

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code).
- 1.2 Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security may review a regulation specifying an organisation as a terrorist organisation for the purpose of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.3 On 12 August 2015, the Attorney-General advised the Committee that regulations had been made specifying the following organisations as terrorist organisations for the purposes of section 102.1 of the Criminal Code:
 - Al-Shabaab
 - Hamas' Izz al-Din al Qassam Brigades
 - Kurdistan Workers' Party
 - Lashkar-e-Tayyiba
 - Palestinian Islamic Jihad.
- 1.4 The regulations for the re-listing of each organisation were made by the Federal Executive Council on 6 August 2015 and came into effect on 11 August 2015, the day after they were registered on the Federal Register of Legislative Instruments. The regulations were tabled in the House of Representatives and the Senate on 11 August 2015.
- 1.5 This is a review of the re-listing of these five organisations.

The Committee's review

- 1.6 The Attorney-General's letter, which included statements of reasons for the re-listings and the process of listing undertaken by the Attorney-General's Department, was accepted as a submission to the review and can be found on the Committee's website.
- 1.7 Notice of the review was placed on the Committee website and a media release was issued on 14 August 2015.
- 1.8 The Committee received 5 submissions.
- 1.9 A private hearing with representatives of the Attorney-General's Department and the Australian Security Intelligence Organisation (ASIO) was held in Canberra on 10 September 2015.
- 1.10 It is the practice of the Committee to conduct classified hearings with agencies so that evidence presented can be interrogated in more detail, as required. Some unclassified statements from the hearing may be included in this report to support the Committee's findings.
- 1.11 A public hearing with representatives from the Kurdish Association of Victoria, the Australian Kurdish Association and Kurdish Lobby Australia was held in Canberra on 17 September 2015.
- 1.12 In its first report, *Review of the listing of the Palestinian Islamic Jihad*, the Committee established procedures for reviewing terrorist listings. It also decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits.¹ The Committee has again adopted this approach in this report.
- 1.13 Where an organisation is to be listed for the first time, the Committee will assess the adequacy and appropriateness of the evidence presented in the statement of reasons as well as the procedures followed by the Government. Where an organisation is to be re-listed, the Committee expects the evidence presented to demonstrate a continuation of activities.
- 1.14 The remainder of this chapter will examine the Government's procedures for the re-listing of each group as a terrorist organisation.
- 1.15 Chapter 2 will examine the merits of the re-listing of Al-Shabaab, Hamas' Izz al-Din al Qassam Brigades, Lashkar-e-Tayyiba and Palestinian Islamic Jihad, based on the evidence provided to the Committee.
- 1.16 Due to the additional evidence received, geostrategic complexities and public interest in the re-listing of the Kurdistan Workers' Party, the

1 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of listing of the Palestinian Islamic Jihad (PIJ) as a Terrorist Organisation under the Criminal Code Amendment Act 2004*, June 2004.

Committee addresses the merits of its re-listing in a separate chapter, Chapter 3.

The Government's procedures

1.17 The Attorney-General's letters outlined the procedures followed by the Attorney-General's Department, with input from other agencies, for the listing of each organisation. These documents were accepted as a submission to the inquiry and are included at Appendix A to this report.

Committee comment

1.18 The Committee reviewed the process of listing and was satisfied with the appropriateness of the procedures undertaken by the Government.

The criteria for listing an organisation

1.19 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Minister must be satisfied on reasonable grounds that the organisation:

- is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or
- advocates the doing of a terrorist act.²

1.20 In addition to these legislative criteria, ASIO may also have regard to non-legislative factors, including:

- engagement in terrorism,
- ideology and links to other terrorist groups or networks,
- links to Australia,
- threats to Australian interests,
- proscription by the United Nations Security Council or like-minded countries, and
- engagement in peace/mediation processes.

1.21 The Committee was first advised of ASIO's evaluation process, including its use of these non-legislative factors, at a private hearing in 2005. Since

2 Subsection 102.1(2) of Division 102, Subdivision A of the Criminal Code. A full list of proscribed terrorist organisations is available at the Australian Government's National Security website at:
<http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>.

then, the Committee has used these criteria as the basis for its reviews of listings of terrorist organisations under the Criminal Code.

- 1.22 The Committee has again used these criteria to assess the appropriateness and adequacy of evidence provided to it in this review.
- 1.23 In reviewing the listings, the Committee has taken into account the Attorney-General's statement of reasons and other publicly available information. The Committee's evaluation of the appropriateness and adequacy of the evidence it has received is then considered against the criteria listed in paragraph 1.20.