

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)
 - Islamic Movement of Uzbekistan
 - Jaish-e-Mohammad (JeM)
 - Lashkar-e Jhangvi (LeJ)
- 1.3 This is a review of the re-listing of these four organisations.
- 1.4 In a letter to the Committee dated 22 February 2012, the Attorney-General advised that she intended to re-list these four 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 were accepted as submission number one to this review.
- 1.5 The regulations were signed by the Governor-General on 8 March 2012. They were then tabled in the House of Representatives and the Senate on 13 March 2012. 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 Tuesday, 29 May 2012.

- 1.6 Notice of the review was placed on the Committee's website and a media release was issued on 15 March 2012. No submissions were received from the general public.
- 1.7 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.
- 1.8 The Committee continues to regard this as a useful approach in the discharge of its responsibilities.
- 1.9 When the re-listing of these four organisations was previously reviewed by the Committee in June 2009, the re-listing of a fifth organisation, Asbat al-Ansar (AAA) was also reviewed. In the letter dated 22 February 2012, the Attorney-General advised the Committee Chair that she had decided not to re-list Asbat al-Ansar as a terrorist organisation under section 102.1 of the Criminal Code, because she was satisfied on reasonable grounds that there was insufficient contemporaneous information from classified and open sources to demonstrate that AAA satisfied the legislative criteria for proscription under the Criminal Code.
- 1.10 In December 2011, the Chair of the Committee received correspondence from the Attorney-General advising of the de-listing of the Islamic Army of Aden (IAA). This organisation was first listed in April 2003 and last re-listed in March 2009. The regulation listing the IAA as a terrorist organisation would have ceased to have effect on 14 March 2012.

The Government's procedures

- 1.11 In a letter received by the Committee on 19 March 2012 the Attorney-General's Department advised the Committee that the procedures listed below – accepted as submission number two for this review – were followed for the purpose of listing Ansar al-Islam, the Islamic Movement of Uzbekistan, Jaish-e-Mohammad (JeM) and Lashkar-e Jhangvi (LeJ):

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 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 listing Ansar al-Islam (AAI), Islamic Movement of Uzbekistan (IMU), Jaish-e-Mohammad (JeM) and Lashkar-e Jhangvi (LeJ):

- Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing AAI, IMU, JeM and LeJ.
- On 24 November 2011, Mr Robert Orr QC, Chief General Counsel, provided written advice with respect to the Statements of Reasons for AAI, IMU, JeM and LeJ.
- The Acting Director-General of Security wrote to the Attorney-General on 22 December 2011, outlining the background, training activities, terrorist activities, and relevant statements of AAI, IMU, JeM and LeJ.
- A submission was provided to the Attorney-General on 21 December 2011, providing the following documents:
 - ⇒ copies of the Statements of Reasons received from ASIO with respect to the organisations; and
 - advice from the Chief General Counsel.

Having considered the information provided in the submission, the Attorney-General signed statements on 17 January 2012 with respect to AAI, IMU, JeM and LeJ 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.

- On 17 January 2012, the Attorney-General wrote to the Prime Minister advising of her intention to re-list AAI, IMU, JeM and LeJ as terrorist organisations.

- On 17 January 2012, the Attorney-General wrote to the Director-General of Security, in response to the Acting Director-General's letter dated 22 December 2011.

- On 4 February 2012, the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the Attorney-General's decision to re-list AAI, IMU, JeM and LeJ 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 4 February 2012.
- The following responses were received from the Premiers and Chief Ministers of the States and Territories:
 - ⇒ New South Wales - response dated 22 February 2012
 - ⇒ Victoria - response dated 22 February 2012
 - ⇒ Western Australia - response dated 15 February 2012
 - ⇒ South Australia - response dated 20 February 2012
 - ⇒ Tasmania - response dated 22 February 2012
 - ⇒ Australian Capital Territory - response dated 22 February 2012
 - ⇒ Northern Territory - response dated 16 February 2012

All responses were supportive of the proposed re-listings.

Note: A response from Queensland has not been received due to the existence of the caretaker government pending the election on 24 March 2012.

- A submission was provided to the Attorney-General on 14 February 2012, providing regulations and Federal Executive Council documentation with respect to the re-listing of AAI, IMU, JeM and LeJ.
- 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, for the Federal Executive Council meeting that occurred on 8 March 2012.
- On 22 February 2012, the Attorney-General advised the Leader of the Opposition of the proposed re-listing of AAI, IMU, JeM and LeJ as terrorist organisations by letter, and offered a briefing in relation to the re-listings.

- On 22 February 2012, the Attorney-General wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of her decision to re-list AAI, IMU, JeM and LeJ as terrorist organisations.

On 8 March 2012 the Governor-General made the following:

- *Criminal Code Amendment Regulations 2012 (No. 1)* – re-listing Ansar al-Islam
- *Criminal Code Amendment Regulations 2012 (No. 2)* – re-listing Islamic Movement of Uzbekistan
- *Criminal Code Amendment Regulations 2012 (No. 3)* – re-listing Jaish-e-Mohammad, and
- *Criminal Code Amendment Regulations 2012 (No. 4)* – re-listing Lashkar-e Jhangvi.

The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 9 March 2012 with the following FRLI Reference Numbers:

- F2012L00553 – Criminal Code Amendment Regulation 2012 (No. 1)
- F2012L00554 – Criminal Code Amendment Regulation 2012 (No. 2)
- F2012L00555 – Criminal Code Amendment Regulation 2012 (No. 3)
- F2012L00556 – Criminal Code Amendment Regulation 2012 (No. 4)

The re-listing Regulations came into effect on 10 March 2012, the day after they were registered on FRLI.

- The Attorney-General issued a Media Release on 9 March 2012 announcing the re-listing of the terrorist organisations and attaching copies of the Statements of Reasons.
- The Australian Government’s National Security website was also updated.

Procedural comments

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

