

Process for the 2010 proscription of al-Qa'ida in the Arabian Peninsula (AQAP), al-Qa'ida (AQ), Jemaah Islamiyah (JI) and al-Qa'ida in the Islamic Maghreb (AQIM) under the Criminal Code

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 in relation to the assessments. These are included in a package of information that is submitted to the Attorney-General to assist him 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 al-Qa'ida in the Arabian Peninsula (AQAP) and re-listing al-Qa'ida (AQ), Jemaah Islamiyah (JI) and al-Qa'ida in the Islamic Maghreb (AQIM):

1. Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for listing AQAP and re-listing AQ, JI and AQIM.
2. On 18 May 2010, Mr George Witynski, Deputy Chief General Counsel, provided written advice with respect to the Statements of Reasons for AQAP, AQ, JI and AQIM.
3. The Director-General of Security wrote to the Attorney-General on 28 May 2010, outlining the background, training activities, terrorist activities, and relevant statements of AQAP, AQ, JI and AQIM.
4. A submission was provided to the Attorney-General on 17 June 2010, providing the following documents:
 - a. copies of the Statements of Reasons received from ASIO with respect to the organisations; and
 - b. advice from the Deputy Chief General Counsel.
5. Having considered the information provided in the submission, the Attorney-General signed statements with respect to AQAP, AQ, JI and AQIM confirming that he 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.
6. On 23 June 2010, the Attorney-General wrote to the Prime Minister advising of his intention to list AQAP and re-list AQ, JI and AQIM as terrorist organisations.
7. On 23 June 2010, the Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 28 May 2010.

8. A submission was provided to the Attorney-General on 13 July 2010, providing regulations and Federal Executive Council documentation with respect to the listing of AQAP and re-listing of AQ, JI and AQIM.
9. The Attorney-General signed *Criminal Code Amendment Regulations 2010* 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 scheduled for 22 July 2010.
10. On 13 July 2010, the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to list AQAP and re-list AQ, JI and AQIM as terrorist organisations.

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

New South Wales – response received 19 July 2010
Victoria – response dated 28 July 2010
Queensland – response dated 16 July 2010
Western Australia – response dated 19 July 2010
South Australia – response dated 19 July 2010
Tasmania – response dated 26 July 2010
Australian Capital Territory – response dated 22 July 2010
Northern Territory – response dated 12 August 2010

All responses were supportive of the proposed listing and re-listings.

11. On 16 July 2010, the Attorney-General advised the Leader of the Opposition of the proposed listing of AQAP and re-listing of AQ, JI and AQIM as terrorist organisations by letter, and offered a briefing in relation to the listing and re-listings.
12. On 16 July 2009, the Attorney-General wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to list AQAP and re-list AQ, JI and AQIM as terrorist organisations.
13. On 18 July 2010, the Attorney-General's Department was advised that the Federal Executive Council meeting of 22 July 2010 was to be brought forward to 19 July 2010 and would be presided over by an Administrator.
14. A submission was provided to the Attorney-General on 18 July 2010 providing replacement regulations and Federal Executive Council documentation that referred to the Administrator rather than the Governor-General, with respect to the listing of AQAP and re-listing of AQ, JI and AQIM.
15. The Attorney-General signed the replacement *Criminal Code Amendment Regulations 2010* in relation to the organisations, and signed the replacement Federal Executive Council minute, referring to the Administrator.

16. On 19 July 2010 the Administrator made the *Criminal Code Amendment Regulations 2010 (No. 1)*, *Criminal Code Amendment Regulations 2010 (No. 2)*, *Criminal Code Amendment Regulations 2010 (No. 3)* and *Criminal Code Amendment Regulations 2010 (No. 4)* with respect to the listing of AQAP and re-listing of AQ, JI and AQIM.

17. The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 21 July 2010 with the following FRLI Reference Numbers:

F2010L02093 - *Criminal Code Amendment Regulations 2010 (No. 1)*

F2010L02094 - *Criminal Code Amendment Regulations 2010 (No. 2)*

F2010L02095 - *Criminal Code Amendment Regulations 2010 (No. 3)*

F2010L02096 - *Criminal Code Amendment Regulations 2010 (No. 4)*

The re-listing Regulations relating to AQ, JI and AQIM came into effect on 22 July 2010, the day after they were registered on FRLI. The regulations relating to the new listing of AQAP came into effect on 26 November 2010, after the expiration of the disallowance period.

18. The Attorney-General issued a Media Release on 19 July 2010 announcing the listing and re-listing of the terrorist organisations and attaching copies of the Statements of Reasons.

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