criminal Code, the Attorney-General wrote to the Leader of the Opposition to arrange a briefing in relation to the re-listing of ESO.
14. On 30 April 2015, the Governor-General made the Regulation at ExCo.
15. On 1 May 2015, the Regulation was registered on the Federal Register of Legislative Instruments (FRLI) (reference [F2015L00621](#)).
16. On 2 May 2015, the Regulation came into effect, the day after it was registered on FRLI.
17. On 2 May 2015, the Attorney-General issued a media release announcing the re-listing of ESO.
18. The Government's Australian National Security website was updated to reflect the re-listing of ESO.

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Appendix B – List of submissions and witnesses appearing at private hearing

Submissions

1. Attorney-General

Witnesses appearing at private hearing

Canberra – Thursday, 28 May 2015

Attorney-General's Department

Ms Jamie Lowe, First Assistant Secretary, National Security Law and Policy Division

Ms Karen Horsfall, Acting Assistant Secretary, Counter-Terrorism Law Branch

Australian Security Intelligence Organisation

First Assistant Director-General, Security Advice and Assessments

Coordinator, National Threat Assessment Centre

