



Australian Government
Attorney-General's Department

**National Security Law
& Policy Division**

12/6775

28 August 2012

Mr Robert Little
Committee Secretary
Parliamentary Joint Committee
on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Mr Little

I refer to the Attorney-General's letter of 10 August 2012, to the Chair of the Parliamentary Joint Committee on Intelligence and Security concerning the *Criminal Code Amendment Regulations 2012* re-listing five organisations as terrorist organisations under the Criminal Code.

I confirm that the separate *Criminal Code Amendment Regulations 2012 (No 7.)* to *(No. 11)* were made on 16 August 2012 giving effect to the re-listing of Al-Shabaab, Hamas Izz al-Din al-Qassam Brigades, Lashkar-e-Tayyiba, Kurdistan Workers Party (PKK) and Palestinian Islamic Jihad.

The regulations re-listing these five organisations came into effect on 18 August 2012, the day after they were registered on the Federal Register of Legislative Instruments.

I attach a document outlining the process for re-listing these five terrorist organisations. I understand that this document will be considered as a submission to the Committee's review into the re-listing of these organisations, and I consent to its publication.

Yours sincerely

Geoff McDonald
First Assistant Secretary
National Security Law and Policy Division

Encl. Process of re-listing

Process for the 2012 proscription of Al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba and Palestinian Islamic Jihad under the *Criminal Code Act 1995*

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 the Australian Security Intelligence Organisation (ASIO) that assess organisations and seeking the advice of the Chief General Counsel of the Australian Government Solicitor in relation to the assessments. These are included in a package of information that is submitted to the Attorney-General to assist her 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 Al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades (Hamas Brigades), Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ):

1. Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ.
2. On 1 June 2012, Mr Robert Orr QC, Chief General Counsel, provided written advice with respect to the Statements of Reasons for Al-Shabaab, Hamas Brigades, LeT and PIJ.
3. On 28 June 2002, Mr Mark Molloy, Senior General Counsel, provided written advice with respect to the Statements of Reasons for the PKK.
4. The Director-General of Security wrote to the Attorney-General on 29 June 2012, outlining the background, training activities, terrorist activities, and relevant statements of Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ.
5. A submission was provided to the Attorney-General on 13 July 2012, providing the following documents:
 - a. copies of the Statements of Reasons received from ASIO with respect to the organisations; and
 - b. advice from the Chief General Counsel.
6. Having considered the information provided in the submission, the Attorney-General signed statements on 23 July 2012 with respect to Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ confirming that she 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, or advocate the doing of a terrorist act, whether or not the act has occurred or will occur.
7. On 23 July 2012, the Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 29 June 2012.

8. On 23 July 2012, the Attorney-General wrote to the Prime Minister advising of her intention to re-list Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ as terrorist organisations.
9. On 23 July 2012, 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 her decision to re-list Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ as terrorist organisations and requesting their comments on the proposed re-listing. The States and Territories were also advised of the proposed re-listings by e-mail dated 24 July 2012.

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

New South Wales – response dated 10 August 2012

Victoria – response received 21 August 2012

Queensland - response dated 7 August 2012

Western Australia – response dated 9 August 2012

South Australia – response dated 10 August 2012

Tasmania – response dated 17 August 2012

Australian Capital Territory – response dated 13 August 2012

Northern Territory – response dated 31 July 2012 to the Prime Minister

No State or Territory objected to the making of the Regulations.

10. A submission was provided to the Attorney-General on 6 August 2012, providing regulations and Federal Executive Council documentation with respect to the re-listing of Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ.
11. On 6 August 2012 the Attorney-General signed *Criminal Code Amendment Regulations 2012* in relation to the organisations, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statements, in preparation for the Federal Executive Council meeting on 16 August 2012.
12. On 10 August 2012, the Attorney-General advised the Leader of the Opposition of the proposed re-listing of Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ as terrorist organisations by letter, and offered a briefing in relation to the re-listings.
13. On 10 August 2012, the Attorney-General wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of her decision to re-list Al-Shabaab, Hamas Brigades, PKK, LeT and PIJ as terrorist organisations.
14. On 16 August 2012 the Governor-General signed the following Criminal Code Amendment Regulations:

15. *Criminal Code Amendment Regulations 2012 (No. 7)* – re-listing Hamas’ Izz al-Din al-Qassam Brigades

Criminal Code Amendment Regulations 2012 (No. 8) – re-listing Lashkar-e-Tayyiba

Criminal Code Amendment Regulations 2012 (No. 9) – re-listing Al-Shabaab

Criminal Code Amendment Regulations 2012 (No. 10) – re-listing Palestinian Islamic Jihad, and

Criminal Code Amendment Regulations 2012 (No. 11) – re-listing Kurdistan Workers Party (PKK).

The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 17 August 2012 with the following FRLI Reference Numbers:

- F2012L01693 – *Criminal Code Amendment Regulation 2012 (No. 7)*
- F2012L01694 – *Criminal Code Amendment Regulation 2012 (No. 8)*
- F2012L01695 – *Criminal Code Amendment Regulation 2012 (No. 9)*
- F2012L01696 – *Criminal Code Amendment Regulation 2012 (No. 10)*
- F2012L01697 – *Criminal Code Amendment Regulation 2012 (No. 11)*

The re-listing Regulations came into effect on 18 August 2012, the day after they were registered on FRLI.

16. The Attorney-General issued a Media Release on 17 August 2012 announcing the re-listing of the five terrorist organisations.

The Australian Government’s National Security website was also updated.