

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-Qa'ida
 - Jemaah Islamiyah (JI)
 - Al-Qa'ida in the lands of the Islamic Maghreb (AQIM)
- 1.3 This is a review of the re-listing of these three organisations.
- 1.4 Al-Qa'ida and JI were originally listed on 21 and 27 October 2002 and re-listed on 31 August 2004, with effect on 1 September 2004. The Committee first considered the listing of Al-Qa'ida and Jemaah Islamiyah in 2004 after the Committee's role in the Criminal Code procedure had been established. Both organisations were again re-listed on 4 September 2006 and the Committee subsequently reviewed the re-listing, reporting to Parliament in October 2006.
- 1.5 Al-Qa'ida in the lands of the Islamic Maghreb was originally listed under the name Salafist Group for Call and Combat (GSPC) in 2002 following their listing by the United Nations Security Council. The Committee first considered the listing of the GSPC in 2004 after the Committee's role in the Criminal procedure had been established. The GSPC was re-listed on 5

November 2004 and again on 1 November 2006. With regard to the change of name the Attorney-General's Department was able to inform the Committee that:

...on the legal front the main thing that would interest you is whether there is any significance in the change of name. I can reassure you that there is not.

- 1.6 Further information on the change of name is given in chapter two.
- 1.7 In a letter to the Committee on 29 July 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 7 August 2008. They were then tabled in the House of Representatives and the Senate on 26 August. 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 13 October 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 28 August 2008, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of listing the organisations:
- Unclassified Statement of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing Al-Qa'ida (AQ) Jemaah Islamiyah (JI) and Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM).
 - On 12 June 2008 Mr Henry Burmester QC, Chief General Counsel provided written advice with respect to the Statement of Reasons for AQ, JI and AQIM.

- The Director-General of Security, Mr Paul O'Sullivan wrote to the Attorney-General on 12 June 2008 outlining the background, training activities, terrorist activities, and relevant statements on AQ, JI and AQIM.
- A submission was provided to the Attorney-General on 17 June 2008 attaching:
 - ⇒ Copies of the Statement of Reasons received from ASIO with respect to the three organisations
 - ⇒ Advice from the Chief General Counsel 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 separate statements with respect to AQ, JI and AQIM confirming that he is satisfied on reasonable grounds that each 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 separate *Criminal Code Amendment Regulations* in relation to each organisation, and approved associated Federal Executive Council documentation including an explanatory memorandum, and executive council minutes and explanatory statements for each organisation.
- The Attorney-General wrote to the Prime Minister on 20 June 2008 advising of his intention to list AQ, JI and AQIM as terrorist organisations
- The Attorney-General wrote to the Director-General of Security on 20 June 2008, in response to the Director General's letter dated 12 June 2008.
- On 7 July 2008 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to 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 – dated 24 July 2008

Victoria – 28 July 2008

Western Australia – 29 July 2008

South Australia – 29 July 2008

Australian Capital Territory – 24 July 2008

Queensland – 25 July 2008

Tasmania – 4 August 2008

All responses were supportive of the proposed re-listings.

Note: On 22 July 2008 the Chief Executive of the Department of the Chief Minister advised that as (an) election in the Northern Territory would take place on 9 August 2008, the conventions of a caretaker government applied and it would therefore not be possible to provide a response to the Prime Minister's proposal within the timeframe requested.

- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 29 July 2008 advising of his decision to re-list AQ, JI and AQIM as terrorist organisations.
- The Attorney-General advised the Leader of the Opposition of the proposed re-listing of AQ, JI and AQIM by letter dated 29 July 2008 and, offered a briefing in relating (sic) to these re-listings.
- On 7 August 2008 the Governor-General made separate regulations as follows:
 - ⇒ *Criminal Code Amendment Regulations 2008 (No.1)* with respect to the re-listing of Al'Qa'ida (AQ)
 - ⇒ *Criminal Code Amendment Regulations 2008 (No.1)* with respect to the re-listing of Jemaah Islamiyah (JI)
 - ⇒ *Criminal Code Amendment Regulations 2008 (No.1)* with respect to the re-listing of Al'Qa'ida in the Lands of the Islamic Maghreb (AQIM)
- The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 8 August with the following FRLI reference numbers:
 - ⇒ F2008L02843 - *Criminal Code Amendment Regulations 2008 (No.1)* with respect to the re-listing of Al'Qa'ida (AQ)
 - ⇒ F2008L02845 - *Criminal Code Amendment Regulations 2008 (No.1)* with respect to the re-listing of Jemaah Islamiyah (JI)
 - ⇒ F2008L02844 - *Criminal Code Amendment Regulations 2008 (No.1)* with respect to the re-listing of Al'Qa'ida in the Lands of the Islamic Maghreb (AQIM)
- The Attorney-General issued a Media Release on 8 August 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.

1.12 This letter was accepted as submission number two for this review.

Procedural comments

State and Territory consultation

- 1.13 The Committee notes that all States and the Australian Capital Territory acknowledged communication from the Attorney General and none of them disagreed with the re-listing.
- 1.14 The Committee notes the reasons given by the Northern Territory for not being able to reply to the communication from the Attorney General.

Community Consultation

- 1.15 In a previous report, *Review of the listing of six terrorist organisations*, March 2005, the Committee recommended that:
- a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.¹
- 1.16 At a subsequent hearing into the *Review of the re - listing of the Kurdistan Worker's Party (PKK)* Attorney-General's Department informed the Committee that they:
- . . . have been working on some new material which will be in various languages.
- The new material is focussing a lot more on the listing that we are developing in various languages.²
- 1.17 During this hearing the Attorney-General's Department advised the Committee that they would be monitoring the effectiveness of these

1 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, p. 20.

2 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of the Kurdistan Workers' Party (PKK)*, June 2008, p. 5.

pamphlets and undertook to engage in consultations with community leaders.³

- 1.18 The letter from the Attorney-General on the process for re-listing did not refer to any community consultation. In evidence before the Committee, the Attorney General's Department stated:

Community consultation has been discussed here before. I am very aware that there is an outstanding PJC report on that and I can assure you that the government is giving that report very careful consideration. I have promised you on a few occasions that we would have some improved material. The material is written in all different languages. We always produce this material just before elections. This has been cleared. We are in the process now of finally making sure that we have that material distributed.⁴

- 1.19 The Committee is pleased that the Attorney General's Department has taken note of its concerns regarding community consultation.

- 1.20 The Committee is mindful of the need for appropriate notification and explanation of proposed listings especially to sections of our community that may have a particular interest in that organisation or group. Similarly, advice of the implications as a result of a listing should be provided to organisations or groups with a likely interest in the listing.

- 1.21 The Committee will continue its discussion with the Attorney General's Department about these matters, including satisfactory methods of distribution of this material.

3 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of the Kurdistan Workers' Party (PKK)*, June 2008, p. 5.

4 Classified transcript, private hearing 4 September 2008, p. 2.