

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 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.
- 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:
 - Palestinian Islamic Jihad (PIJ);
 - Lashkar-e-Tayibba (LeT); and
 - Hamas' Izz al-Din al-Qassam Brigades (Hamas Brigades).
- 1.3 This is a review of the re-listing of these organisations.
- 1.4 In a letter to the Committee on 31 August 2007, the Attorney-General advised that he intended to re-list the three organisations prior to the lapsing of their current listing as provided for in section 102.1(3) of the Criminal Code. The Attorney-General provided a Statement of Reasons for each of the three re-listings (Appendix A).
- 1.5 The regulations were signed by the Governor-General on 6 September 2007. On 10 September 2007, the Attorney-General issued a media

release announcing the decision to re-list the organisations. The media release provided open source details on the organisations. This information is the same as the information provided to the Committee in the statements of reasons.

- 1.6 The regulations were tabled in the House of Representatives on 11 September 2007 and in the Senate on 12 September 2007. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the first tabling. Therefore, the Committee is required to report to the Parliament by 12 November 2007.
- 1.7 At a private meeting on 13 September 2007, the Committee resolved to review these listings on the papers rather than by way of hearings. Notice of the review by the Committee was immediately placed on the Committee's website.
- 1.8 The Committee's practice has been to test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits. The Government's procedures in re-listing the organisations are examined below. Chapter 2 will consider the merits of the re-listings.

The Government's procedures

- 1.9 In a letter sent to the Committee on 17 September 2007, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of re-listing the three organisations:
 - Separate unclassified Statement of Reasons for the PIJ, LeT and the Hamas Brigades were prepared by the Australian Security Intelligence Organisation (ASIO), in consultation with the Department of Foreign Affairs and Trade, detailing the case for re-listing the PIJ, LeT and the Hamas Brigades.
 - On 20 July 2007 Mr Henry Burmester QC, Chief General Counsel of the Australian Government Solicitor, provided written confirmation that the Statement of Reasons prepared by ASIO with respect to the PIJ and the Hamas Brigades provided an adequate basis for the Attorney-General to be satisfied on reasonable grounds that the PIJ and the Hamas Brigades met the

requirements under subsection 102.1(2) for the re-listing by regulations as terrorist organisations under the Criminal Code.

- On 17 August 2007 Mr Henry Burmester QC, Chief General Counsel of the Australian Government Solicitor provided written confirmation that the Statement of Reasons prepared by ASIO with respect to LeT provided an adequate basis for the Attorney-General to be satisfied on reasonable grounds that LeT met the requirements under subsection 102.1(2) for the re-listing by regulations of LeT as a terrorist organisation under the Criminal Code.
- The Director-General of Security, Mr Paul O'Sullivan wrote to the Attorney-General on 9 August 2007 outlining the background, training activities, terrorist activities, leadership and membership of the PIJ and the Hamas Brigades and attached Statement of Reasons in respect of each of the organisations.
- The Director-General of Security, Mr Paul O'Sullivan wrote to the Attorney-General on 27 August 2007 outlining the background, training activities, terrorist activities, leadership and membership of LeT and attached Statement of Reasons in respect of the organisation.
- A submission was provided to the Attorney-General on 29 August 2007 attaching:
 - copies of the Statement of Reasons prepared by ASIO for the PIJ, LeT and the Hamas Brigades;
 - advice from the Chief General Counsel in relation to the PIJ, LeT and the Hamas Brigades; and
 - regulations and Federal Executive Council documentation for the re-listing of the PIJ, LeT and the Hamas Brigades.
- Having considered the information provided in the submission, the Attorney-General signed separate statements confirming that he is satisfied on reasonable grounds that the PIJ, LeT and the Hamas Brigades are 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 regulations with respect to the PIJ, LeT and the Hamas Brigades and approved associated Federal Executive Council documentation including Explanatory

Memoranda, an Executive Council Minute and Explanatory Statements.

- On 31 August 2007 the Attorney-General wrote to the Prime Minister advising of the Attorney-General's intention to re-list the PIJ, LeT and the Hamas Brigades as terrorist organisations under the Criminal Code.
- On 31 August 2007 the Attorney-General wrote to the Leader of the Opposition advising of the proposed listing of the PIJ, LeT and the Hamas Brigades as terrorist organisations under the Criminal Code. The Leader of the Opposition was offered a briefing in relation to the re-listing of the organisations. At the time of writing to the Committee, the Leader of the Opposition had not arranged for a briefing from the Attorney-General.
- On 31 August 2007 the Attorney-General wrote to the Premiers and Chief Ministers of the States and Territories advising them of the decision to re-list the PIJ, LeT and the Hamas Brigades as terrorist organisations under the Criminal Code. A copy of the Statement of Reasons with respect to each organisation was attached to the letters.

On 7 September 2007 the Chief Minister of the Northern Territory wrote to the Attorney-General advising that the Northern Territory Government supported the proposed re-listing of the PIJ, LeT and the Hamas Brigades as terrorist organisations under the Criminal Code.

On 6 September 2007 the NSW Premier's office advised by telephone that the NSW Premier had no objection to the re-listings, and that a confirmatory letter would be sent to this effect.

- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 31 August 2007 advising of his decision to re-list the PIJ, LeT and the Hamas Brigades as terrorist organisations under the Criminal Code.
- The Attorney-General wrote to the Chairman of the Senate Standing Committee on Regulations and Ordinances on 31 August 2007 advising of his decision to re-list the PIJ, LeT and the Hamas Brigades as terrorist organisations under the Criminal Code.
- The Governor-General made the *Criminal Code Amendment Regulations 2007 (No.10)* listing the PIJ as a terrorist organisation

under the Criminal Code on 6 September 2007.

The regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 7 September 2007 (FRLI Reference Number: F2007L03535).

The regulations came into effect on 8 September 2007.

- The Governor-General made the *Criminal Code Amendment Regulations 2007 (No.11)* listing the Hamas Brigades as a terrorist organisation under the Criminal Code on 6 September 2007.

The regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 7 September 2007 (FRLI Reference Number: F2007L03537).

The regulations came into effect on 8 September 2007.

- The Governor-General made the *Criminal Code Amendment Regulations 2007 (No.12)* listing the LeT as a terrorist organisation under the Criminal Code on 6 September 2007.

The regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 7 September 2007 (FRLI Reference Number: F2007L03536).

The regulations came into effect on 8 September 2007.

- A press release was issued on 10 September 2007 and the Attorney-General's Department's National Security web site has been updated.

Re-listings and the Statement of Reasons

- 1.10 For the purpose of each re-listing the Attorney-General must be satisfied on the same grounds as for the original listing, that is 'on reasonable grounds that the organisation is 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

1 *Criminal Code Act 1995*, section 102.1(2)

- 1.11 The Attorney-General explains, using open source material, his reasons for making the regulation in the Statement of Reasons. To comply with the Act, the Statement of Reasons covers the terrorist activity of the organisation which is the subject of the regulation.
- 1.12 In the initial consideration of the listing of organisations the Statement of Reasons canvassed activity over a period of many years, however, the Committee believes that the arguments for a re-listing should concentrate on recent activities and information about what has changed since the last review, whether that be an increase or a decrease in terrorist activity. The re-listing of an organisation is a fresh exercise of executive discretion and there must, therefore, be a sufficient degree of currency in the evidence to warrant the use of the power.
- 1.13 Chapter 2 will examine the Attorney-General's statements of reasons to consider the merits of the listings.