

## Parliamentary Joint Committee on Intelligence and Security

### *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*

Tabled 20 September 2007

#### Government response to recommendations

*(Note: Any legislative amendments to Part 5.3 of the Criminal Code require the approval of the majority of the States and Territories in accordance with the Inter-Governmental Agreement on the Counter-Terrorism Laws.)*

Recommendation	Response
<p><b>The implications and community impacts of proscription</b></p> <p><b>Recommendation 1:</b></p> <p>The Committee recommends that:</p> <p>(a) The Attorney-General's Department develop a communication strategy that is responsive to the specific information needs of ethnic and religious communities;</p> <p>(b) There be direct consultation on the management of visa security assessments between ASIO, the Inspector-General of Intelligence and Security and the UN High Commission for Refugees.</p>	<p>The Government <b>supports</b> recommendation 1(a).</p> <p>As noted in the Government response to the recommendations of the PJCIS' report entitled <i>Review of Security and Counter-Terrorism Legislation</i>, the Attorney-General's Department has undertaken considerable work to educate communities and create public awareness of the counter-terrorism laws. Future activities may involve extending the range of languages in which information pamphlets are produced, preparing supplementary explanatory material where there is a significant change to counter-terrorism laws, and providing presentations to a range of community groups and stakeholders about impending key amendments to counter-terrorism legislation.</p> <p>The Government <b>notes</b> recommendation 1(b).</p> <p>ASIO is conscious of the need to avoid unnecessary delay in dealing with the significant volume of matters for which it must undertake a security assessment, and has implemented a number of strategies to this end. This activity is monitored by the IGIS who is periodically briefed on ASIO's progress. Unlike the proscription legislation contained in the Criminal Code, security assessments deal only with individuals and not with groups.</p> <p>The Government is committed to ensuring Australia is fully compliant with its obligations under the Refugees Convention and will raise and address any issues of concern when Australian representatives next meet with the UNHCR.</p>

<p><b>Selection of Entities</b></p> <p><b>Recommendation 2:</b> The Committee recommends that the criteria ‘ideology and links to other networks and groups’ be restated so that:</p> <p>(a) the link between acts of terrorist violence and the political, ideological or religious goals it seeks to advance is clearly expressed;</p> <p>(b) links to other networks and groups that share the same world view is identified as a separate criteria.</p>	<p>The Government <b>supports</b> this recommendation by requiring ASIO and the Attorney-General’s Department to develop an unclassified protocol which outlines the key indicators which are taken into consideration when determining whether an organisation meets the statutory test for proscription.</p> <p>This recommendation refers to the six non-statutory factors ASIO uses as a guide to inform them when assessing whether an organisation meets the legislative requirements for listing as a terrorist organisation under the Criminal Code. The ‘six ASIO criteria’ were initially referred to by the former Director-General of ASIO, at a hearing on 1 February 2005 during the PJCIS’ review of the listing of six terrorist organisations.</p> <p>These criteria do not form an exhaustive list of issues considered by ASIO as ASIO considers a wide range of security factors when providing advice on organisations.</p>
<p><b>Procedural Issues</b></p> <p><b>Recommendation 3:</b></p> <p>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.</p>	<p>The Government <b>supports</b> this recommendation.</p> <p>Section 102.1A of the Criminal Code provides for the Committee to review the listing and re-listing of terrorist organisations by the Government. The maintenance of these provisions will ensure that the Criminal Code provides a transparent and accountable mechanism for the Government to outlaw terrorist organisations and organisations that threaten the integrity and security of Australia or another country.</p>
<p><b>Recommendation 4:</b></p> <p>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.</p> <p>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 FRLI</p>	<p>The Government <b>supports</b> this recommendation and will adopt the practice of giving consideration to delaying the commencement of a listing regulation (when an organisation is listed for the first time) until after the Parliamentary disallowance period has expired.</p> <p>As recognised by the PJCIS, flexibility must be maintained within this approach so in circumstances where the Attorney-General considers that a listing should commence immediately (for example for security reasons), there remains scope for a regulation to commence when it is lodged with the</p>

<p>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.</p>	<p>Federal Register of Legislative Instruments (FRLI).</p>
<p><b>Recommendation 5:</b></p> <p>The Committee recommends that strict liability not be applied to the terrorist organisation offences of Division 102 of the Criminal Code.</p>	<p>The Government <b>notes</b> recommendation 5 in line with recommendation 20 of the PJCIS Report on the Review of Security and Counter-Terrorism Legislation. The Government will refer the strict liability components of the offences for examination by the new National Security Legislation Monitor once appointed.</p>
<p><b>Recommendation 6:</b></p> <p>The Committee recommends that:</p> <p>(a) a regulation listing an entity should cease to have effect on the third anniversary of the date it took effect; and</p> <p>(b) the Government consult with the Committee on streamlining the administration of proscription to enable periodic review of multiple listings during the parliamentary cycle.</p>	<p>The Government <b>supports</b> this recommendation.</p> <p>The Government will further consult with the Committee on streamlining the administration of proscription.</p>
<p><b>Recommendation 7:</b></p> <p>The Committee recommends that:</p> <p>(a) the Attorney-General’s Department be responsible for the publication of comprehensive data on the application of terrorism laws;</p> <p>(b) an Independent Reviewer be established and the Committee be conferred with responsibility for examining the Independent Reviewer’s reports to Parliament;</p> <p>(c) 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.</p>	<p>The Government <b>supports</b> these recommendations.</p> <p>(a) Refer to the comment on recommendation 1.</p> <p>(b) Refer to Government response to the PJCIS Report on the Review of Security and Counter-Terrorism Legislation.</p> <p>(c) The Government supports the recommendation that the proscription power be included in the review of counter-terrorism laws scheduled for the 2010 COAG review.</p>