



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

THIRTEENTH REPORT

OF

2003

7 November 2003

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MEMBERS OF THE COMMITTEE

Senator T Crossin (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator D Johnston
Senator J McLucas
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRTEENTH REPORT OF 2003

The Committee presents its Thirteenth Report of 2003 to the Senate.

The Committee draws the attention of the Senate to clauses of the following which contains provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Criminal Code Amendment (Hizballah) Act 2003

Criminal Code Amendment (Hizballah) Act 2003

Introduction

The Committee dealt with the bill for this Act in *Alert Digest No. 6 of 2003*, in which it made various comments. The Attorney-General has responded to those comments in a letter dated 28 October 2003.

Although this bill has been passed by both Houses (and received Royal Assent on 24 June 2003) the response may, nevertheless, be of interest to Senators. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Attorney-General's response are discussed below.

Extract from Alert Digest No. 6 of 2003

This bill was introduced into the House of Representatives on 29 May 2003 by the Attorney-General. [Portfolio responsibility: Attorney-General]

Introduced with the Criminal Code Amendment (Terrorist Organisations) Bill 2003, the bill proposes to amend the *Criminal Code Act 1995* to create a basis for the identification and listing of the Hizballah External Security Organisation as a terrorist organisation under Australian law, if the Minister is satisfied that the organisation is engaged in terrorist activity. This measure would avoid the existing requirement that the organisation be first identified in, or pursuant to, a decision of the United Nations Security Council as a terrorist organisation.

The bill also inserts a provision to enable a listing in a regulation of the Hizballah External Security Organisation to operate retrospectively from the time at which a public announcement is made by a Minister stating the Government's intention to specify the organisation in regulations.

This bill was received by the Senate on 16 June 2003 and agreed to, without amendment, on the same day.

Retrospectivity of bill

Subclause 2(1), item 2

By virtue of item 2 in the table to subclause 2(1) of this bill, Schedule 1 is to commence on 29 May 2003, “immediately after the commencement of Schedule 1 to the *Criminal Code Amendment (Terrorism) Act 2003*.” It is difficult to see the reason for this retrospectivity. The purpose of the bill is to allow regulations to be made declaring the Hizballah organisation to be a terrorist organisation for the purposes of the *Criminal Code*. But it is presumed that such regulations could not be made until this bill has been assented to. The Committee **seeks the Attorney-General’s advice** as to the reason for this provision.

Pending the Attorney-General’s advice, the Committee draws Senators’ attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.

Relevant extract from the response from the Attorney-General

Thank you for your letter of 19 June 2003 to the then Attorney-General concerning the *Criminal Code Amendment (Hizballah) Bill 2003*. I apologise for the delay in responding.

You sought the advice of the former Attorney-General as to the matters raised in your Committee’s *Alert Digest* (No. 6 of 2003); namely as to the retrospective application of the Bill itself and any Regulations made under that legislation.

I am aware that legislation with retrospective application should not be considered unless there is a clear policy reason for doing so. In this case, however, due to the immediate danger posed to the Australian community by the Hizballah External Security Organisation, the Government was justified in the use of retrospectivity. Making the legislation retrospective to the date of an announcement allowed an early and strong warning to Australians that they should not become involved with this terrorist organisation.

I am pleased to say that the nature of this threat and the response to it contained in this Bill were recognised by the Opposition and the Bill’s passage through Parliament was appropriately expedited.

I hope this information is of use to your Committee. Thank you for the opportunity to comment.

The Committee thanks the Attorney-General for this response.

Retrospectivity of regulations

Proposed new subsection 102.1(11)

Proposed new subsection 102.1(11) of the *Criminal Code*, to be inserted by item 3 of the Schedule to this bill, would permit the making of regulations having effect retrospectively to the day on which the Attorney-General or another Minister makes an announcement to the effect that such regulations will be made. It appears that the regulations will have the effect of imposing criminal liability on members of the Hizballah organisation, and the bill will therefore create criminal liability by public announcement. These provisions may be regarded as trespassing on personal rights and liberties, but that whether such a trespass would be *undue* is a matter to be left for decision by the Senate as a whole.

The Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Attorney-General

Response same as above for subclause 2(1), item 2.

The Committee thanks the Attorney-General for this response.

Trish Crossin
Chair



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

RECEIVED

29 OCT 2003

Senate Standing C'ttee
for the Scrutiny of Bills

Min no: 232073

Senator Trish Crossin
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

28 OCT 2003

Dear Senator Crossin

Thank you for your letter of 19 June 2003 to the then Attorney-General concerning the *Criminal Code Amendment (Hizballah) Bill 2003*. I apologise for the delay in responding.

You sought the advice of the former Attorney-General as to the matters raised in your Committee's *Alert Digest* (No. 6 of 2003); namely as to the retrospective application of the Bill itself and any Regulations made under that legislation.

I am aware that legislation with retrospective application should not be considered unless there is a clear policy reason for doing so. In this case, however, due to the immediate danger posed to the Australian community by the Hizballah External Security Organisation, the Government was justified in the use of retrospectivity. Making the legislation retrospective to the date of an announcement allowed an early and strong warning to Australians that they should not become involved with this terrorist organisation.

I am pleased to say that the nature of this threat and the response to it contained in this Bill were recognised by the Opposition and the Bill's passage through Parliament was appropriately expedited.

I hope this information is of use to your Committee. Thank you for the opportunity to comment.

Yours sincerely

Philip Ruddock

