

# 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.

6. Courts have on a number of occasions recognized the need for security intelligence information to be kept secret in order to protect national security: see, for example, *Canada (Minister of Employment and Immigration) v. Chiarelli* [1992] 1 S.C.R. 711 (at paragraph 48); *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3 (at paragraphs 43 and 44); *Charkaoui* [2004] 3 F.C.R. 32 (F.C.) (at paragraphs 100, 101); *R. v. Shayler*, [2002] 2 All E.R. 477 (H.L.); *Murray v. United Kingdom* (1995), 19 EHRR 193 (E.C.H.R.) (at paragraph 58); *Vereniging Weekblad Bluf! v. Netherlands* (1995), 20 EHRR 189 (E.C.H.R.) (at paragraphs 34 and 35).
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).

Val Sim  
Crown Counsel

Allison Bennett  
Assistant Crown Counsel

In addition to the general disclaimer for all documents on this website, please note the following: This advice was prepared to assist the Attorney-General to determine whether a report should be made to Parliament under s 7 of the New Zealand Bill of Rights Act 1990 in relation to the Terrorism Suppression Amendment Bill. It should not be used or acted upon for any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.