

## 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 The regulations under review have specified the following organisations as terrorist organisations for the purposes of section 102.1 of the Criminal Code:
  - Jabhat al-Nusra
  - Abu Sayyaf Group
  - al-Qa'ida
  - al-Qa'ida in the Lands of the Islamic Maghreb
  - Islamic State of Iraq and the Levant (formerly al-Qa'ida in Iraq)
  - Jamiat ul-Ansar
  - Jemaah Islamiyah, and
  - al-Qa'ida in the Arabian Peninsula.
- 1.4 This is a review of the initial listing of Jabhat al-Nusra and the re-listing of the other groups.

### Islamic State of Iraq and the Levant

- 1.5 In the 43<sup>rd</sup> Parliament, the Committee was advised on the re-listing of al-Qa'ida in Iraq (AQI). Since commencement of the review, the regulation

proscribing AQI has been repealed and replaced with a regulation proscribing the Islamic State of Iraq and the Levant (ISIL).<sup>1</sup>

- 1.6 The Federal Executive Council made the regulation listing ISIL on 12 December 2013 and it came into effect on 14 December 2013, the day after it was registered on the Federal Register of Legislative Instruments (FRLI). This regulation also repealed the *Criminal Code (Terrorist Organisation – Al-Qa’ida in Iraq) Regulation 2013*.
- 1.7 The statement of reasons for ISIL provides the following reasons for this action:
- The name AQI has never been used by the group itself, but was devised by Western intelligence services to reflect the group’s al-Qa’ida affiliation.
  - The Arabic name now used by the group, Dawla al-Islamiya fi Iraq wa as-Shams (Islamic State of Iraq and the Levant), is in common use in Western intelligence and open sources, especially concerning the group’s activities in Syria.
  - The use of the name ISIL does not represent a change in the leadership, membership or methods of the group, but reflects the expansion of its operating area to include both Iraq and Syria.<sup>2</sup>
- 1.8 Announcing the listing, the Attorney-General, Senator the Hon George Brandis QC, stated:
- While ISIL and AQI are the same organisation, the Government has moved to specifically list ISIL under this name reflecting the expansion of the organisation’s operating area to include Syria. It does not represent a change in ISIL’s leadership, membership or methods of operation.<sup>3</sup>

## Jabhat al-Nusra

- 1.9 The Committee of the 43<sup>rd</sup> Parliament was advised on 18 June 2013 by the then Attorney-General that Jabhat al-Nusra would be listed as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code.

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1 Senator the Hon George Brandis QC, Attorney-General, *Media Release, ‘Islamic State of Iraq and the Levant listed as a Terrorist Organisation’*, 18 December 2013, viewed 8 January 2014, <<http://www.attorneygeneral.gov.au/Mediareleases>>.

2 Statement of Reasons, *Islamic State of Iraq and the Levant (ISIL)*, pp. 1-2.

3 Senator the Hon George Brandis QC, Attorney-General, *Media Release, ‘Islamic State of Iraq and the Levant listed as a Terrorist Organisation’*, 18 December 2013, viewed 8 January 2014, <<http://www.attorneygeneral.gov.au/Mediareleases>>.

- 1.10 The Attorney-General also advised that the regulations would commence on the day after registration, which occurred on 28 June 2013. This is contrary to usual practice for new listings and the Committee was briefed on the reason for this decision.<sup>4</sup>
- 1.11 The regulations were tabled in the House of Representatives and the Senate on 12 November 2013. The disallowance period of 15 sitting days for the Committee's review of the listings began from the date of tabling and will expire on 11 February 2014.

### **Abu Sayyaf Group, al-Qa'ida, al-Qa'ida in the Lands of the Islamic Maghreb, Jamiat ul-Ansar and Jemaah Islamiyah**

- 1.12 The regulations for the re-listing of Abu Sayyaf Group, al-Qa'ida, al-Qa'ida in the Lands of the Islamic Maghreb, Jamiat ul-Ansar and Jemaah Islamiyah were made by the Federal Executive Council on 11 July 2013 and came into effect on 12 July 2013, the day after they were registered on the FRLI.
- 1.13 The regulations were then tabled in the House of Representatives and the Senate on 12 November 2013. The disallowance period will expire on 11 February 2014.

### **Al-Qa'ida in the Arabian Peninsula**

- 1.14 The regulation for the re-listing of al-Qa'ida in the Arabian Peninsula was made by the Federal Executive Council on 21 November 2013 and came into effect on 26 November 2013, the day after it was registered on the FRLI. It was then tabled in the House of Representatives and the Senate on 2 December 2013. The disallowance period of 15 sitting days will expire on 27 February 2014.

## **The Committee's review**

- 1.15 Statements of reasons for the listing and re-listing of each organisation were accepted as submissions to the review and can be obtained from the Committee's website.

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4 In 2007, the Government agreed in response to a recommendation by the Committee that when an organisation is listed for the first time, commencement of regulations would be delayed under after the Parliamentary disallowance period had expired. Flexibility was maintained, however, so that in circumstances where the Attorney-General considered a listing should commence immediately, this could occur. Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, available at: [www.apf.gov.au/pjcis](http://www.apf.gov.au/pjcis).

- 1.16 Documents outlining the process of listing undertaken by the Attorney-General's Department were also accepted as submissions. Details of the process of listing for each organisation are outlined below.
- 1.17 Notice of the reviews was placed on the Committee's website and a media release was issued on 19 December 2013. No public submissions were received.
- 1.18 A private hearing with representatives of the Attorney-General's Department and Australian Security Intelligence Organisation (ASIO) was held in Canberra on 30 January 2014.
- 1.19 It is the practice of the Committee to conduct classified hearings with agencies in order that evidence presented can be interrogated in more detail, as required. Some unclassified statements from this hearing are included in the report to support the Committee's findings.
- 1.20 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, 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. The Committee has again adopted this approach in this report.
- 1.21 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 and the procedures. Where an organisation is to be relisted, the Committee expects the evidence presented to demonstrate a continuation of activities.
- 1.22 The remainder of this chapter will examine the Government's procedures for the listing of Jabhat al-Nusra and re-listing the other seven organisations.
- 1.23 Chapter two will consider the merits of the listings, based on evidence provided to the Committee.

## **The Government's procedures**

- 1.24 The Attorney-General's Department advised the Committee of the 43<sup>rd</sup> Parliament in a letter dated 10 July 2013 of the procedures followed by the Attorney-General's Department, with input from other agencies, for listing and re-listing organisations. Similar letters advising procedures were sent to this Committee on 10 December 2013 and 22 January 2014. The procedures are included below.

## Jabhat al-Nusra

- 1.25 The Attorney-General's Department informed the Committee that the following processes were undertaken for the purpose of listing Jabhat al-Nusra:
- An unclassified Statement of Reasons was prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, detailing the case for listing Jabhat al-Nusra.
  - The Acting Director-General of Security wrote to the then Attorney-General on 3 May 2013, outlining the background, training activities, terrorist activities, and relevant statements of Jabhat al-Nusra.
  - On 6 May 2013, the Australian Government Solicitor (AGS) provided written advice with respect to the Statements of Reasons for Jabhat al-Nusra, stating that the Attorney-General could, on the basis of the statement, be satisfied on reasonable grounds that matters specified in s102.1(2) of the Criminal Code have been met.
  - A submission was provided to the Attorney-General on 10 May 2013, providing the following documents:
    - ⇒ a copy of the Statement of Reasons received from ASIO with respect to Jabhat al-Nusra; and
    - ⇒ advice from the Chief General Counsel of AGS.
  - Having considered the information provided in the submission, the Attorney-General signed a statement on 13 May 2013 with respect to Jabhat al-Nusra confirming that he is 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 whether or not the act has occurred or will occur.
  - On 13 May 2013, the Attorney-General wrote to the then Prime Minister advising of his intention to list Jabhat al-Nusra as a terrorist organisation.
  - On 13 May 2013, the Attorney-General wrote to the Director-General of Security, in response to the Acting Director-General's letter dated 3 May 2013.
  - On 13 May 2013, the Attorney-General wrote on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to list Jabhat al-Nusra as a terrorist organisation and requesting their comments on the proposed listing. State and Territory officials were also advised on the proposed listing by e-mail dated 14 May 2013.

The following responses were received from the Premiers and Chief Ministers of the States and Territories:

Northern Territory – response dated 31 May 2013  
Victoria – response dated 2 June 2013  
Australian Capital Territory – response dated 6 June 2013  
Western Australia – response dated 12 June 2013  
South Australia – response dated 12 June 2013  
New South Wales – response dated 13 June 2013  
Queensland – response dated 17 June 2013  
Tasmania – response dated 24 June 2013

All responses were supportive of the proposed listing.

- A submission was provided to the Attorney-General on 17 June 2013, providing the regulation and Federal Executive Council documentation with respect to the listing of Jabhat al-Nusra.
- On 17 June the Attorney-General signed the *Criminal Code (Terrorist Organisation – Jabhat al-Nusra) Regulation 2013* in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statement, in preparation for the Federal Executive Council meeting on 28 June 2013.
- On 18 June 2013, the Attorney-General advised the then Leader of the Opposition of the proposed listing of Jabhat al-Nusra as a terrorist organisation by letter, and offered a briefing in relation to the listing.
- On 18 June 2013, the Attorney-General wrote to the then Chair of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to list Jabhat al-Nusra as a terrorist organisation.
- On 28 June 2013 the Federal Executive Council made the *Criminal Code (Terrorist Organisation – Jabhat al-Nusra) Regulation 2013*. The Regulation was registered with the FRLI on 28 June 2013 with the FRLI Reference Number F2013L01217. The Regulation came into effect on 29 June 2013, the day after it was registered on FRLI.
- The Attorney-General issued a Media Release on 28 June 2013 announcing the listing of Jabhat al-Nusra and attaching a copy of the Statement of Reasons. The Australian Government’s National Security website was also updated.

## Islamic State of Iraq and the Levant

1.26 The following processes were undertaken for the listing of ISIL:

- An unclassified Statement of Reasons was prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, detailing the case for listing ISIL.
- The Director-General of Security wrote to the Attorney-General on 29 November 2013, outlining the background, training activities, terrorist activities, and relevant statements of ISIL.
- On 29 November 2013, the Australian Government Solicitor provided written advice with respect to the Statement of Reasons, stating that the Attorney-General could, on the basis of the statement, be satisfied on reasonable grounds that matters specified in s102.1(2) of the Criminal Code have been met.
- A submission was provided to the Attorney-General on 29 November 2013, providing the following documents:
  - ⇒ a copy of the Statement of Reasons received from ASIO with respect to ISIL
  - ⇒ advice from the Australian Government Solicitor
  - ⇒ the regulation and Federal Executive Council documentation for the listing of ISIL.
- Having considered the information provided in the submission, the Attorney-General signed a statement on 4 December 2013 confirming that he is satisfied on reasonable grounds that ISIL is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act whether or not the act has occurred or will occur.
- On 4 December 2013, the Attorney-General wrote to the Prime Minister advising of his intention to list ISIL as a terrorist organisation.
- On 4 December 2013, the Attorney-General wrote on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to list ISIL as a terrorist organisation and requesting their comments on the proposed listing. State and Territory officials were also advised of the proposed listing by e-mail dated 4 December 2013.

The following responses were received from the Premiers and Chief Ministers of the States and Territories:

New South Wales - response dated 6 December 2013

South Australia - response dated 6 December 2013

Northern Territory - response dated 7 December 2013

Queensland - response dated 9 December 2013

ACT - response dated 10 December 2013

Tasmania – response dated 11 December 2013

Western Australia – response dated 16 December 2013

Victoria – response dated 18 December 2013

These responses did not object to the proposed listing.

- On 4 December 2013 the Attorney-General signed the *Criminal Code (Terrorist Organisation – Islamic State of Iraq and the Levant) Regulation 2013* and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statement, in preparation for the Federal Executive Council meeting on 12 December 2013.
- On 4 December 2013, the Attorney-General advised the Leader of the Opposition of the proposed listing of ISIL as a terrorist organisation by letter, and offered a briefing in relation to the listing. A copy of the Statement of Reasons was also provided.
- On 12 December 2013 the Federal Executive Council made the *Criminal Code (Terrorist Organisation – Islamic State of Iraq and the Levant) Regulation 2013*. The Regulation was registered with the FRLI on 13 December 2013 with the FRLI Reference Number F2013L02097. The Regulation came into effect on 14 December 2013, the day after it was registered on FRLI.
- The Attorney-General issued a Media Release on 18 December 2013 announcing the listing of ISIL and attaching a copy of the Statement of Reasons. The Australian Government's National Security website was also updated.

### **Abu Sayyaf Group, al-Qa'ida, al-Qa'ida in Iraq, al-Qa'ida in the Lands of the Islamic Maghreb, Jamiat ul-Ansar and Jemaah Islamiyah**

1.27 The following processes were undertaken for the re-listing of Abu Sayyaf Group (ASG), al-Qa'ida (AQ), al-Qa'ida in Iraq (AQI)<sup>5</sup>, al-Qa'ida in the Lands of the Islamic Maghreb (AQIM), Jamiat ul-Ansar (JuA) and Jemaah Islamiyah (JI):

- Unclassified Statements of Reasons were prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, detailing the case for listing ASG, AQ, AQI, AQIM, JuA and JI.
- On 15 May 2013, the Australian Government Solicitor provided written advice with respect to the Statements of Reasons for ASG, AQ, AQI, AQIM, JuA and JI.

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5 As noted earlier, the listing of AQI has been replaced by the listing of ISIL. AQI is accordingly no longer part of the Committee's review.



- The Director-General of Security wrote to the then Attorney-General on 23 May 2013, outlining the background, training activities, terrorist activities, and relevant statements of ASG, AQ, AQI, AQIM, JuA and JI.
- A submission was provided to the Attorney-General on 3 June 2013, providing the following documents:
  - ⇒ copies of the Statement of Reasons received from ASIO with respect to the organisations; and
  - ⇒ advice from the Australian Government Solicitor.
- Having considered the information provided in the submissions, the Attorney-General signed a statement on 5 June 2013 with respect to ASG, AQ, AQI, AQIM, JuA and JI confirming that he is satisfied on reasonable grounds that the organisations are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocating the doing of a terrorist act, whether or not the act has occurred or will occur.
- On 5 June 2013, the Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 23 May 2013.
- On 5 June 2013, the Attorney-General wrote to the then Prime Minister advising of his intention to re-list ASG, AQ, AQI, AQIM, JuA and JI as terrorist organisations.
- On 5 June 2013, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to re-list ASG, AQ, AQI, AQIM, JuA and JI as terrorist organisations and requesting their comments on the proposed re-listings by 1 July 2013. Relevant officials of the States and Territories were also advised of the proposed re-listings by e-mail dated 6 June 2013.

The following responses were received from the Premiers and Chief Ministers of the States and Territories:

Victoria – response dated 24 June 2013

Northern Territory – response dated 25 June 2013

Western Australia – response dated 26 June 2013

South Australia – response dated 1 July 2013

New South Wales – response dated 2 July 2013

Australian Capital Territory – response dated 4 July 2013

Queensland – response dated 12 July 2013

Tasmania – response dated 6 August 2013

No States or Territories objected to the making of the regulations proscribing the organisations as terrorist organisations.

- A submission was provided to the Attorney-General on 28 June 2013, providing the regulation and Federal Executive Council documentation with respect to the re-listing of ASG, AQ, AQI, AQIM, JuA and JI.
- The Attorney-General signed the separate regulations in relation to each organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, an Executive Council minute and explanatory statements, in preparation for the Federal Executive Council meeting that occurred on 11 July 2013.
- On 2 July 2013, the Attorney-General advised the then Leader of the Opposition of the proposed re-listing of ASG, AQ, AQI, AQIM, JuA and JI as terrorist organisations by letter, and offered a briefing in relation to the re-listings.
- On 2 July 2013, the Attorney-General wrote to the then Chair of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to re-list ASG, AQ, AQI, AQIM, JuA and JI as terrorist organisations.
- On 11 July 2013, the Federal Executive Council made the following regulations:

*Criminal Code (Terrorist Organisation-Abu Sayyaf Group) Regulation 2013*

*Criminal Code (Terrorist Organisation-Al-Qa'ida) Regulation 2013*

*Criminal Code (Terrorist Organisation-Al'Qa'ida in Iraq) Regulation 2013*

*Criminal Code (Terrorist Organisation-Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013*

*Criminal Code (Terrorist Organisation-Jamiat ul-Ansar) Regulation 2013*

*Criminal Code (Terrorist Organisation-Jemaah Islamiyah) Regulation 2013*

The Regulations were registered with the FRLI on 11 July 2013 with the FRLI Reference Numbers:

*F2013L01353, Criminal Code (Terrorist Organisation-Abu Sayyaf Group) Regulation 2013*

*F2013L01357, Criminal Code (Terrorist Organisation-Al-Qa'ida) Regulation 2013*

*F2013L01358, Criminal Code (Terrorist Organisation-Al-Qa'ida in Iraq) Regulation 2013*

*F2013L01354, Criminal Code (Terrorist Organisation-Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013*

*F2013L01356, Criminal Code (Terrorist Organisation-Jamiat ul-Ansar) Regulation 2013*

*F2013L01355, Criminal Code (Terrorist Organisation-Jemaah Islamiyah) Regulation 2013*

The re-listing regulations came into effect on 12 July 2013, the day after they were registered on the FRLI.

- The Attorney-General issued a Media Release on 12 July 2013 announcing the re-listing of ASG, AQ, AQL, AQIM, JuA and JI and attaching copies of the Statements of Reasons with respect to each organisation. The Australian Government's National Security website was also updated.

## Al-Qa'ida in the Arabian Peninsula

1.28 In relation to al-Qa'ida in the Arabian Peninsula (AQAP), the following processes were undertaken:

- An unclassified Statement of Reasons was prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, detailing the case for listing AQAP.
- The Director-General of Security wrote to the Attorney-General on 26 September 2013, outlining the background, training activities, terrorist activities, and relevant statements of AQAP.
- On 12 September 2013, the Australian Government Solicitor provided written advice with respect to the Statement of Reasons for AQAP, stating that the Attorney-General could, on the basis of the statement, be satisfied on reasonable grounds that matters specified in s102.1(2) of the Criminal Code have been met.
- A submission was provided to the Attorney-General on 2 October 2013, providing the following documents:
  - ⇒ a copy of the Statement of Reasons received from ASIO with respect to AQAP; and
  - ⇒ advice from the Australian Government Solicitor.
- Having considered the information provided in the submission, the Attorney-General signed a statement on 4 October 2013 with respect to AQAP confirming that he is 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 whether or not the act has occurred or will occur.
- On 4 October 2013, the Attorney-General wrote to the Prime Minister advising of his intention to list AQAP as a terrorist organisation.

- On 4 October 2013, the Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 26 September 2013.
- On 4 October 2013, the Attorney-General wrote on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to list AQAP as a terrorist organisation and requesting their comments on the proposed listing. State and Territory officials were also advised of the proposed listing by e-mail dated 8 October 2013.

The following responses were received from the Premiers and Chief Ministers of the States and Territories:

Tasmania – response dated 14 October 2013  
Queensland – response dated 25 October 2013  
Western Australia – response dated 29 October 2013  
Australian Capital Territory – response dated 1 November 2013  
Northern Territory – response dated 3 November 2013  
Victoria – response dated 5 November 2013  
South Australia – response dated 6 November 2013  
New South Wales – response dated 27 November 2013

These responses did not object to the proposed listing.

- A submission was provided to the Attorney-General on 6 November 2013, providing the regulation and Federal Executive Council documentation with respect to the listing of AQAP.
- On 13 November 2013 the Attorney-General signed the *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Arabian Peninsula) Regulation 2013* and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statement, in preparation for the Federal Executive Council meeting on 21 November 2013.
- On 13 November 2013, the Attorney-General advised the Leader of the Opposition of the proposed listing of AQAP as a terrorist organisation by letter, and offered a briefing in relation to the listing. A copy of the Statement of Reasons was also provided.
- On 21 November 2013 the Federal Executive Council made the *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Arabian Peninsula) Regulation 2013*. The Regulation was registered with the FRLI on 25 November 2013 with the FRLI Reference Number F2013L01969. The

Regulation came into effect on 26 November 2013, the day after it was registered on FRLI.

- The Attorney-General issued a Media Release on 26 November 2013 announcing the listing of AQAP and attaching a copy of the Statement of Reasons. The Australian Government's National Security website was also updated.

## **Committee comment**

- 1.29 The Committee has reviewed the process of listing for each organisation and is satisfied with the appropriateness and adequacy of the procedures undertaken by the Government. The Committee notes that responses were received from all States and Territories, none of which objected to the listings.

