

## **Process for the 2022 re-listing of Islamic State Somalia as a terrorist organisation under the Criminal Code**

### Islamic State (IS) Somalia re-listing process

1. On 1 June 2022, the Department of Home Affairs formally raised the re-listing of IS Somalia with relevant agencies and sought whole-of-government input to inform the Statement of Reasons outlining the case for re-listing Islamic State Somalia (IS Somalia).
2. On 1 August 2022, the Australian Government Solicitor provided written advice to the Department of Home Affairs in relation to IS Somalia and the Criminal Code requirements.
3. On 11 August 2022, the Department of Home Affairs wrote to state and territory officials and members of the Australia-New Zealand Counter-Terrorism Committee to inform them of the proposed re-listing of IS Somalia as a terrorist organisation and to provide them with advance notice that they would be consulted.
4. On 18 August 2022, the Department of Home Affairs provided a submission to the Minister for Home Affairs seeking her consideration of the Statement of Reasons.
5. On 23 August 2022, the Minister for Home Affairs wrote to the Attorney-General, supporting the re-listing of Islamic State Somalia as a terrorist organisation under the Criminal Code. The Minister's letter attached the Statement of Reasons, and drafts of the Regulations, Explanatory Memorandum and Federal Executive Council documents.
6. On 30 August 2022, the Attorney-General's Department provided a submission to the Attorney-General recommending that he agree to the re-listing.
7. On 31 August 2022, the Attorney-General agreed to the re-listing of IS Somalia having been satisfied that the organisation met the statutory criteria and approved the Regulation.
8. On 31 August 2022, the Attorney-General wrote to the Prime Minister advising of the decision to re-list Islamic State Somalia as a terrorist organisation. The Attorney-General notified the Prime Minister that he had written to the First Ministers of each state and territory regarding the proposed re-listing.
9. On 31 August 2022, the Attorney-General wrote to the Leader of the Opposition advising of his decision to re-list Islamic State Somalia as a terrorist organisation, attaching the Statement of Reasons and offering a briefing in relation to the organisation.
10. On 31 August 2022, the Attorney-General wrote to the Minister for Home Affairs advising of his intention to re-list IS Somalia as a terrorist organisation.
11. On 31 August 2022, the Attorney-General wrote to First Ministers on behalf of the Prime Minister, advising of his decision to re-list Islamic State Somalia as a terrorist organisation, and attached copies of the draft Regulation and Statement of Reasons. The letters requested that a response be provided by 13 September 2022, advising whether the First Minister objected to the re-listing, and reasons for any objections.
12. The following responses were received from the Premier or Chief Minister of the following states and territories:
  - Northern Territory – received 12 September 2022
  - Australian Capital Territory – received 13 September 2022
  - Western Australia – received 13 September 2022

- Victoria – received 14 September 2022
- New South Wales – received 14 September 2022

No response was received from the Premiers of Tasmania, South Australia, and Queensland.

No objections were made to the re-listing of IS Somalia as a terrorist organisation.

13. On 15 September 2022, the Governor-General made the Regulation.
14. On 16 September 2022 the *Criminal Code (Terrorist Organisation—Islamic State Somalia) Regulations 2022* was registered on FRL [reference: F2022L01215]. To ensure there is no gap in the coverage of offences in relation to IS Somalia, the Regulation commenced immediately and was not delayed until after the disallowance period.
15. On 6 October 2022 the Attorney-General wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listing of IS Somalia as a terrorist organisation, and attaching the Regulation, Explanatory Statement, and Statement of Reasons, and this listing process document.

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**Process for the 2021 re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code***

The Counter-Terrorism Strategic Policy Branch in the Department of Home Affairs (the Department) facilitates the process by which the Minister for Home Affairs is satisfied that an organisation meets the threshold for listing or re-listing as a terrorist organisation under the *Criminal Code Act 1995* (the Criminal Code).

This includes coordinating whole-of-Government input to a written Statement of Reasons that assesses each organisation, and seeking the advice of the Australian Government Solicitor (AGS) in relation to these assessments. This information and advice is included in a submission to the Minister for Home Affairs to assist her in deciding whether an organisation meets the threshold for listing or re-listing under the *Criminal Code*.

The following process was undertaken for the purpose of re-listing al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations:

1. On 9 March 2021, the Department commenced coordinating whole-of-Government input to Statements of Reasons outlining the case for re-listing al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad.
2. On 12 May 2021, the Department provided the Statements of Reasons outlining the re-listing cases for al-Shabaab, Lashkar-e-Tayyiba and Palestinian Islamic Jihad to AGS.
3. On 19 May 2021, the Department provided the Statements of Reasons outlining the re-listing cases for the Kurdistan Workers' Party and Hamas' Izz al-Din al-Qassam Brigades to AGS.
4. On 21 May 2021, AGS provided written advice to the Department in relation to whether it is open to the Minister to be satisfied of the legislative requirements to re-list al-Shabaab, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations.
5. On 1 June 2021, AGS provided written advice to the Department in relation to whether it is open to the Minister to be satisfied of the legislative requirements to re-list Hamas' Izz al-Din al-Qassam Brigades and the Kurdistan Workers' Party as terrorist organisations.
6. On 25 June 2021, the Department provided a submission to the Minister for Home Affairs advising her that it was open to her to be satisfied on reasonable grounds that the legislative criteria for re-listing al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code* were satisfied.
7. On 28 June 2021, the Department sought the Minister for Home Affairs' approval of the Regulations and associated Federal Executive Council (ExCo) documents, for consideration by the Governor-General at the 22 July 2021 meeting of ExCo.
8. On 1 July 2021, having considered the information provided in the Department's submission, including the Statements of Reasons, the Minister for Home Affairs was satisfied that the five organisations met the threshold for listing.

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9. On 1 July 2021, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of her satisfaction that al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad meet the threshold for listing, and attaching a copy of the Statements of Reasons. The letters requested that a response be provided by 21 July 2021, advising whether the First Minister approved of, or objected to, the proposed listings.
10. On 12 July 2021, the Minister for Home Affairs approved the Regulations and associated ExCo documents.
11. On 12 July 2021, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of her satisfaction that al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad meet the threshold for listing, attaching the Statements of Reasons and offering a briefing in relation to the organisations.
12. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
  - Northern Territory – dated 13 July 2021
  - South Australia – dated 20 July 2021
  - Victoria – dated 20 July 2021
  - Tasmania – dated 20 July 2021
  - Western Australia – dated 21 July 2021
  - Australian Capital Territory – dated 23 July 2021
  - New South Wales – dated 26 July 2021

No objections were made to the re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba or Palestinian Islamic Jihad as terrorist organisations.

At the time of writing, no response had been received from the Premier of Queensland.

13. On 23 July 2021, the Governor-General made the Regulations.
14. On 26 July 2021, the Regulations were registered on the Federal Register of Legislation. The Regulations come into effect on 4 August 2021.
15. On 3 August 2021, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations, and attaching the Regulations, the Explanatory Statements and the Statements of Reasons.