

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 the following organisations as terrorist organisations for the purposes of section 102.1 of the Criminal Code:
 - Ansar al-Islam (formerly Ansar al-Sunna)
 - Asbat al-Ansar (AAA)
 - Islamic Army of Aden (IAA)
 - Islamic Movement of Uzbekistan
 - Jaish-e-Mohammad (JeM)
 - Lashkar-e Jhangvi (LeJ)
- 1.3 This is a review of the re-listing of these six organisations.
- 1.4 The Committee notes that the Attorney-General recently considered advice from the Director-General of Security with respect to the Egyptian Islamic Jihad (EIJ). This advice noted that there was a lack of contemporaneous information from either classified or open sources to demonstrate that the EIJ continues to meet the legislative criteria under the Criminal Code. He stated he would not be re-listing EIJ as a

terrorist organisation under the Criminal Code after the current listing expired on 30 March 2009.¹

- 1.5 In order to give greater transparency to the listing process, the Committee has requested that the Attorney-General provide the Committee with a statement of reasons as to why the EIJ has been de-listed. This issue will be addressed further in chapter three.
- 1.6 In a letter received by the Committee on 10 March 2009, the Attorney-General advised that he intended to re-list these six 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. These are accepted as submission number one to this review.
- 1.7 The regulations were signed by the Governor-General on 13 March 2009. They were then tabled in the House of Representatives and the Senate on 17 March 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 was required to report to the Parliament by Monday 15 June 2009.
- 1.8 The Committee advertised the inquiry in *The Australian* on Wednesday, 18 March 2009 (see appendix H). Notice of the review was placed on the Committee's website. One submission from the general public was received from the Federation of Community Legal Centres, Victoria.
- 1.9 In its first report, *Review of the listing on the Palestinian Islamic Jihad (PIJ)*, the Committee 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.
- 1.10 The Committee continues to regard this as a useful approach in the discharge of its responsibilities.

The Government's procedures

- 1.11 In a letter received by the Committee on 14 April 2009, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of listing the organisations:
 - The then Director-General of Security, Mr Paul O'Sullivan, wrote to the Attorney-General on 21 January 2009

¹ *Submission 1.*

outlining the background, training activities, terrorist activities, and relevant statements of Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU. This included the provision of unclassified Statements of Reasons prepared by ASIO, in consultation with DFAT and AGS, detailing the case for re-listing Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU.

- A submission was provided to the Attorney-General on 28 January 2009 providing the following documents:
 - ⇒ copies of the Statements of Reasons received from ASIO with respect to the six organisations
 - ⇒ advice from the Chief General Counsel in relation to the six organisations, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a separate statement with respect to Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU confirming that he is satisfied on reasonable grounds that each organisation is an organisation 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 the *Criminal Code Amendment Regulations 2009* in relation to each organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minutes and explanatory statements for each organisation.
- The Attorney-General wrote to the Prime Minister and the Director-General of Security advising of his intention to list Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU as terrorist organisations.
- On 17 February 2009 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to list Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU as terrorist organisations.
- The following responses were received from the Premiers and Chief Ministers of the States and Territories:
 - ⇒ Australian Capital Territory – 4 March 2009
 - ⇒ New South Wales – dated 6 March 2009
 - ⇒ Northern Territory – 12 March 2009
 - ⇒ Victoria – 12 March 2009
 - ⇒ Western Australia – 12 March 2009
 - ⇒ South Australia – 25 March 2009

- All responses were supportive of the proposed re-listings.
- Note: On 11 March 2009 the Director-General of Queensland's Department of the Premier and Cabinet advised that as an election in Queensland would take place on 21 March 2009, the conventions of a caretaker government applied and it would therefore not be possible to provide a response to the Prime Minister's proposal within the timeframe requested.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to re-list Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU as terrorist organisations.
- The Attorney-General advised the Leader of the Opposition of the proposed re-listing of Ansar al-Islam, AAA, JeM, IAA, LeJ, and IMU as terrorist organisations by letter, and offered a briefing in relating to these re-listings.
- On 13 March 2009 the Governor-General made six separate regulations as follows:
 - ⇒ *Criminal Code Amendment Regulations 2009 (No. 1)* with respect to the re-listing of Ansar al-Islam
 - ⇒ *Criminal Code Amendment Regulations 2009 (No. 2)* with respect to the re-listing of Asbat al-Ansar (AAA)
 - ⇒ *Criminal Code Amendment Regulations 2009 (No. 3)* with respect to the re-listing of Jaish-e Mohammad (JeM)
 - ⇒ *Criminal Code Amendment Regulations 2009 (No. 4)* with respect to the re-listing of Islamic Army of Aden (IAA)
 - ⇒ *Criminal Code Amendment Regulations 2009 (No. 5)* with respect to the re-listing of Lashkar-e Jhangvi (LeJ), and
 - ⇒ *Criminal Code Amendment Regulations 2009 (No. 6)* with respect to the re-listing of Islamic Movement of Uzbekistan (IMU).
- The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 13 March 2009 with the following FRLI Reference Numbers:
 - ⇒ F2009L00835 - *Criminal Code Amendment Regulations 2009 (No. 1)* with respect to the re-listing of Ansar al-Islam
 - ⇒ F2009L00834 - *Criminal Code Amendment Regulations 2009 (No. 2)* with respect to the re-listing of Asbat al-Ansar (AAA)
 - ⇒ F2009L00838 - *Criminal Code Amendment Regulations 2009 (No. 3)* with respect to the re-listing of Jaish-e Mohammad (JeM)

- ⇒ F2009L00837 - *Criminal Code Amendment Regulations 2009 (No. 4)* with respect to the re-listing of Islamic Army of Aden (IAA)
- ⇒ F2009L00836 - *Criminal Code Amendment Regulations 2009 (No. 5)* with respect to the re-listing of Lashkar-e Jhangvi (LeJ), and
- ⇒ F2009L00833 - *Criminal Code Amendment Regulations 2009 (No. 6)* with respect to the re-listing of Islamic Movement of Uzbekistan (IMU).

- The regulations came into effect on 14 March 2009, the day after they were registered on FRLI.
- The Attorney-General issued a Media Release on 17 March 2009 announcing the re-listing of the terrorist organisations and attaching copies of the Statements of Reasons for each organisation.
- The Attorney-General's Department's National Security website was also updated.²

1.12 At the hearing, the Committee became aware that the public statement of reasons provided to the Committee were not copies of the unclassified documents received from ASIO by the Attorney-General's Department in respect of the six organisations, as indicated above.

1.13 The Committee was subsequently provided with a non-public version of the statement of reasons which contained the following previously omitted information in respect of the six organisations under review:

- Islamic Movement of Uzbekistan (IMU):

These details have been corroborated by official reporting. ASIO assesses the details set out below are accurate and reliable.

- Jaish-e-Mohammad (JeM):

These details have been corroborated by material from intelligence investigations into the activities of JeM and official reporting.

- Asbat al-Ansar (AAA):

These details have been corroborated by material from intelligence investigations into the activities of AAA and official reporting.

- Islamic Army of Aden (IAA):

These details have been corroborated by classified material. ASIO assesses that the details set out below are accurate and reliable.

■ Ansar al-Islam:

These details have been corroborated by classified material. ASIO assesses that the details set out below are accurate and reliable.

■ Lashkar-e Jhangvi (LeJ):

These details have been corroborated by official reporting. ASIO assesses the details set out below are accurate and reliable.

- 1.14 In addition to the above, the non-public statement of reasons provided to the Committee for each of the six organisations, included a conclusion, which stated that each organisation was directly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, thereby satisfying the statutory criteria contained in section 102.1 of the Criminal Code.

Procedural comments

- 1.15 The Committee is satisfied with the procedures undertaken by the Government and notes the responses of the States and Territories.