Terrorism Suppression Amendment Bill - 2007

4 December 2006
Attorney-General

LEGAL ADVICE
CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
Terrorism Suppression Amendment Bill
Our Ref: ATT395/24

1. We have considered the Terrorism Suppression Amendment Bill (PCO 6367/10) and have concluded that it is not inconsistent with the New Zealand Bill of Rights Act 1990 (the "BORA"). We understand that the Bill is to be considered by the Cabinet Legislation Committee at its meeting on 7 December 2006.

2. The Bill will make a range of amendments to the Terrorism Suppression Act 2002, including amendments to the processes for the designation of terrorist entities under the Act:

2.1 To replace the current designation process with a regime whereby the provisions of the Act apply automatically to terrorist entities that are subject to the United Nations (Sanctions) Regulations 2001 (which in turn recognise terrorist designations once they are listed by the United Nations Security Council;

2.2 These "automatic" designations will remain in place until the entities are removed from the United Nations terror list;

2.3 The Act will continue to have a designation mechanism that may be used to designate terrorist entities not on the United Nations terrorist list;

2.4 Designations made by the Prime Minister will remain in place for three years unless earlier revoked with provision for designations to be renewed.

3. Amendments are also made to the freezing of assets and forfeiture regime, the terrorist financing offences, and the offence of participating in a terrorist group. New offences of committing a terrorist act and involving nuclear material are also introduced.

4. One aspect of the Bill we have considered in particular is the treatment of "classified security information" in proceedings in a court arising out of, or relating to, the making of a designation under the Act (new s 38).

5. The Bill provides for requests from the Attorney-General to have the Court hear or receive such information in the absence of the designated entity, any barristers or solicitors representing the entity, and the public generally. In such circumstances where the designated entity is participating in proceedings, the Court must approve a summary of the classified security information except to the extent that a summary of any particular part of
the information itself would involve disclosure that would be likely to prejudice certain interests.


7. We consider that this approach strikes an appropriate balance between the interests of national security and those of the designated entities.

8. Accordingly, we have reached the view that the Bill is consistent with the BORA, including s 27(1) (the right to natural justice).

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