

## 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 ASIO, ASIS and DSD (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. This is the fourth review undertaken under this power during the current Parliament.
- 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:
- Hizballah External Security Organisation;
  - Hamas Izz al-Din al-Qassam Brigades;
  - Lashkar-e-Tayyiba;
  - Palestinian Islamic Jihad.
- 1.3 The Hizballah External Security Organisation, Hamas Izz al-Din al-Qassam Brigades and Lashkar-e-Tayyiba were initially listed as terrorist organisations under the Criminal Code in 2003. The Palestinian Islamic Jihad was initially listed as a terrorist organisation under the Criminal Code in 2004. Under subsection 102.1 (3) of the

Criminal Code, the regulations cease to have effect on their second anniversary.

- 1.4 The Attorney-General informed the Committee of the proposed re-listing of the four terrorist organisations in a letter received by the Committee secretariat on 18 May 2005.
- 1.5 The Attorney-General advised the Committee that although Hamas Izz al-Din al-Qassam Brigades and Lashkar-e-Tayyiba have another 6 months left to run before the second anniversary of their original listing and PIJ another 11 months, he was seeking an early re-listing to ensure that all regulations are being made in a uniform and free standing manner and to ensure that terrorist organisations do not sunset prematurely.
- 1.6 The Attorney-General issued a media release announcing the decisions to re-list the organisations on 25 May 2005. The media release provided open source details on the organisations.
- 1.7 The regulations were tabled in the House of Representatives on 2 June 2005.<sup>1</sup> 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 is required to report to the Parliament by 5 September 2005.
- 1.8 The Committee advertised the inquiry in *The Australian* on 8 June 2005. Notice of the inquiry was also placed on the Committee's website and two submissions were received from the 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 8 August 2005 in Canberra.
- 1.10 In its first report, *Review of the listing of 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. Chapter 2 will examine the Government's procedures in listing the organisations and broader issues regarding the proscription power. Chapter 3 will consider the merits of the listings.

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1 At the hearing on 8 August, the Attorney-General's Department brought to the attention of the Committee several 'misdescriptions' in the Statement of Reasons for three of the re-listings, namely: Hamas Izz al-Din al-Qassam Brigades; Lashkar-e-Tayyiba; and Palestinian Islamic Jihad. The re-listing of these three organisations will be re-made at a future date.

## The Government's procedures

1.11 In a letter sent to the Committee on 8 June 2005, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of listing the organisations:

### Hizballah External Security Organisation:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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.
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005 DFAT provided the following comment:  
*"While the political component of Hizballah is undergoing a period of change and is likely to increase its involvement in domestic politics in Lebanon, this does not, in our view, detract from the grounds to re-list Hizballah's ESO as established in the Statement of Reasons".*
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
  - ⇒ copies of the Statements of Reasons from ASIO for the organisation
  - ⇒ advice from the Chief General Counsel in relation to the organisation
  - ⇒ letter from the Director-General of Security
  - ⇒ the response from DFAT in relation to the proposed re-listing, and
  - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement

confirming that he is satisfied on reasonable grounds that the 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 the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.

- On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
- The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
- The Governor-General made the regulation on 25 May 2005.
- A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01201].

#### **Hamas Izz al-Din al-Qassam Brigades:**

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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.

- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005. DFAT provided the following comment:  
*“HAMAS has refused to give formal commitment to a Palestinian unilateral cease-fire and, although it has signed on to the Palestinian Authority brokered Cairo Declaration committing militant groups to a ‘period of calm’, it has declared its continuing right to undertake acts of violence and HAMAS Izz Al-Din Al-Qassam Brigades continues to conduct small scale attacks on Israeli targets”.*
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
  - ⇒ copies of the Statements of Reasons from ASIO for the organisation
  - ⇒ advice from the Chief General Counsel in relation to the organisation
  - ⇒ letter from the Director-General of Security
  - ⇒ the response from DFAT in relation to the proposed re-listing, and
  - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
- On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.

- The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
- The Governor-General made the regulation on 25 May 2005.
- A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01202].

#### Lashkar-e-Tayyiba:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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.
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005 DFAT had no additional comment.
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
  - ⇒ copies of the Statements of Reasons from ASIO for the organisation

- ⇒ advice from the Chief General Counsel in relation to the organisation
  - ⇒ letter from the Director-General of Security
  - ⇒ the response from DFAT in relation to the proposed re-listing, and
  - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memoranda, and an executive council minute.
  - On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
  - The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
  - The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
  - The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
  - The Governor-General made the regulation on 25 May 2005.
  - A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
  - The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01203].

### Palestinian Islamic Jihad:

- An unclassified Statement of Reasons was prepared by ASIO detailing the case for re-listing the organisation.
- Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 6 May 2005 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds that the 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.
- AGD consulted with DFAT in order to identify issues of relevance with respect to that portfolio. In this instance, DFAT expressed support for the re-listing of the organisation by email dated 11 May 2005 DFAT provided the following comment:  
*“PIJ has refused to give a formal commitment to a Palestinian unilateral ceasefire and, although it has signed on to the Palestinian Authority brokered Cairo Declaration committing militant groups to a ‘period of calm’, it has declared its continuing right to undertake acts of violence”.*
- The Director-General for Security, Mr Dennis Richardson, wrote to the Attorney-General on 12 May 2005 outlining the background, training activities, terrorist activities and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 12 May 2005 including:
  - ⇒ copies of the Statements of Reasons from ASIO for the organisation
  - ⇒ advice from the Chief General Counsel in relation to the organisation
  - ⇒ letter from the Director-General of Security
  - ⇒ the response from DFAT in relation to the proposed re-listing, and
  - ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the 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 the organisation, and approved associated Federal Executive Council documentation



including an explanatory statement, explanatory memoranda, and an executive council minute.

- On 17 May 2005 the Attorney-General wrote to the Attorneys-General of the States and Territories advising of the decision to re-list the organisation. These letters were sent by facsimile on 17 May 2005. No comments were received from the Attorneys-General of the States and Territories.
- The Attorney-General wrote to the Prime Minister on 17 May 2005 advising of his intention to re-list the organisation.
- The Leader of the Opposition was advised of the proposed re-listing by letter dated 17 May 2005 and was offered a briefing in relation to the re-listing. To date no request for a briefing has been made.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 18 May 2005 advising of his decision to re-list the organisation.
- The Governor-General made the regulation on 25 May 2005.
- A press release was issued on 25 May 2005 and the Attorney-General's Department National Security website was updated.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 25 May 2005 [FRLI Reference Number: F2005L01204].

