

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 regulation under review has specified Al-Shabaab as a terrorist organisation for the purposes of section 102.1 of the *Criminal Code Act 1995*.
- 1.3 This is a review of the initial listing of this organisation.
- 1.4 In a letter received by the Committee on 11 August 2009, the Attorney-General advised that he intended to list this organisation and provided statements of reasons for the listing. This was accepted as submission number one to this review.
- 1.5 The regulations were tabled in the House of Representatives and the Senate on 7 September 2009. 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 has conducted its review to enable it to report to the Parliament by 29 October 2009.
- 1.6 Notice of the review was placed on the Committee's website on 25 August 2009. The Committee advertised the inquiry in *The Australian* on 3 September 2009 (see Appendix C). Submissions were due to be received by 7 September 2009. No public submissions were received.

- 1.7 The Committee regrets the tight timeframe between advertising the review in *The Australian* and the due date for submissions. This was a result of the scheduled hearing dates and ensuring compliance with the vetting requirements of the *Intelligence Services Act 2001*.

The Government's procedures

- 1.8 The Attorney-General's letter of 11 August made the following statement:

It is proposed that the regulations listing Al-Shabaab as a terrorist organisation will commence the day after registration. I note that, in response to a recommendation made by the Committee, the Government agreed to consider delaying the commencement of regulations when an organisation is listed for the first time until after the Parliamentary disallowance period has expired. However the Government's response also noted that, as recognised by the Committee, flexibility must be maintained within this approach so that, in circumstances where the Attorney-General considers that a listing should commence immediately (for example security reasons), there remains scope for a regulation to commence when it is registered. ASIO has advised me that there are very strong operational reasons for Al-Shabaab to be listed as soon as possible.

- 1.9 On Thursday 20 September 2007, the Parliamentary Joint Committee on Intelligence and Security tabled its report on the inquiry into the terrorist organisation listing provisions of the Criminal Code Act 1995 entitled *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*. Recommendation 4 read:

The Committee recommends that the Government give consideration to reverting to the initial legislative approach of postponing commencement of a listing until after the disallowance period has expired.

The Committee recognises that the Attorney-General should, in exceptional cases, retain the power to begin the commencement of a listing on the date the instrument is lodged with the Federal Register of Legislative Instruments where the Attorney-General certifies that there are

circumstances of urgency and the immediate commencement of the listing is required for reasons of national security.

- 1.10 The Committee is comfortable with the commencement of the regulations.
- 1.11 In a letter received by the Committee on 7 September 2009, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of re-listing the organisation:

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:

- Unclassified Statement of Reasons was prepared by ASIO, and endorsed by DFAT, detailing the case for listing Al-Shabaab.
- On 1 July 2009 Mr George Witynski, Deputy Chief General Counsel, provided written advice with respect to the Statement of Reasons for Al-Shabaab.
- 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.

- 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.
- 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.
- The Attorney-General wrote to the Prime Minister¹ advising of his intention to list Al-Shabaab as a terrorist organisation.
- 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.
- On 7 August 2009, another submission was provided to the Attorney-General providing regulations and Federal Executive Council documentation with respect to Al-Shabaab.
- 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.
- The Attorney-General wrote to the Director-General of Security, in response to the Director-General's letter dated 6 August 2009.

1 The Attorney-General wrote to the Prime Minister on 6 August 2009.

- 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.
- The Attorney-General advised the Leader of the Opposition² 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.
- On 14 August 2009 the Governor-General made the *Criminal Code Amendment Regulations 2009 (No. 12)* with respect to the listing of Al-Shabaab.
- 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.
- 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.

Community consultation

- 1.12 The Attorney-General's Department informed the Committee that, in light of the listing of Al-Shabaab, they had produced a copy of their pamphlet *Australia's Counter-terrorism Laws* in Somali for distribution to the Somali community.

2 The Attorney-General wrote to the Leader of the Opposition on either 10 or 11 August 2009.

Procedural comments

- 1.13 The Committee is satisfied with the procedures undertaken by the Government and notes the responses of the States and Northern Territory.
- 1.14 The Attorney-General's informed the Committee that since the letter of 7 September 2009 the Australian Capital Territory has written to indicate its support of the listing.