

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 in the Arabian Peninsula (AQAP)
 - Al-Qa'ida (AQ)
 - Jemaah Islamiyah (JI)
 - Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM)
 - Jamiat ul-Ansar (JuA)
 - Abu Sayyaf Group (ASG)
 - Al-Qa'ida in Iraq (AQI)
- 1.3 This is a review of the initial listing of Al-Qa'ida in the Arabian Peninsula and a review of the re-listing of Al-Qa'ida, Jemaah Islamiyah, Al-Qa'ida in the Lands of the Islamic Maghreb, Jamiat ul-Ansar, the Abu Sayyaf Group and Al-Qa'ida in Iraq.
- 1.4 Al-Qa'ida and Jemaah Islamiyah were originally listed in October 2002. Al-Qa'ida in the Lands of the Islamic Maghreb, the Abu Sayyaf Group and Jamiat ul-Ansar were originally listed in November 2002. This is the fourth re-listing of AQ, JI, AQIM, the ASG and JuA. Al-Qa'ida in Iraq was first

listed under its previous name of TQJBR in March 2005. This is the group's third re-listing.

- 1.5 In a letter to the Committee on 16 July 2010, the Attorney-General advised that he intended to list AQAP and re-list AQ, JI and AQIM prior to the lapsing of their current listing as provided for in section 102.1(3). The Attorney-General provided statements of reasons for the listing and the re-listings. These are accepted as *submission number one* to this review.
- 1.6 The regulations were signed by the Governor-General on 19 July 2010 and came into effect on 22 July 2010, the day after they were registered on the Federal Register of Legislative Instruments (FRLI). They were then tabled in the House of Representatives and the Senate on 28 September 2010. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore, to be within the disallowance period, the Committee was required to report to the Parliament by 25 November 2010.
- 1.7 As a new listing, the regulations relating to AQAP came into effect on 26 November 2010, after the expiration of the disallowance period.
- 1.8 In a letter received by the Chair of the Committee on 22 December 2010, the Attorney-General advised that regulations re-listing JuA, ASG and AQI were signed by the Governor-General on 27 October 2010 and came into effect on 29 October 2010, the day after they were registered on FRLI.
- 1.9 The regulations were tabled in the House of Representatives and the Senate on 15 November 2010. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore, to be within the disallowance period, the Committee was required to report to the Parliament by Monday, 28 February 2010.
- 1.10 The Attorney-General provided statements of reasons for the re-listings. These are accepted as *submission number two* to this review.
- 1.11 The Attorney-General's Department noted that advice of the re-listings to the Committee was delayed due to the Parliament's dissolution due to the 2010 Federal election and the subsequent reappointment of the PJCIS. The 43rd Parliament sat for its first session on 28 September 2010.
- 1.12 Although neither of the above disallowance periods could be met by the Committee due to short timeframes, the Committee resolved to review the listing of AQAP and the re-listings of AQ, JI, AQIM, JuA, ASG and AQI and report to Parliament outside the disallowance period and notice of the review was placed on the Committee's website.

- 1.13 The listing of AQAP and the re-listing of the six groups are each valid for three years.
- 1.14 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 AQAP and re-listing the six organisations and chapter two will consider the merits of the listings.

The Government's procedures

- 1.15 In a letter sent to the Committee on 23 December 2010 the Attorney-General's Department informed the Committee of the procedures it had followed for the purpose of listing and re-listing all seven organisations.
- 1.16 The Attorney-General's Department advised the Committee that the procedures listed below – accepted as *submission number three* for this review – were followed for the purpose of listing al-Qa'ida in the Arabian Peninsula and re-listing al-Qa'ida, Jemaah Islamiyah and al-Qa'ida in the Islamic Maghreb.

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):

- 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.
- 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.
- 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.
- A submission was provided to the Attorney-General on 17 June 2010, providing the following documents:
 - ⇒ copies of the Statements of Reasons received from ASIO with respect to the organisations; and
 - ⇒ advice from the Deputy Chief General Counsel.
- 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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- On 16 July 2010, 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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.

1.17 The Attorney-General's Department advised the Committee that the procedures listed below – accepted as *submission number four* for this review – were followed for the purpose of listing Jamiat ul-Ansar, Abu Sayyaf Group and Al Qa'ida in Iraq.

The following processes, were undertaken for the purpose of re-listing Jamiat ul-Ansar (JuA), Abu Sayyaf Group (ASG) and Al Qa'ida in Iraq (AQI):

- Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing JuA, ASG and AQI.
- On 21 September 2010, Mr George Witynski SC, Deputy Chief General Counsel, provided written advice with respect to the Statements of Reasons for JuA, ASG and AQI.
- The Director-General of Security wrote to the Attorney-General on 17 September 2010, outlining the background, training activities, terrorist activities, and relevant statements of JuA, ASG and AQI.
- A submission was provided to the Attorney-General on 23 September 2010, providing the following documents:
 - ⇒ Copies of the Statements of Reasons received from ASIO with respect to the organisations;
 - ⇒ Advice from the Deputy Chief General Counsel; and
 - ⇒ Separate Criminal Code Amendment Regulations 2010 and other Federal Executive Council documentation with respect to JuA, ASG and AQI.
- Having considered the information provided in the submission, on 27 September 2010, the Attorney-General signed statements with respect to JuA, ASG and AQI 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.
- 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 27 October 2010.
- On 28 September 2010, the Attorney-General wrote to the Prime Minister advising of his intention to re-list JuA, ASG and AQI as terrorist organisations.

- On 28 September 2010, the Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 17 September 2010.
- On 6 October 2010, the Acting Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to re-list JuA, ASG and AQI as terrorist organisations.

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

- ⇒ New South Wales – the Department of Prime Minister and Cabinet received telephone advice that NSW agreed to the re-listings
- ⇒ Victoria – response dated 20 October 2010
- ⇒ Queensland – response dated 19 October 2010 from the Premier
- ⇒ Western Australia – the Department of Prime Minister and Cabinet received telephone advice that WA agreed to the re-listings
- ⇒ South Australia – response dated 25 October 2010
- ⇒ Tasmania – response dated 19 October 2010
- ⇒ Australian Capital Territory – response dated 22 October 2010 from the Deputy Chief Minister
- ⇒ Northern Territory – dated 25 October 2010 from the Chief Minister

All responses were supportive of the proposed re-listings.

- On 21 October 2010, the Attorney-General advised the Leader of the Opposition of the proposed re-listing of JuA, ASG and AQI as terrorist organisations by letter, and offered a briefing in relation to the re-listings.
- On 27 October 2010 the Governor-General made the *Criminal Code Amendment Regulations 2010 (No. 5)*, *Criminal Code Amendment Regulations 2010 (No. 6)*, and *Criminal Code Amendment Regulations 2010 (No. 7)* with respect to the re-listing of JuA, ASG and AQI.
- The Regulations were registered with the Federal Register of Legislative Instrument (FLRI) on 28 October 2010 with the following FLRI Reference Numbers:
 - ⇒ F2010L02825 - *Criminal Code Amendment Regulations 2010 (No. 5)* with respect to the re-listing of Jamiat ul-Ansar (JuA) as a terrorist organisation
 - ⇒ F2010L02826 - *Criminal Code Amendment Regulations 2010 (No. 6)* with respect to the re-listing of Abu Sayyaf Group (ASG) as a terrorist organisation

⇒ F2010L02828 - *Criminal Code Amendment Regulations 2010* (No. 7) with respect to the re-listing of Al Qa'ida in Iraq (AQI) as a terrorist organisation.

The re-listing Regulations relating to JuA, ASG and AQI came into effect on 29 October 2010, the day after they were registered on FLRI.

- The Attorney-General issued a Media Release on 28 October 2010 announcing the re-listing of the terrorist organisations and attaching copies of the Statements of Reasons. The Australian Government's National Security website was also updated.
- On 2 November 2010 the Attorney-General's Department advised the Secretary of the Parliamentary Joint Committee on Intelligence and Security by e-mail, of the making of the separate *Criminal Code Amendment Regulations 2010* giving effect to the re-listings of JuA, ASG and AQI as terrorist organisations under the Criminal Code.

Procedural comments

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