

## Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code). Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) 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.
- 1.2 The regulations under review have specified Hamas' Izz al-Din al-Qassam Brigades (the Brigades), Lashkar-e-Tayyiba (LeT), Kurdish Workers Party (PKK) and Palestinian Islamic Jihad (PIJ) as terrorist organisations for the purposes of section 102.1 of the *Criminal Code Act 1995*.
- 1.3 This is a review of the re-listing of these organisations.
- 1.4 In a letter received by the Committee on 7 September 2009, the Attorney-General advised that he intended to re-list these organisations prior to the lapsing of their current listing as provided for in section 102.1(3). The Attorney provided statements of reasons for the re-listings. This was accepted as submission number one to this review.
- 1.5 The regulations were tabled in the House of Representatives and the Senate on 9 September 2009. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore the Committee has conducted its review to enable it to report to the Parliament by 17 November 2009.

- 1.6 Notice of the review was placed on the Committee's website on 11 September 2009. The inquiry was advertised in *The Australian* on 16 September 2009 (see Appendix C). Submissions were due to be received by 6 October 2009. Three public submitters sought and were granted extensions to the submission time.
- 1.7 Seven public submissions were received.
- 1.8 The Committee held a hearing on 22 October 2009 in which the following people/organisations appeared:
- Australian Kurdish Association and the Kurdish Association of Victoria
  - Federation of Community Legal Centres (Vic) Inc
  - Dr Patrick Emerton
  - Attorney-General's Department
  - Australian Security Intelligence Organisation
- 1.9 The Committee thanks those, particularly members of the public and public organisations, who took part in its hearing.

## **The Government's procedures**

- 1.10 In a letter received by the Committee on 7 October 2009, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of re-listing the organisation:

### **Process for the 2009 re-listing of four terrorist organisations under the Criminal Code**

- The Security Law Branch of the Attorney-General's Department facilitates the process by which the Attorney-General makes a decision to list, re-list or de-list a terrorist organisation under the Criminal Code. This includes obtaining products from ASIO that assess organisations and seeking the advice of the Chief General Counsel in relation to the assessments. These are included in a package of information that is submitted to the Attorney-General to assist him to make a decision as to whether or not a particular organisation will be listed under the Criminal Code.

- The following processes were undertaken for the purpose of re-listing Hamas' Izz al-Din al-Qassam Brigades (the Brigades), the Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ):
- Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing the Brigades, PKK, LeT and PIJ.
- On 3 June 2009 Mr George Witynski, Deputy Chief General Counsel provided written advice with respect to the Statements of Reasons for the Brigades, PKK, LeT and PIJ.
- The Acting Director-General of Security wrote to the Attorney-General on 4 June 2009 outlining the background, training activities, terrorist activities, and relevant statements of the Brigades, PKK, LeT and PIJ.
- A submission was provided to the Attorney-General on 11 June 2009 providing the following documents:
  - a. copies of the Statements of Reasons received from ASIO with respect to the organisations
  - b. advice from the Deputy Chief General Counsel, and
  - c. regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed statements with respect to the Brigades, PKK, LeT and PIJ confirming that he is satisfied on reasonable grounds that the organisations are organisations 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.
- The Attorney-General also signed *Criminal Code Amendment Regulations 2009* in relation to the organisations, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statements.
- On 25 June 2009 the Attorney-General wrote to the Prime Minister advising of his intention to re-list the Brigades, PKK, LeT and PIJ as terrorist organisations.
- On 25 June 2009 the Attorney-General wrote to the Director-General of Security, in response to the Acting Director-General's letter dated 4 June 2009.
- On 6 July 2009 the Attorney-General advised the Leader of the Opposition of the proposed re-listing of the Brigades,

PKK, LeT and PIJ as terrorist organisations by letter, and offered a briefing in relating to these re-listings. The letter also advised the Leader of the Opposition that, as a result of an administrative error, regulations re-listing these organisations were made prematurely but would soon be repealed (see Attachment A).

- On 24 July 2009 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to re-list the Brigades, PKK, LeT and PIJ as terrorist organisations.

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

- ⇒ Victoria - 5 August 2009
- ⇒ Australian Capital Territory - 6 August 2009
- ⇒ Northern Territory - 10 August 2009
- ⇒ Western Australia - 13 August 2009
- ⇒ Tasmania - 18 August 2009
- ⇒ New South Wales - 19 August 2009
- ⇒ Queensland - 31 August 2009

- All responses were supportive of the proposed re-listings.
- A submission was provided to the Attorney-General on 19 August 2009 providing regulations and Federal Executive Council documentation with respect to the re-listing of the Brigades, PKK, LeT and PIJ.

(Due to the administrative error discussed at Attachment A, it was necessary for the Attorney-General to approve these documents again.)

- The Attorney-General signed statements with respect to the Brigades, PKK, LeT and PIJ confirming that he is satisfied on reasonable grounds that the organisations are organisations 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.
- The Attorney-General also signed *Criminal Code Amendment Regulations 2009* in relation to the organisations, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statements.
- On 27 August 2009 the Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to re-list the Brigades, PKK, LeT and PIJ as terrorist organisations.

- On 7 September 2009 the Governor-General made the Criminal Code Amendment Regulations 2009 (No. 13), Criminal Code Amendment Regulations 2009 (No. 14), Criminal Code Amendment Regulations 2009 (No. 15) and Criminal Code Amendment Regulations 2009 (No. 16) with respect to the re-listings of the Brigades, PKK, LeT and PIJ.
- The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 7 September 2009 with the following FRLI Reference Numbers:
  - ⇒ F2009L03396 - Criminal Code Amendment Regulations 2009 (No. 13)
  - ⇒ F2009L03397 - Criminal Code Amendment Regulations 2009 (No. 14)
  - ⇒ F2009L03398 - Criminal Code Amendment Regulations 2009 (No. 15)
  - ⇒ F2009L03399 - Criminal Code Amendment Regulations 2009 (No. 16)
- The Regulations came into effect on 8 September 2009, the day after they were registered on FRLI.
- The Attorney-General issued a Media Release on 8 September 2009 announcing the re-listing of the terrorist organisations and attaching copies of the Statements of Reasons.
- The Attorney-General's Department's National Security website was also updated.

## Procedural comments

- 1.11 The Attorney-General Department's Attachment A, mentioned above, informed the Committee that a set of regulations for this re-listing were made as a 'result of an administrative error'<sup>1</sup> and were repealed by regulations with the FLRI number - F2009L02684.
- 1.12 The Committee notes the administrative error that forced the original regulations to be repealed and remade. The Committee is satisfied with the procedures undertaken by the Government and notes the responses of the States and Territories.

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1 Attorney-General's Department, *Submission 2 - Attachment A*

## Committee comment on submissions 4, 8 and 9

- 1.13 Mr Assem Judeh sent three detailed submissions to the Committee. These were received as submissions 4, 8 and 9 and were authorised for publication.
- 1.14 It is Mr Judeh's view that ASIO have not been truthful in the information they have presented in their statements of reasons in relation to the Brigades and the PIJ. His submission is that ASIO's statements of reasons do not contain accurate information, lack proper analysis and contain 'deliberate bias and inaccurate assessment regarding the Brigades and PIJ'<sup>2</sup>. In support of this allegation Mr Judeh has presented voluminous amounts of his own 'open source' data collected from the internet. Much of this information contains reports on alleged human rights abuses by the Israeli Defence Force (IDF).
- 1.15 Whilst the statements of reasons refer to open source documents, importantly they state that the information provided, whilst publicly available, has been 'corroborated by classified information.'<sup>3</sup>
- 1.16 Mr Judeh's submission, at times, confuses the listing of the Brigades with Hamas. The Committee makes it clear that Hamas is not being listed only Hamas' Izz al-Din al-Qassam Brigades are being listed.
- 1.17 The central question in the listing of the Hamas Brigades, the PIJ, or any other organisation, is whether they have been involved in terrorist activities. Mr Judeh's submissions concerning the IDF are not relevant to the legislative test of whether the Brigades have been involved in such activities.
- 1.18 In relation to the Brigades and the PIJ Mr Judeh did not provide any information that would suggest either of these groups had renounced violence and should not be listed under Australia's proscription regime.
- 1.19 In relation to his specific allegation about the statement of reasons containing inaccurate information, Mr Judeh states that the February 2008 attack on Dimona, has been mistakenly attributed to the Brigades.

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2 Mr Assem Judeh, *Submission 4*, p. 85.

3 See *Statements of Reasons*, Appendices D, E, F, G.

- 1.20 The Committee is aware that ‘an al-Aqsa Martyrs Brigades spokesman told a news conference in Gaza that it was a joint operation between al-Aqsa, the Popular Front for the Liberation of Palestine (PFLP) and another lesser-known faction.’<sup>4</sup> However it is also aware that ‘ Hamas spokesman Ayman Taha said he did not know whether Hamas was involved in the attack, but called it “heroic” and “justified.”’<sup>5</sup>
- 1.21 The Committee notes that Jane’s does not list this attack as one carried out by the Brigades.
- 1.22 The Committee also notes that a Hamas member, Shihab Natsheh was killed during exchanges of fire with IDF forces and is alleged to be the bomb making ‘mastermind’ behind the Dimona attack.<sup>6</sup>
- 1.23 The statement of reasons says that the Dimona attack is one ‘for which responsibility has been claimed by, or reliably attributed to, the Brigades.’<sup>7</sup>
- 1.24 Mr Judeh did provide third and fourth supplementary submissions to the Committee. This was not accepted by the Committee as the issues Mr Judeh addressed were not relevant to the matters before this inquiry.

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4 *Israeli killed in suicide bombing*, <[http://news.bbc.co.uk/2/hi/middle\\_east/7225775.stm](http://news.bbc.co.uk/2/hi/middle_east/7225775.stm)>

5 *Israel: Hamas and the Dimona Suicide Bomber*, <[http://www.stratfor.com/memberships/110047/analysis/israel\\_hamas\\_and\\_dimona\\_suicide\\_bombing](http://www.stratfor.com/memberships/110047/analysis/israel_hamas_and_dimona_suicide_bombing)>

6 *IDF kills terror mastermind in Hebron* <<http://www.ynetnews.com/articles/0,7340,L-3573486,00.html>> and *Bomb attack leads to huge Hams crackdown on Fatah* <[http://www.timesonline.co.uk/tol/news/world/middle\\_east/article4411395.ece#](http://www.timesonline.co.uk/tol/news/world/middle_east/article4411395.ece#)> see also, <<http://www.reuters.com/news/video?videoId=87887>> and *Hamas fighter killed in West Bank* <<http://english.aljazeera.net/news/middleeast/2008/07/200872683457514622.html#>>

7 ‘Hamas’ Izz al-Din al-Qassam Brigades’ *Statement of Reasons* p. 4

