

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 ASIO, ASIS and DSD (the Committee) may review a regulation specifying an organisation as a terrorist organisation for the purposes 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. This is the third review undertaken under this power during the current Parliament.
- 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;
 - Asbat al-Ansar;
 - Egyptian Islamic Jihad;
 - Islamic Army of Aden;
 - Jaish-e-Mohammad;
 - Lashkar-e Jhangvi; and
 - Islamic Movement of Uzbekistan;
- 1.3 These organisations were initially listed as terrorist organisations under the Criminal Code in 2003. Under subsection 102.1 (3) of the Criminal Code, the regulations cease to have effect on their second anniversary.

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- 1.4 The Attorney-General informed the Committee of the proposed re-listing of Ansar al-Islam by letter dated 17 March 2005. The Committee was advised of the re-listing of Asbat al-Ansar, Egyptian Islamic Jihad, Islamic Movement of Uzbekistan, Jaish-e-Mohammad and Lashkar-e Jhangvi by the Attorney-General's letters dated 23 March 2005. The Attorney-General wrote to the Chairman again on 31 March 2005 advising of the re-listing of the Islamic Army of Aden.
- 1.5 The Attorney-General issued media releases announcing the decisions to re-list the organisations on 23 March 2005 and 7 April 2005. The media releases provided open source details on the organisations.
- 1.6 The regulations were tabled in the House of Representatives on 24 May 2005. 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 is required to report to the Parliament by 10 August 2005.
- 1.7 The Committee advertised the inquiry in *The Australian* on 11 April 2005. Notice of the inquiry was also placed on the Committee's website and two submissions were received from the general public.
- 1.8 Representatives of the Attorney-General's Department, ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listings on 2 May 2005 in Canberra.
- 1.9 In its first report, *Review of the listing of 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. Chapter 2 will examine the Government's procedures in listing the organisations and broader issues regarding the proscription power. Chapter 3 will consider the merits of the listings.

The Government's procedures

- 1.10 In a letter sent to the Committee on 18 April 2005, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of listing the organisations:

Ansar al-Islam:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 10 March 2005 that the Statement of

Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.

- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 7 March 2005 outlining the background, training activities, terrorist activities, and relevant statements of the organisation.
- AGD consulted with DFAT in order to identify issues of relevance with respect to the re-listing of Ansar al-Islam. DFAT provided a response by email dated 9 March 2005 expressing support for the re-listing of Ansar al-Islam.
- A submission was provided to the Attorney-General on 14 February 2005 including:
 - ⇒ copies of the Statements of Reasons from ASIO for the organisation;
 - ⇒ advice from the Chief General Counsel in relation to the organisation;
 - ⇒ the letter from the Director-General of Security;
 - ⇒ responses from DFAT in relation to the proposed listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
- The Attorney-General wrote to the Prime Minister on 17 March 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter on 17 March 2005 and was offered a briefing in relation to the re-listing.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 17 March 2005 advising of his decision to re-list the organisation.
- On 17 March 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising them of the decision to re-list the organisation. The following responses have been received:

⇒ 22 March 2005 from the Minister for Justice and Attorney-General of the Northern Territory advising that he had no opposition to the re-listing of the organisation.

⇒ 1 April 2005 from the Attorney-General of South Australia noting the information provided and advising that there were no objections to the proposal.

⇒ 1 April 2005 from the Attorney-General of Queensland advising that there was no objection to the proposed re-listing.

⇒ The Premier of Western Australia wrote to the Prime Minister on 30 March 2005 advising that there was no objection to the re-listing of the organisation and requesting that future requests in relation to re-listings adhere to the provisions of the *Inter-governmental Agreement on counter-terrorism Laws* (25 June 2004). A copy of this letter was also sent to the Attorney-General.

⇒ The Premier of NSW wrote to the Prime Minister on 1 April 2005 and sent a copy of this letter to the Attorney-General. The Premier did not object to the re-listing of the organisation as a terrorist organisation. The Premier requested that in accordance with the *Inter-governmental Agreement on Counter-Terrorism Laws*, he would appreciate all future matters concerning the listing of terrorist organisations being raised directly with the Premier.

- The Prime Minister responded to the Premier of NSW and to the Premier of Western Australia by letter dated 4 April 2005 advising that the process adopted by the Government is consistent with the terms of the Intergovernmental Agreement on Counter-terrorism Laws and that it is more practical administratively in the case of re-listings to continue the current practice whereby the Commonwealth Attorney-General liaises with his counterparts in the States and Territories.
- The Governor-General made the regulation on 23 March 2005.
- The Regulation was registered with the Federal Register of Legislative Instruments (FRLI) on 23 March 2005 [FRLI Reference Number: F2005L00699]
- A press release was issued 23 March 2005 and the Attorney-General's Department National Security website was updated.

Asbat al-Ansar:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 8 March 2005 outlining the

background, training activities, terrorist activities and relevant statements of the organisation.

- AGD consulted DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 9 March 2005. No further detail was provided.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 10 March 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.
- A submission was provided to the Attorney-General on 14 March 2005 including:
 - ⇒ copies of the Statement of Reasons from ASIO for the organisation;
 - ⇒ advice from the Chief General Counsel in relation to the organisation;
 - ⇒ the letter from the Director-General of Security;
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
- On 17 March 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. The following responses were received:
 - ⇒ 22 March 2005 from the Minister for Justice and Attorney-General of the Northern Territory advising that he had no opposition to the re-listing of the organisation.
 - ⇒ 1 April 2005 from the Attorney-General of South Australia noting the information provided and advising that there were no objections to the proposal.

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- ⇒ 1 April 2005 from the Attorney-General of Queensland advising that there was no objection to the proposed re-listing.
 - ⇒ The Premier of Western Australia wrote to the Prime Minister on 30 March 2005 advising that there was no objection to the re-listing of the organisation and requesting that future requests in relation to re-listings adhere to the provisions of the *Inter-governmental Agreement on counter-terrorism Laws* (25 June 2004). A copy of this letter was also sent to the Attorney-General.
 - ⇒ The Premier of NSW wrote to the Prime Minister on 1 April 2005 and sent a copy of this letter to the Attorney-General. The Premier did not object to the re-listing of the organisation as a terrorist organisation. The Premier requested that in accordance with the *Inter-governmental Agreement on Counter-Terrorism Laws*, he would appreciate all future matters concerning the listing of terrorist organisations being raised directly with the Premier.
 - The Prime Minister responded to the Premier of NSW and to the Premier of Western Australia by letter dated 4 April 2005 advising that the process adopted by the Government is consistent with the terms of the *Intergovernmental Agreement on Counter-terrorism Laws* and that it is more practical administratively in the case of re-listings to continue the current practice whereby the Commonwealth Attorney-General liaises with his counterparts in the States and Territories.
 - The Attorney-General wrote to the Prime Minister on 23 March 2005 advising of his intention to re-list the organisation.
 - The Leader of the Opposition was advised of the proposed re-listing by letter dated 23 March 2005 and was offered a briefing in relation to the re-listing.
 - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 23 March 2005 advising of this decision to re-list the organisation.
 - The Administrator made the regulation on 7 April 2005.
 - A press release was issued on 7 April 2005 and the Attorney-General's Department National Security website was updated.
 - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 8 April 2005 [FRLI Reference Number: F2005L00701].

Egyptian Islamic Jihad:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 10 March 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- AGD consulted DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 14 March 2005. No further detail was provided.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 10 March 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.
- A submission was provided to the Attorney-General on 14 March 2005 including:
 - ⇒ copies of the Statement of Reasons from ASIO for the organisation;
 - ⇒ advice from the Chief General Counsel in relation to the organisation;
 - ⇒ the letter from the Director-General of Security;
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
- On 17 March 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. The following responses were received:
 - ⇒ 22 March 2005 from the Minister for Justice and Attorney-General of the Northern Territory advising that he had no opposition to the re-listing of the organisation.

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- ⇒ 1 April 2005 from the Attorney-General of South Australia noting the information provided and advising that there were no objections to the proposal.
 - ⇒ 1 April 2005 from the Attorney-General of Queensland advising that there was no objection to the proposed re-listing.
 - ⇒ The Premier of Western Australia wrote to the Prime Minister on 30 March 2005 advising that there was no objection to the re-listing of the organisation and requesting that future requests in relation to re-listings adhere to the provisions of the *Inter-governmental Agreement on counter-terrorism Laws* (25 June 2004). A copy of this letter was also sent to the Attorney-General.
 - ⇒ The Premier of NSW wrote to the Prime Minister on 1 April 2005 and sent a copy of this letter to the Attorney-General. The Premier did not object to the re-listing of the organisation as a terrorist organisation. The Premier requested that in accordance with the *Inter-governmental Agreement on Counter-Terrorism Laws*, he would appreciate all future matters concerning the listing of terrorist organisations being raised directly with the Premier.
 - The Prime Minister responded to the Premier of NSW and to the Premier of Western Australia by letter dated 4 April 2005 advising that the process adopted by the Government is consistent with the terms of the *Intergovernmental Agreement on Counter-terrorism Laws* and that it is more practical administratively in the case of re-listings to continue the current practice whereby the Commonwealth Attorney-General liaises with his counterparts in the States and Territories.
 - The Attorney-General wrote to the Prime Minister on 23 March 2005 advising of his intention to re-list the organisation.
 - The Leader of the Opposition was advised of the proposed re-listing by letter dated 23 March 2005 and was offered a briefing in relation to the re-listing.
 - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 23 March 2005 advising of this decision to re-list the organisation.
 - The Administrator made the regulation on 7 April 2005.
 - A press release was issued on 7 April 2005 and the Attorney-General's Department National Security website was updated.
 - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 8 April 2005 [FRLI Reference Number: F2005L00707].

Islamic Movement of Uzbekistan:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 8 March 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- AGD consulted DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 9 March 2005. No further detail was provided.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 10 March 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.
- A submission was provided to the Attorney-General on 14 March 2005 including:
 - ⇒ copies of the Statement of Reasons from ASIO for the organisation;
 - ⇒ advice from the Chief General Counsel in relation to the organisation;
 - ⇒ the letter from the Director-General of Security;
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
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- ⇒ 1 April 2005 from the Attorney-General of South Australia noting the information provided and advising that there were no objections to the proposal.
 - ⇒ 1 April 2005 from the Attorney-General of Queensland advising that there was no objection to the proposed re-listing.
 - ⇒ The Premier of Western Australia wrote to the Prime Minister on 30 March 2005 advising that there was no objection to the re-listing of the organisation and requesting that future requests in relation to re-listings adhere to the provisions of the *Inter-governmental Agreement on counter-terrorism Laws* (25 June 2004). A copy of this letter was also sent to the Attorney-General.
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 - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 23 March 2005 advising of this decision to re-list the organisation.
 - The Administrator made the regulation on 7 April 2005.
 - A press release was issued on 7 April 2005 and the Attorney-General's Department National Security website was updated.
 - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 8 April 2005 [FRLI Reference Number: F2005L00702].

Jaish-e-Mohammad:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 8 March 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- AGD consulted DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 9 March 2005. No further detail was provided.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 10 March 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.
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 - ⇒ advice from the Chief General Counsel in relation to the organisation;
 - ⇒ the letter from the Director-General of Security
 - ⇒ the response from DFAT in relation to the proposed re-listing, and
 - ⇒ regulations and Federal Executive Council documentation.
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 - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 23 March 2005 advising of this decision to re-list the organisation.
 - The Administrator made the regulation on 7 April 2005.
 - A press release was issued on 7 April 2005 and the Attorney-General's Department National Security website was updated.
 - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 8 April 2005 [FRLI Reference Number: F2005L00703].

Lashkar-e Jhangvi:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 8 March 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- AGD consulted DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 9 March 2005. No further detail was provided.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 10 March 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.
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 - The Attorney-General wrote to the Prime Minister on 23 March 2005 advising of his intention to re-list the organisation.
 - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 23 March 2005 advising of this decision to re-list the organisation.
 - The Administrator made the regulation on 7 April 2005.
 - A press release was issued on 7 April 2005 and the Attorney-General's Department National Security website was updated.
 - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 8 April 2005 [FRLI Reference Number: F2005L00706].

Islamic Army of Aden:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 22 March 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 22 March 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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 terrorist act has occurred or will occur.
- AGD consulted DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email on 23 March 2005. No further detail was provided.
- A submission was provided to the Attorney-General on 30 March 2005 including:
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- On 31 March 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 6 April 2005.
- The Attorney-General wrote to the Prime Minister on 31 March 2005 advising of his intention to re-list the organisation.

- The Leader of the Opposition was advised of the proposed re-listing by letter dated 31 March 2005 and was offered a briefing in relation to the re-listing.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 31 March 2005 advising of this decision to re-list the organisation.
- The Administrator made the regulation on 7 April 2005.
- A press release was issued on 7 April 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 8 April 2005 [FRLI Reference Number: F2005L00850].

