

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

Question No. AE16/027

Senator McKim asked the following question at the hearing on 9 February 2016:

Senator McKIM: What I said, Mr Lewis, was that they claimed responsibility for that shooting. I obviously have no knowledge of whether or not it was them. They are the Tehrik-i-Taliban, known as the TTP.

Mr Lewis: They are not on the list of prescribed organisations.

Senator McKIM: I understand that. My advice is that they are listed in both New Zealand and the United States.

Senator Brandis: We will look into that.

Senator McKIM: So you will provide a response?

Senator Brandis: I think we have given you a response, really, but thank you for drawing that to my attention and we will look into it.

Senator McKIM: I am sorry to push the point but the response from ASIO was that it is not listed. I know that it is not listed; that is why I am asking the question. I appreciate your commitment to look into it. Could I ask you to communicate with me or the committee in some way, if it is possible to do so without compromising national security—

Mr Lewis: It is a matter for me and my organisation, in that sense, to make recommendations. I will have a look at it and I will speak with the attorney. I understand the point of your question

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

As noted in the response provided at the Estimates hearing on 09 February 2016, I confirm that the Tehrik-e-Taliban Pakistan (TTP) is **not** a proscribed terrorist organisation currently listed by Australia under the *Criminal Code*.

There are a number of entities and groups around the world that might be considered for listing under Australia's terrorist *Criminal Code* regime.

The issue of which organisations should be listed under the *Criminal Code* regime remains under active review. However, it is the Government's longstanding practice not to comment on the status of any consideration being given to the possible listing of terrorist organisations under the *Criminal Code*.

It may be useful however to outline for the committee the process for listing of a terrorist organisation and ASIO's role in that process.

Terrorist groups are listed by the Australian Government under Division 102 of the *Criminal Code*. ASIO provides security advice in the form of a Statement of Reasons (SoR), which outlines the security intelligence case to help determine whether the organisation meets the legislative requirements for listing.

In order for an organisation to be listed it must meet the legislative requirements in the *Criminal Code*, which states the organisation:

- a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- b) advocates the doing of a terrorist act.

In addition, the process for listing is informed by the 'Protocol for listing terrorist organisations' which is located on the Australian Government's *Australian National Security* website.

As this Protocol notes, depending on available information (and I would add the specifics of each individual organisation being considered), some factors may carry more weight than others in selecting organisations for consideration. It would be true to say that given the listing provides a possible basis to prosecute Australians who support a terrorist group, we have given greater priority to the groups where there are links to Australia or where the group threatens Australian interests.

I should note that it is not a pre-requisite that a group be listed as a terrorist organisation for the prosecution of an individual in Australia for most of the terrorist organisation offences contained in the *Criminal Code*. Similarly whether a group is listed or not has no impact on ASIO's ability to conduct security intelligence investigations where we feel there are matters relevant to security.

I note the Senator's question also referenced the TTP being listed by New Zealand and the UN. While the listing of an organisation by other nations and the UN is a factor considered in whether to list the organisation in Australia, I should highlight that each nation operates under different regimes with their own legislative requirements and each nation will make a determination about the listing of the group with reference to its own experience and security requirements. The fact that a group is listed by another nation or the UN is not relevant to whether it meets the legislative requirements for listing in Australia.