

Process for the 2018 listings of Al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as 'terrorist organisations' under the Criminal Code

The Counter-Terrorism Policy Branch in the Department of Home Affairs (the department) facilitates the process by which the Minister for Home Affairs makes a decision to list, re-list or de-list an organisation as a terrorist organisation under the *Criminal Code Act 1995* (the Criminal Code). This includes obtaining a written Statement of Reasons from the Australian Security Intelligence Organisation (ASIO) that assesses the organisation, and seeking the advice of the Australian Government Solicitor (AGS) in relation to ASIO's assessment. This information and advice is included in a submission to the Minister for Home Affairs to assist in deciding whether or not to list, re-list or de-list an organisation as a terrorist organisation under the Criminal Code.

The following processes were undertaken for the purpose of re-listing of Al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades (Hamas' Brigades), Kurdistan Workers' Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ) as terrorist organisations:

1. Unclassified Statements of Reasons outlining the case for the re-listing of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ were provided to the department by ASIO.
2. On 3 May 2018, the Statements of Reasons were considered by the department and then provided to AGS.
3. On 11 May and 7 June 2018, AGS provided written advice to the department in relation to these organisations and the Criminal Code requirements.
4. On 20 June 2018, the Director-General of Security wrote to the Minister for Home Affairs providing the Statements of Reasons for Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ.
5. On 21 June 2018, the department provided a submission to the Minister for Home Affairs advising him that he could be satisfied on reasonable grounds that the legislative criteria for listing the organisations as terrorist organisations under the Criminal Code was satisfied.
6. On 28 June 2018, having considered the information provided in the submission, including grounds to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ, the Minister for Home Affairs agreed to re-list these organisations.
7. On 28 June 2018 the Minister for Home Affairs wrote to the Prime Minister advising of the decision to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations. The Minister for Home Affairs notified the Prime Minister that he had written, on the Prime Minister's behalf, to the First Ministers of each state and territory regarding the proposed re-listings.
8. On 28 June 2018, the Minister for Home Affairs wrote to the Leader of the Opposition advising of his decision to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ, attaching the Statements of Reasons and offering a briefing in relation to these organisations.

9. On 28 June 2018, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of his decision to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations, and attached copies of the Statements of Reasons. The letters requested that a response be provided by 30 July 2018, advising whether the First Minister approved of, or objected to the re-listings.
10. On 2 July 2018, the department emailed State and Territory officials and members of the Australia-New Zealand Counter-Terrorism Committee (ANZCTC) advising them of the proposal to re-list Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ and provided copies of the Statements of Reasons.
11. The following responses to the Minister for Home Affairs' correspondence to First Ministers were received by the department:
 - Australian Capital Territory – response received 16 July 2018
 - Tasmania – response received 20 July 2018
 - Northern Territory – response received 20 July 2018
 - Western Australia – response received 25 July 2018
 - New South Wales – response received 30 July 2018
 - Victoria – response received 30 July 2018

No response was received from the South Australian and Queensland Premiers prior to the Federal Executive Council (ExCo) meeting held on 2 August 2018.

No objections were made to the re-listing of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ.

12. On 13 July 2018, the department sought approval from the Minister for Home Affairs of the Regulations and associated ExCo documentation, including an ExCo Minute, and Explanatory Memorandum for consideration by the Governor-General at a meeting of ExCo.
13. On 31 July 2018, the Minister approved the Regulations and associated Federal Executive Council (ExCo) documentation.
14. On 2 August 2018, the Governor-General made the Regulations.
15. On 3 August 2018, the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2018*, *Criminal Code (Terrorist Organisation—Hamas' Izz al-Din al-Qassam Brigades) Regulations 2018*, *Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulations 2018*, *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2018*, *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2018* were registered on the Federal Register of Legislation (FRL) [references: F2018L01082, F2018L01084, F2018L01087, F2018L01085, F2018L01081]. The Regulations came into effect on 4 August 2018.
16. On 4 August 2018, the Australian Government's National Security website was updated to reflect the re-listing of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ as terrorist organisations.
17. On 5 August 2018, the Minister for Home Affairs issued a media release on the re-listing of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ under the Criminal Code.

18. On 7 August 2018, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listings of Al-Shabaab, Hamas' Brigades, PKK, LeT and PIJ, and attaching the Statements of Reasons, Regulations and Explanatory Statement.