

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:
 - Abu Sayyaf Group (ASG)
 - Jamiat ul-Ansar (JuA)
 - Al-Qa'ida in Iraq (AQI)
- 1.3 This is a review of the re-listing of these three organisations.
- 1.4 The Committee notes that the Attorney-General recently considered advice from the Director-General of Security and the Australian Government Solicitor that the Armed Islamic Group (GIA) did not meet the requirements for listing under the Criminal Code. He stated he would not be re-listing GIA as a terrorist organisation under the Criminal Code after the current listing expired on 2 November 2008.¹

¹ *Submission No. 1.*

- 1.5 ASG and JuA were last re-listed as terrorist organisations by *Criminal Code Amendment Regulations 2006 (No. 4)* and *(No. 5)* respectively, with effect from 3 November 2006.
- 1.6 AQI was last re-listed as a terrorist organisation under its previous name, *Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn*, by *Criminal Code Amendment Regulations 2007 (No. 1)*, with effect from 17 February 2007.
- 1.7 In a letter to the Committee on 23 October 2008, the Attorney-General advised that he intended to re-list these three 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 are accepted as submission number one to this review.
- 1.8 The regulations were signed by the Governor-General on 31 October 2008. They were then tabled in the House of Representatives and the Senate on 10 November 2008. 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 Monday 9 February 2008.
- 1.9 Notice of the review was placed on the Committee's website.
- 1.10 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. This chapter will examine the Government's procedures in listing the three organisations and chapter two will consider the merits of the listings.

The Government's procedures

- 1.11 In a letter sent to the Committee on 3 November 2008, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of listing the organisations:

The following processes were undertaken for the purpose of re-listing Jamiat ul-Ansar (JuA), Abu Sayyaf Group (ASG) and Al Qa'ida in Iraq (AQI):

- Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing JuA, ASG and AQI.

- Mr George Witynski, Deputy Chief General Counsel provided written advice with respect to the Statements of Reasons for JuA (on 16 July 2008) and for AQI (on 5 August 2008).
- On 5 August 2008 Mr Henry Burmester QC, Chief General Counsel provided written advice with respect to the Statement of Reasons for ASG.
- The Director-General of Security, Mr Paul O’Sullivan wrote to the Attorney-General on 11 August 2008 outlining the background, training activities, terrorist activities, and relevant statements of JuA, ASG and AQI.
- A submission was provided to the Attorney-General on 25 August 2008 providing the following documents:
 - ⇒ Copies of the Statements of Reasons received from ASIO with respect to the three organisations
 - ⇒ Advice from the Australian Government Solicitor in relation to the three organisations; and
 - ⇒ Regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement with respect to JuA and AQI confirming that he is satisfied on reasonable grounds that each organisation is an organisation directly or indirectly engaged in, preparing, 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 statement with respect to ASG confirming that he is satisfied on reasonable grounds that the organisation directly or indirectly engaged in, preparing, 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 *Criminal Code Amendment Regulations 2008* in relation to each organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minutes and explanatory statements for each organisation.
- The Attorney-General wrote to the Prime Minister on 28 August 2008 advising of his intention to re-list JuA, ASG and AQI as terrorist organisations.
- The Attorney-General wrote to the Director-General of Security on 28 August 2008, in response to the Director-General’s letter dated 11 August 2008.
- On 26 September 2008 the Acting Prime Minister wrote to the Premiers of the States and Chief Ministers of the

Territories advising them of the decision to re-list JuA, ASG and AQI as terrorist organisations.

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

- ⇒ South Australia - 12 October 2008
- ⇒ Northern Territory - 13 October 2008
- ⇒ Tasmania - 13 October 2008
- ⇒ Australian Capital Territory - 13 October 2008
- ⇒ Victoria - 13 October 2008
- ⇒ Western Australia - 14 October 2008
- ⇒ Queensland - 14 October 2008

All responses were supportive of the proposed re-listings.

- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 21 October 2008 advising of his decision to re-list JuA, ASG and AQI as terrorist organisations.
- The Attorney-General briefed the Leader of the Opposition of the proposed re-listing of JuA, ASG and AQI as terrorist organisations by letter dated 21 October 2008.
- On 31 October 2008 the Governor-General made three separate regulations as follows:
 - ⇒ *Criminal Code Amendment Regulations 2008 (No. 4)* with respect to the re-listing of Abu Sayyaf Group (ASG)
 - ⇒ *Criminal Code Amendment Regulations 2008 (No. 5)* with respect to the re-listing of Al Qa'ida in Iraq (AQI)
 - ⇒ *Criminal Code Amendment Regulations 2008 (No. 6)* with respect to the re-listing of Jamiat ul-Ansar (JuA)
- The Regulations were registered with the Federal Register of Legislative Instrument (FLRI) on 31 October 2008 with the following FLRI Reference Numbers:
 - ⇒ F2008L03611 - *Criminal Code Amendment Regulations 2008 (No. 4)* with respect to the re-listing of Abu Sayyaf Group (ASG)
 - ⇒ F2008L03612 - *Criminal Code Amendment Regulations 2008 (No. 5)* with respect to the re-listing of Al Qa'ida in Iraq (AQI)
 - ⇒ F2008L033610 - *Criminal Code Amendment Regulations 2008 (No. 6)* with respect to the re-listing of Jamiat ul-Ansar (JuA)

The regulations came into effect on 1 November 2008, the day after they were registered on FLRI.

- The Attorney-General issued a Media Release on 3 November 2008 announcing the re-listing of the terrorist organisations and attaching copies of the Statements of Reasons for each organisation.

The Attorney-General's Department's National Security website was also updated.

Procedural comments

State and Territory consultation

- 1.12 The Committee notes that all States and Territories acknowledged communication from the Attorney General and none of them disagreed with the re-listing.

