

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:
 - Al-Shabaab
 - Hamas' Izz al-Din al-Qassam Brigades (Hamas' Brigades)
 - Kurdistan Workers Party (PKK)
 - Lashkar-e-Tayyiba (LeT)
 - Palestinian Islamic Jihad (PIJ)
- 1.3 This is a review of the re-listing of these five organisations.
- 1.4 In a letter to the Committee dated 10 August 2012, the Attorney-General advised that she intended to re-list these five 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 were accepted as submission number one to this review.

- 1.5 The regulations were signed by the Governor-General on 16 August 2012. They were then tabled in the House of Representatives and the Senate on 20 August 2012. 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, 15 October 2012.
- 1.6 Notice of the review was placed on the Committee's website and a media release was issued on 17 August 2012. One submission was received from the general public.
- 1.7 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.
- 1.8 The Committee continues to regard this as a useful approach in the discharge of its responsibilities.

The Government's procedures

- 1.9 In a letter received by the Committee on 29 August 2012 the Attorney-General's Department advised the Committee that the procedures listed below – accepted as submission number two for this review – were followed for the purpose of listing the organisations:

Process for the 2012 re-listing of five terrorist organisations 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 the Australian Security Intelligence Organisation (ASIO) that assess organisations and seeking the advice of the Chief General Counsel of the Australian Government Solicitor in relation to the assessments. These are included in a package of information that is submitted to the Attorney-General to assist her 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 re-listing Al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades (Hamas' Brigades), Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ):

- Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ.
- On 1 June 2012, Mr Robert Orr QC, Chief General Counsel, provided written advice with respect to the Statements of Reasons for Al-Shabaab, Hamas' Brigades, LeT and PIJ.
- On 28 June 2002, Mr Mark Molloy, Senior General Counsel, provided written advice with respect to the Statements of Reasons for the PKK.
- The Director-General of Security wrote to the Attorney-General on 29 June 2012, outlining the background, training activities, terrorist activities, and relevant statements of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ.
- A submission was provided to the Attorney-General on 13 July 2012, providing the following documents:
 - copies of the Statements of Reasons received from ASIO with respect to the organisations; and
 - advice from the Chief General Counsel.

Having considered the information provided in the submission, the Attorney-General signed statements on 23 July 2012 with respect to Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ confirming that she 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.

On 23 July 2012, the Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 29 June 2012.

On 23 July 2012, the Attorney-General wrote to the Prime Minister advising of her intention to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations.

On 23 July 2012, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories advising them of her decision to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations and requesting their comments on the proposed re-listing. The States and Territories were also advised of the

proposed re-listings by e-mail dated 24 July 2012.

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

- New South Wales - response dated 10 August 2012
- Victoria - response received 21 August 2012
- Queensland - response dated 7 August 2012
- Western Australia - response dated 9 August 2012
- South Australia - response dated 10 August 2012
- Tasmania - response dated 17 August 2012
- Australian Capital Territory - response dated 13 August 2012
- Northern Territory - response dated 31 July 2012 to the Prime Minister

No State or Territory objected to the making of the Regulations.

A submission was provided to the Attorney-General on 6 August 2012, providing regulations and Federal Executive Council documentation with respect to the re-listing of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ.

On 6 August 2012 the Attorney-General signed *Criminal Code Amendment Regulations 2012* in relation to the organisations, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statements, in preparation for the Federal Executive Council meeting on 16 August 2012.

On 10 August 2012, the Attorney-General advised the Leader of the Opposition of the proposed re-listing of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations by letter, and offered a briefing in relation to the re-listings.

On 10 August 2012, the Attorney-General wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of her decision to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations.

On 16 August 2012 the Governor-General signed the following Criminal Code Amendment Regulations:

- *Criminal Code Amendment Regulations 2012 (No.7)* - re-listing Hamas' Izz al-Din al-Qassam Brigades

- *Criminal Code Amendment Regulations 2012 (No. 8)* – re-listing Lashkar-e-Tayyiba
- *Criminal Code Amendment Regulations 2012 (No. 9)* – re-listing Al-Shabaab
- *Criminal Code Amendment Regulations 2012 (No. 10)* – re-listing Palestinian Islamic Jihad, and
- *Criminal Code Amendment Regulations 2012 (No. 11)* – re-listing Kurdistan Workers Party (PKK).

The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 17 August 2012 with the following FRLI Reference Numbers:

F2012L01693 – *Criminal Code Amendment Regulation 2012 (No. 7)*
F2012L01694 – *Criminal Code Amendment Regulation 2012 (No. 8)*
F2012L01695 – *Criminal Code Amendment Regulation 2012 (No. 9)*
F2012L01696 – *Criminal Code Amendment Regulation 2012 (No. 10)*
F2012L01697 – *Criminal Code Amendment Regulation 2012 (No. 11)*

The re-listing Regulations came into effect on 18 August 2012, the day after they were registered on FRLI.

The Attorney-General issued a Media Release on 17 August 2012 announcing the re-listing of the five terrorist organisations.

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

Procedural comments

- 1.10 The Committee is satisfied with the procedures undertaken by the Government and notes the responses of the States and Territories.

