

Introduction

- 1.1 This review is conducted under the *Criminal Code Act 1995* (the Criminal Code) as amended by the *Criminal Code Amendment (Terrorist Organisations) Act 2004* which gained royal assent on 10 March 2004. Section 102.1A of the Criminal Code provides that the Parliamentary Joint Committee on ASIO, ASIS and DSD may review the regulation as soon as possible after it has been made and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.2 One review was undertaken in the last Parliament under this power, the *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, tabled in June 2004.
- 1.3 The current review covers six regulations made at the end of the last Parliament and before the beginning of this. They refer to organisations listed as terrorist organisations under part 5.3 of the Criminal Code as amended by the *Security Legislation Amendment (Terrorism) Act 2002*. Under that legislation, 13 groups were listed. All had previously been listed by the United Nations Security Council. These six regulations then are all re-listings, being reviewed under the new provisions.
- 1.4 The regulations were tabled on the return of the House of Representatives and the Senate on 6 December 2005. The disallowance period of 15 sitting days for the Committee's review of the listings began from the date of the tabling. Therefore the Committee is required to report to the Parliament by 14 March 2005.

Committee's procedures for the review

1.5 In its first report on the Palestinian Islamic Jihad, the Committee established the following procedures for reviewing terrorist listings.

- The Government should be required to present the regulation and the accompanying unclassified brief formally to the Committee immediately after the regulation is made. In this brief, the Government should provide details of its consultation with the States and Territories and the Department of Foreign Affairs regarding the making of the regulation. There should also be details of the procedures followed in the making of the regulation.
- ASIO should be called to provide a private briefing to the Committee. Any classified information that pertained to the listing and the reasoning behind the listing should be presented at this briefing. This briefing should occur whether or not the Committee chooses to hold a public review. It will be Hansard recorded by the cleared Hansard officers of the Parliament.
- On receipt of the regulation and accompanying brief from the Attorney-General, the Committee will decide whether to advertise the review. The normal parliamentary process is to advertise any inquiry, even if the Committee then chooses to take evidence in private and make submissions confidential. This demonstrates to the public that the process of parliamentary scrutiny exists; it seeks to elicit from the public any information of which the Committee might be unaware; and it offers to members of listed entities an opportunity to contest adverse assessments made by ASIO.
- After considering the nature of the listing, the submissions received from community organisations or others and whether the listed organisation has members in Australia who might seek to make representations, the Committee may decide to hold a hearing on a listing. In particular, if the Committee were convinced that there appeared to be a *prima facie* case against a particular listing, a hearing would be held.
- If a hearing is to be held, it could be in-whole or in-part in public or in-camera depending on the sensitivities of those giving evidence.
- If the Committee decides not to hold a hearing, its report will be based wholly on the papers supplied to it and the ASIO briefing.

- A report will then be drafted and tabled in Parliament within the time frame as dictated by the legislation. The legislation requires that the Committee report before the end of the disallowance period.
- 1.6 With the exception of aspects of dot point one, which is further discussed below, this review followed these agreed procedures.
- 1.7 The Attorney-General wrote to the Chairman on 31 August 2004 for the regulations made on that day for Al Qa'ida and Jemaah Islamiyah and on 1 November 2004 for regulations made on 4 November for the other four organisations. These letters informed the Committee of the Attorney-General's intention and included the Attorney's public Statement of Reasons. In addition, a further submission was received from the Attorney-General's Department on 10 December outlining the procedures used in the making of the regulations.
- 1.8 The Committee advertised the inquiry in *The Australian* on Friday, 17 December 2004. Notice of the inquiry was also placed on the Committee's website. Seven submissions were received from the general public.
- 1.9 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 1 February 2005 in Canberra.

Government's procedures for specific listings

- 1.10 In a submission sent to the Committee on 10 December 2004, the Attorney-General's Department outlined its procedures in the making of the regulations for the six organisations under consideration. The regulations were dealt with in two groups: Group one - Al Qa'ida and Jemaah Islamiyah on 31 August; and Group two - Abu Sayyaf, the Armed Islamic Group (GIA), the Jamiat ul-Ansar (JuA), (formally Harakat Ul-Mujahideen), and the Salafist Group on 4 November.

Group one

- 1.11 In relation to group one of these regulations, the Attorney General's Department informed the Committee that it followed these procedures:

- An unclassified Statement of Reasons was prepared by ASIO in relation to each organisation detailing the case for listing with respect to each organisation.
- Chief General Counsel, Mr Henry Burmester QC, provided written confirmation on 27 August 2004 that each Statement of Reasons was sufficient for the Attorney-General to be 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 terrorist act has occurred or will occur.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 27 August 2004 outlining the background, training activities, terrorist activities, and relevant statements of each organisation.
- The Attorney-General's Department consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the continued listing of both organisations by email on 24 August 2004.
- Submissions were provided to the Attorney-General on 30 August 2004 including:
 - ⇒ copies of the Statements of Reasons from ASIO for each organisation;
 - ⇒ advice from the Chief General Counsel in relation to each organisation;
 - ⇒ letter from the Director-General of Security
 - ⇒ responses from DFAT in relation to the proposed listings; and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in each submission, the Attorney-General signed a statement for each organisation confirming that he remained 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 a regulation in relation to each 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 30 August 2004 advising of his intention to list both organisations.
- The Leader of the Opposition was advised of the proposed listings by letter on 30 August 2004 and was offered a briefing in relation to the listings.
- On 30 August 2004, the Attorney-General wrote to the Attorneys-General of the States and Territories advising them of his decision to re-list the organisations. To date, one response has been received. The Office of the Chief Minister of the Northern Territory replied on 7 November 2004 expressing support for the re-listings.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 30 August 2004 advising of his decision to list the organisations.
- The Governor-General made the regulation on 31 August 2004.
- The regulations were gazetted in Special Gazette No. S362, Wednesday 1 September 2004.
- A press release was issued on 1 September 2004 and the Attorney-General's Department National Security website was updated.¹

Group two

1.12 The following process was undertaken for the purpose of listing all four organisations within group two about which regulations were made on 4 November:

- An unclassified Statement of Reasons was prepared by ASIO in relation to each organisation detailing the case for listing with respect to each organisation.
- Chief General Counsel, Mr Henry Burmester QC, provided written confirmation on 25 October 2004 that each Statement of Reasons was sufficient for the Attorney-General to be 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 terrorist act has occurred or will occur.

1 Attorney-General's Department submission No 7.

- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 27 October 2004 outlining the background, training activities, terrorist activities, and relevant statements of each organisation.
- The Attorney-General's Department consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the continued listing of each of the organisations by email (provided between 21 October and 27 October 2004).
- Submissions were provided to the Attorney-General on 28 October 2004 including:
 - ⇒ copies of the Statements of Reasons from ASIO for each organisation;
 - ⇒ advice from the Chief General Counsel in relation to each organisation;
 - ⇒ letter from the Director-General of Security;
 - ⇒ responses from DFAT in relation to the proposed listings; and
 - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in each submission, the Attorney-General signed a statement for each organisation confirming that he remained 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 a regulation in relation to each 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 1 November 2004 advising of his intention to list the four organisations.
- The Leader of the Opposition was advised of the proposed listings on 1 November 2004 and was offered a briefing in relation to the listings which was provided on 9 November 2004.
- On 1 November 2004, the Attorney-General wrote to the Attorneys-General of the States and Territories advising them of his decision to re-list the four organisations. To date, no responses have been received by the Australian Government.

- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 1 November 2004 advising of his decision to list the four organisations.
- The Governor-General made the regulation on four November 2004.
- The regulations were gazetted in Special Gazette No. S448, Friday 5 November 2004.
- A press release was issued on 6 November 2004 and the Attorney-General's Department National Security website was updated.²

2 Attorney-General's Department submission no. 7

