

8 November 2007

## **MEDIA STATEMENT: SOLICITOR-GENERAL**

### **Decision of the Solicitor-General in Relation to the Prosecution of People under the Terrorism Suppression Act 2002 (“Operation 8”)**

1. On 29 October 2007 the Commissioner of Police asked me to consider authorising the prosecution of 12 people under the Terrorism Suppression Act 2002.
2. For reasons which I will briefly summarise in a few moments, I have advised the Commissioner of Police that I am unable to authorise any prosecutions under the Terrorism Suppression Act 2002.
3. The responsibility for deciding whether or not to authorise the proposed prosecutions rests with the Solicitor-General pursuant to s 9 Constitution Act 1986, and the convention that it is the Solicitor-General rather than the Attorney-General who determines applications of the kind made by the Commissioner of Police in this case. This process ensures there is no perception of political influence brought to bear in what is essentially a legal process.
4. In making my decision, I have:
  - 4.1 Considered all of the known evidence;
  - 4.2 Assessed the relevant law;
  - 4.3 Applied the law to the evidence;
  - 4.4 Made an assessment of the likelihood of any prosecutions succeeding;
  - 4.5 Decided whether or not it is ultimately in the public interest for the prosecutions to proceed.

My role is therefore different from that of the Police who are required to investigate suspected crimes, and in a case like this, place that evidence before me to determine if prosecutions should be brought.

5. The evidence that I have examined has included many hundreds of pages of intercepted communications, a large number of photographs taken by the Police during their surveillance operations, as well as video footage of events observed by the Police.

6. Regrettably, not all the evidence that I have been able to consider will be made public. I know this is a source of frustration for the Police, for the media, and I am sure for the general public. However, I can say that in due course a significant body of the evidence will enter the public domain during the course of the hearings of the charges brought under the Arms Act against the people whose cases I have considered.
7. Having considered in detail all of the available evidence, I am very satisfied that the Police had a sufficient and proper basis for investigating the activities in question under the provisions of the Terrorism Suppression Act. The Police have, in my opinion, also acted very properly in referring the evidence to my office so that I could make an assessment as to whether or not charges should be brought under the Terrorism Suppression Act.
8. In examining the relevant provisions of the Terrorism Suppression Act I have concluded that legislation is unnecessarily complex, incoherent and as a result almost impossible to apply to the domestic circumstances observed by the Police in this case.
9. I will make available to the media a summary of the key provisions of the Terrorism Suppression Act. Because of my concerns about the real difficulties that exist in trying to apply the Terrorism Suppression Act to events such as those observed by the Police in this case, I will be inviting the Attorney-General to consider referring that Act to the Law Commission with a view to seeing whether or not the Act should be completely reviewed.
10. In summary, the key reason why I am not prepared to authorise prosecutions under the Terrorism Suppression Act is because I am of the view that at this stage there is insufficient evidence to establish to the very high standard required that a group or entity was planning or preparing to commit a terrorist act as that term is defined in the legislation.
11. Some may try to interpret my decision as a criticism of the Police. Nothing could be further from the truth. In my view, the Commissioner of Police and his officers have acted entirely appropriately in referring the evidence to me.
12. I wish also to stress that the Police have successfully brought an end to what were very disturbing activities. That the Police did so without a single shot being fired, injury or loss of life, is a tremendous reflection on the professionalism and integrity of the New Zealand Police.
13. Finally, 16 people are facing serious charges under the Arms Act. Those trials must not be compromised by a continuation of the often ill-informed debate which has occurred in this case. Because those 16 cases have still to be heard, I will not be making any further comment about my decision, or matters that could touch upon the cases which are yet to be heard. I am, however, prepared to answer questions which focus on the processes that I have followed or the relevant law. I urge the media to be extremely cautious in the way in which they report my decision, and in the way in which they report any matters that may impact upon the cases that are yet to be heard.

## 5 Terrorist act defined

- (1) An act is a **terrorist act** for the purposes of this Act if—
- the act falls within subsection (2); or
  - the act is an act against a specified terrorism convention (as defined in section 4(1)); or
  - the act is a terrorist act in armed conflict (as defined in section 4(1)).
- (2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for the purpose of advancing an ideological, political, or religious cause, and with the following intention:
- to induce terror in a civilian population; or
  - to unduly compel or to force a government or an international organisation to do or abstain from doing any act.
- (3) The outcomes referred to in subsection (2) are—
- the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act);
  - a serious risk to the health or safety of a population;
  - destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d);
  - serious interference with, or serious disruption to, an infrastructure facility, if likely to endanger human life;
  - introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country.
- (4) However, an act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
- (5) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person—
- is carrying out an act for a purpose, or with an intention, specified in subsection (2); or
  - intends to cause an outcome specified in subsection (3).

## 13 Participating in terrorist groups

- (1) A person commits an offence who participates in a group or organisation for the purpose stated in subsection (2), knowing that the group or organisation is—
- an entity that is for the time being designated under this Act as a terrorist entity; or
  - an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.
- (2) The purpose referred to in subsection (1) is to enhance the ability of any entity (being an entity of the kind referred to in subsection (1)(a) or (b)) to carry out, or to participate in the carrying out of, 1 or more terrorist acts.
- (3) A person who commits an offence against subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

## 25 Carrying out and facilitating terrorist acts

- (1) For the purposes of this Act, a terrorist act is **carried out** if any 1 or more of the following occurs:
- planning or other preparations to carry out the act, whether it is actually carried out or not;
  - a credible threat to carry out the act, whether it is actually carried out or not;
  - an attempt to carry out the act;
  - the carrying out of the act.
- (2) For the purposes of this Act, a terrorist act is **facilitated** only if the facilitator knows that a terrorist act is facilitated, but this does not require that—
- the facilitator knows that any specific terrorist act is facilitated;
  - any specific terrorist act was foreseen or planned at the time it was facilitated;
  - any terrorist act was actually carried out.