

**Submission No: 2**  
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**Australian Government**  
**Attorney-General's Department**

**National Security**  
**Law and Policy Division**

09/7535

September 2009

Mr Robert Little  
Committee Secretary  
Parliamentary Joint Committee  
on Intelligence and Security  
Parliament House  
CANBERRA ACT 2600

Dear Mr Little

I refer to the Attorney-General's letter to the Chair of the Parliamentary Joint Committee on Intelligence and Security concerning the proposed regulations listing Al-Shabaab as a terrorist organisation under the Criminal Code.

I confirm that the *Criminal Code Amendment Regulations 2009 (No. 12)* have been made giving effect to the listing of Al-Shabaab as a terrorist organisation under the Criminal Code.

These regulations took effect on 22 August 2009.

I now attach a document outlining the process for listing Al-Shabaab as a terrorist organisation. I understand that this document will be considered as a submission to the Committee's review into the listing of this organisation, and I consent to its publication.

Yours sincerely

Geoff McDonald  
First Assistant Secretary  
National Security Law and Policy Division

## Process for the 2009 listing of Al-Shabaab as a terrorist organisation 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-Shabaab:

1. Unclassified Statement of Reasons was prepared by ASIO, and endorsed by DFAT, detailing the case for listing Al-Shabaab.
2. On 1 July 2009 Mr George Witynski, Deputy Chief General Counsel, provided written advice with respect to the Statement of Reasons for Al-Shabaab.
3. The Director-General of Security wrote to the Attorney-General on 6 August 2009 outlining the background, training activities, terrorist activities, and relevant statements of Al-Shabaab.
4. A submission was provided to the Attorney-General on 6 August 2009 providing the following documents:
  - a. copy of the Statement of Reasons received from ASIO with respect to the organisation, and
  - b. advice from the Deputy Chief General Counsel.
5. Having considered the information provided in the submission, the Attorney-General decided that he was 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.
6. The Attorney-General wrote to the Prime Minister advising of his intention to list Al-Shabaab as a terrorist organisation.
7. On 7 August 2009 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to list Al-Shabaab as a terrorist organisation.

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

South Australia – 8 August 2009  
New South Wales – 11 August 2009  
Northern Territory – 11 August 2009  
Tasmania – 11 August 2009

Victoria – 11 August 2009  
Western Australia – 11 August 2009

All responses were supportive of the proposed listing.

8. On 7 August 2009, another submission was provided to the Attorney-General providing regulations and Federal Executive Council documentation with respect to Al-Shabaab.
9. The Attorney-General signed the *Criminal Code Amendment Regulations 2009* in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statement.
10. The Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 6 August 2009.
11. The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to list Al-Shabaab as a terrorist organisation.
12. The Attorney-General advised the Leader of the Opposition of the proposed listing of Al-Shabaab as a terrorist organisation by letter, and offered a briefing in relation to this listing. The Leader of the Opposition requested an additional briefing, and this briefing took place on 12 August 2009.
13. On 14 August 2009 the Governor-General made the *Criminal Code Amendment Regulations 2009 (No. 12)* with respect to the listing of Al-Shabaab.
14. The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 21 August 2009 with the following FRLI Reference Number:

F2009L03208 - *Criminal Code Amendment Regulations 2009 (No. 12)*

The Regulations came into effect on 22 August 2009, the day after they were registered on FRLI.

15. The Attorney-General and the Minister for Foreign Affairs issued a joint Media Release on 21 August 2009, announcing the listing of the terrorist organisation under both the Criminal Code and the *Charter of the United Nations Act 1945* and attaching a copy of the Statement of Reasons.

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