

The Parliament of the Commonwealth of Australia

Review of the re-listing of Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (the al- Zarqawi network) as a terrorist organisation

Parliamentary Joint Committee on Intelligence and Security

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Membership of the Committee

Chair The Hon David Jull MP

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Terms of reference

This inquiry and report is conducted under the following powers:

Criminal Code Act 1995

Section 102.1A Reviews by Parliamentary Joint Committee on Intelligence and Security

Review of listing regulation

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1, the Parliamentary Joint Committee on Intelligence and Security may:
 - (a) review the regulation as soon as possible after the making of the regulation; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period.

And

Criminal Code Amendment Regulations 2005 (No 1)

Select Legislative Instrument 2007 No.3

Registered: 16 February 2007



List of recommendations

2 The Listing

Recommendation 1

The Committee does not recommend disallowance of the regulation.

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 purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments and recommendations to each house of the Parliament before the end of the applicable disallowance period.
- 1.2 The organisation for which the regulation has been made is Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (TQJBR). The organisation has also been known as the al-Zarqawi network as it was led by Abu Mus'ab al-Zarqawi until his death in 2006.
- 1.3 Under subsection 102(3) of the Criminal Code regulations, the listing of an organisation as a terrorist organisation ceases to have effect on the second anniversary of the day on it took effect. The organisation must, therefore, be re-listed if it is to continue to be a listed terrorist organisation for the purposes of the Criminal Code.
- 1.4 This organisation was originally listed by the Attorney-General in March 2005. The Committee reviewed this regulation and reported to Parliament on 25 May 2005. It did not recommend disallowance of the regulation at that time. Then the Committee concluded that:

It is evident from the Attorney-General's statement of reasons that TQJBR has committed violent crimes in pursuit of its objectives. The group has kidnapped and murdered civilians

and attacked Multi-National Forces and members of the Interim Iraqi Government.

The Committee strongly condemns the violent acts of TQJBR. The proscription of TQJBR in Australia is potentially useful insofar as it prevents Australians from assisting the organisation either financially or personally.¹

- 1.5 The Attorney-General wrote to the Chairman on 2 February 2007 advising that he had decided to re-list TQJBR as a terrorist organisation for the purposes of section 102.1 of the Criminal Code.²
- 1.6 The regulation was registered and took effect on 16 February 2007.³ The regulation was tabled in the House of Representatives and the Senate on 26 February 2007. 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 is required to report to the House of Representatives by 22 May 2007 and to the Senate by 13 June 2007.
- 1.7 The Committee advertised the inquiry in *The Australian* on 14 February 2007. Notice of the inquiry was also placed on the Committee's website. No submissions were received from the public.
- 1.8 Representatives of the Attorney-General's Department, ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listing on 23 March 2007 in Canberra.
- 1.9 In its first report, *Review of the listing of 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 TQJBR and chapter 2 will consider the merits of the listing.

1 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of the listing of Tanzim Qa'idat al-jihad fi Bilad al-Rafidayn (the al-Zarqawi network) as a terrorist organisation*, May 2005, p. 21

2 Submission 1.

3 Criminal Code Amendment Regulations 2007 (No.1).

The Government's procedures

1.10 In a letter sent to the Committee on 5 March 2007, the Attorney-General informed the Committee that it had adhered to the following procedures for the purpose of the listing:

- A separate unclassified Statement of Reasons for TQJBR was prepared by the Australian Security Intelligence Organisation (ASIO), in consultation with the Department of Foreign Affairs and Trade, detailing the case for re-listing TQJBR.
- Mr Henry Burmester QC, Chief General Counsel of the Australian Government Solicitor provided written confirmation on 7 December 2006 that the Statement of Reasons prepared by ASIO was sufficient for the Attorney-General to be satisfied on reasonable grounds of the matters referred to in section 102.1(2) for the re-listing by regulation of TQJBR as a terrorist organisation under the Criminal Code.
- The Director-General of Security, Mr Paul O'Sullivan wrote to the Attorney-General on 11 December 2006 outlining the background, training activities, terrorist activities, leadership and membership of TQJBR and attached a Statement of Reasons in respect of the organisation.
- A submission was provided to the Attorney-General on 23 January 2007 attaching:
 - ⇒ Copy of the Statement of Reasons prepared by ASIO for TQJBR;
 - ⇒ Advice from Chief General Counsel in relation to TQJBR;
 - ⇒ Regulations and Federal Executive Council documentation for TQJBR.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that TQJBR is 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 regulations with respect to TQJBR and approved associated Federal Executive Council documentation including an Explanatory

Memorandum, Executive Council Minute and Explanatory Statement.⁴

- A letter dated 2 February 2007 from the Attorney-General was sent to the Prime Minister advising of the Attorney-General's intention to re-list TQJBR as a terrorist organisation under the Criminal Code.
- The Attorney-General advised the Leader of the Opposition by letter dated 2 February 2007 of the proposed listing of TQJBR as a terrorist organisation under the Criminal Code. The Leader of the Opposition was offered a briefing in relation to the re-listing of the organisation; however he has not taken up the offer of a briefing.
- The Attorney-General wrote to the Attorneys-General of the States and Territories on 2 February 2007 advising them of the decision to re-list TQJBR as a terrorist organisation under the Criminal Code. A copy of the Statement of Reasons and regulations TQJBR as a terrorist organisation were attached to the letters. To date, no correspondence from the States or Territories has been received in relation to the listing of TQJBR.
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 2 February 2007 advising of his decision to re-list TQJBR as a terrorist organisation under the Criminal Code.
- The Governor-General made the regulations on 15 February 2007. The regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 16 February 2007 (FRLI Reference Number: F2007L00284).
- A press release was issued on 19 February 2007 and the Attorney-General's Department's National Security web site has been updated.

Procedural concerns

The nature of the information supplied to the Committee

- 1.11 Many of the regulations which currently come to the Committee are for the re-listing of organisations, previously listed and fully reviewed. The Committee has asked that the information presented

4 Submission 2.

to justify this 'fresh exercise of executive discretion' contain a 'sufficient degree of currency in the evidence to warrant the use of the power'.⁵ Therefore, the Committee has asked that the emphasis in the material be on the activities of the organisation in the period since the last listing/review. On this occasion some additional and current information has been supplied on TQJBR and this is appreciated. However, it is still scattered amongst older information relevant to an earlier review and most of the information in the statement of reasons predates the last review.

1.12 Of the 14 paragraphs in the statement of reasons, only three paragraphs and two part paragraphs provide new information relevant to the current period; of the 14 terrorist activities listed, 7 fall within the relevant period, all but two prior to the death of al-Zarqawi.

1.13 The information in the statement of reasons does not as yet address the criteria which ASIO uses to 'select' an organisation for listing, namely:

- Engagement in terrorism;
- Ideology and links to other terrorist groups or networks;
- Links to Australia;
- Threats to Australian interests;
- Proscription by the UN or like minded countries; and
- Engagement in peace/mediation processes.⁶

1.14 The use of these criteria in the statement of reasons would not preclude the Attorney-General from applying the definition of a terrorist organisation from within the act, as this definition is very broad. However, the Committee reiterates that:

a clearer exposition of the criteria would strengthen the Government's arguments, provide greater clarity and consistency in the evidence and therefore increase public confidence in the regime as a whole. Therefore, ... it would

5 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of ASG, JuA, GIA and GSPC*, February 2007, p. 6.

6 Criteria given at a hearing on 1 February 2005. The last factor was seen as an exclusionary factor.

greatly facilitate the Committee's review process if the [statement of reasons addressed these criteria.]⁷

- 1.15 The issue was raised again during the private hearing. Officers from the Attorney-General's Department informed the Committee that the criteria are still under consideration by government.⁸ The issue of whether the statement of reasons should be organised according to the criteria depends on whether the government is formally to adopt the criteria.⁹ The Government might apply the criteria directly or, as is currently the case, as matters that are taken into account. Under either circumstance, the question of organising the statement of reasons according to the criteria would still remain relevant for the convenience of assessment.¹⁰ This issue is to be examined and dealt with in more detail as part of the Committee's general inquiry into the operation, effectiveness and implications of the proscription power.

Consultation within government

- 1.16 Consultation with the States and Territories remains minimal. There were eight working days between the time when the Attorney-General sent letters to the Prime Minister, the Leader of the Opposition, the Attorneys of the States and Territories and the Chairman of the Parliamentary Joint Committee on Intelligence and Security (2 February 2007) and when the Governor General made the regulation (15 February 2007).
- 1.17 The Leader of the Opposition did not seek a briefing on the matter and no State or Territory government replied.
- 1.18 The Committee notes that letters were addressed to the Attorneys General in the States and Territories rather than the Premiers and Chief Ministers as agreed under subclause 3.4(6) of the *Inter - Governmental Agreement on Counter-terrorism Laws*. This subclause states that the Commonwealth will provide the States and Territories with the 'text of the proposed regulation and will use its best endeavours to give the other parties reasonable time to consider and to comment on the proposed regulation'.

7 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of ASG, JuA, GIA and GSPC*, February 2007, p.8.

8 Transcript, Private hearing, 23 March 2007, p.3.

9 Transcript, Private hearing, 23 March 2007, p.4.

10 Transcript, Private hearing, 23 March 2007, p.4.

1.19 DFAT was consulted at the initial stage of developing the statement of reasons.¹¹ At the hearing, officers told the Committee that DFAT was involved in a lengthy consultative process with the National Threat Assessment Centre (NTAC) and the Attorney General's Department.

Essentially, we are asked to contribute to the statement of reasons. To produce that, we consult with our posts and within our organisations and we provide that written feedback to the statement of reasons and it is incorporated in the final document.¹²

1.20 DFAT also advised that, although there was no direct account taken of Australia's international obligations in respect of this organisation, TQJBR is designated by the UN and appears on the UN 1267 Sanctions Committee List. UNSC Resolution 1267 imposes obligations upon member states to freeze the assets and resources of designated organisations. Those obligations are implemented under the *Charter of the United Nations Act 1948*. It is unclear whether the organisation has been included in any of Australia's reports to the United Nations Security Council on the monitoring of financial transactions, people movement or the sale of arms.¹³

1.21 In response to questions on the listing of TQJBR by comparable jurisdictions, DFAT advised that some jurisdictions regard TQJBR as an integral part of al Qaeda while others view them as two distinct organisations. DFAT subsequently confirmed that:

European Union

TQJBR was appended - in the 41st amendment - to the list attached to the Council Regulation 881/2002 (pursuant to UNSCR 1267). This listing entails a travel ban and freezing of assets. Criminal sanctions flowing from membership of a listed organisation remain the preserve of EU member states. The EU automatically transposes into its law organisations listed as terrorist organisations under UNSCR 1267;¹⁴

11 See Statement of Reasons above.

12 Transcript, Private hearing 23 March 2007, p.5

13 Australia is required to report to the United Nations Security Council on measures taken by the Australian Government to implement Security Council resolutions 1267, 1333, 1390, 1455 and 1373. These resolutions oblige member states to suppress terrorism, including freezing terrorist assets, preventing terrorists from entering into or transiting through their territories, preventing the supply, sale and transfer of arms and military equipment and denying safe haven to terrorists.

14 Response to Question on Notice, 26 March 2007.

United Kingdom

The UK has taken the position that it lists al Qaeda as a whole, and entities such as AQI are subsumed under this listing.¹⁵

Community consultation and information

- 1.22 The submission from the Attorney-General provides no information on the means which the government used to inform the community beyond the last dot point in submission 2:
- A press release was issued on 19 February 2007 and the Attorney-General's Department's National Security web site has been updated.
- 1.23 At previous hearings and in response to recommendations going back to the Committee's second review in March 2005, the Attorney-General's Department has advised that 'they are developing a response to the Committee's recommendation on community consultation'.¹⁶
- 1.24 This clearly has not happened and there is no sign of any intention that it should happen.

15 Response to Question on Notice, 27 March 2007.

16 Transcript, Private hearing 2 May 2005, p. 5.

The Listing

The criteria for listing an organisation

- 2.1 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Minister must be satisfied on reasonable grounds that the organisation:
- is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur): or
 - advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).¹
- 2.2 In previous reports, the Committee has commented on the breadth of this definition.² The definition does not explain why certain organisations who engage in, prepare, plan, assist in or foster the doing of a terrorist act have not been proscribed under the Criminal Code, whereas others have. To date, no organisation has been listed on the basis of the advocacy of terrorism.
- 2.3 In order to understand the process of selecting organisations for listing, the Committee sought guidance from ASIO. At the hearing on 1 February 2005 for the *Review of the listing of six terrorist*

¹ Paragraphs 102.1(2) (a) and (b) of the Criminal Code.

² See: Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad*, June 2004, p. 18 and Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, Chapter 2.

organisations, the Director-General of ASIO advised the Committee of ASIO's evaluation process in selecting entities for proscription under the Criminal Code. Factors included:

- engagement in terrorism;
- ideology and links to other terrorist groups/networks;
- links to Australia;
- threat to Australian interests;
- proscription by the UN or like-minded countries; and
- engagement in peace/mediation processes.³

2.4 The Committee accepted these criteria as useful and has used them as the basis of its reviews over the last three years. However, matching information within the statements of reasons with the criteria has proved to be elusive. Therefore, the Committee has asked the Attorney-General to use the criteria as the basis of statements of reasons. This has not yet occurred. The statement of reasons on TQJBR, provided by ASIO for the Attorney-General, is not structured to address these factors specifically.⁴

The re-listing of TQJBR

2.5 The Attorney-General informed the Committee of the proposed listing by letter dated 2 February 2007 with an attached statement of reasons. On 19 February 2007, the Attorney-General issued a media release announcing the decision to re-list TQJBR. The media release provided open source details on the organisation.

2.6 The Attorney-General's statement of reasons is as follows:

Tanzim Qa'idat al-Jihad ft Biiad al-Rafidayn

(Also known as: the al-Zarqawi network; ai-Tawhid; Jama'at al-Tawhid wa'al-Jihad; Al-Tawhid and al-Jihad; The Monotheism and Jihad Group; Qa'ida of the Jihad in the Land of the Two rivers; Al-Qa'ida of Jihad in the Land of the Two Rivers; Al-Qa'ida of Jihad Organization in the Land of the Two Rivers; The Organisation of Jihad's Base in the Country of the Two Rivers; The Organisation Base of

3 Confidential exhibit, ASIO, tabled 1 February 2005.

4 See discussion of this issue in Chapter 1.

Jihad/Mesopotamia; Tanzeem Qa'idat al-Jihad/Bilad al Raafidaini; Kateab al-Tawhid; Brigades of Tawhid; Unity and Jihad Group; Unity and Holy Struggle; Unity and Holy War; Al-Qa'ida in Iraq; Al-Qa'ida in Iraq - Zarqawi; Islamic State in Iraq and; Mujahidin Shura Council.)

The following information is based on publicly available details about Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (TQJBR). These details have been corroborated by material from intelligence investigations into the activities of the TQJBR. ASIO assesses that the details set out below are accurate and reliable.

TQJBR is listed in the United Nation's 1267 Committee's consolidated list and as a proscribed terrorist organisation by the government of the United States.

Current status of TQJBR

TQJBR is a Sunni Islamic extremist network established and originally led by Abu Mus'ab al-Zarqawi until his death on 7 June 2006. He has been replaced by Abu Hamza al-Muhajir, also known as Abu Ayyub al Masri.

The network, al-Tawhid wal-Jihad, first emerged as a group of, mainly Jordanian, individuals under the leadership of al-Zarqawi over a period of several years, following his release from a Jordanian prison in 1999. From May 2002 al-Zarqawi worked closely with Ansar al-Islam, until Ansar al-Islam and its members were scattered following intense action in northern Iraq in 2003. Al-Zarqawi's group found prominence following the attacks against the UN headquarters in Baghdad on 19 August 2003 and the kidnap and televised beheading of US hostage Nicolas Berg in May 2004.

During 2004 al-Zarqawi's group operated under the name Jama'at al-Tawhid wa'al-Jihad. The name Jama'at al-Tawhid wa'al-Jihad was subsequently changed to Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn on 17 October 2004 in a public pledge of allegiance to Usama bin Laden via an internet posting. A subsequent statement by Usama bin Laden, broadcast on 27 December 2004, welcomed the union and exhorted mujahideen in Iraq to obey al-Zarqawi. TQJBR literally translates to the al-Qa'ida of Jihad Organisation in the Land of the Two Rivers. It is now commonly referred to as al-Qa'ida in Iraq.

On 15 January 2006 it was announced that al-Zarqawi had brought together five jihadi groups in Iraq under one umbrella group, the Mujahideen Shura Council. TQJBR is the dominant group under the Council but other members include Victorious Sect Army, Ansar al-Tawhid, al-Ghuraba, al-Jihad al-Islami and al-Awhal. On 15 October 2006 the Mujahideen Shura Council declared the establishment of the Islamic State of Iraq. While attacks are claimed by the Ministry of Information of the Islamic State of Iraq, TQJBR conducts or directs these attacks in its own right as the dominant member of the Mujahideen Shura Council. TQJBR no longer publicly claims responsibility for attacks it has conducted.

TQJBR maintains a finance committee which collects the necessary funds to finance TQJBR's various activities. The finance committee relies on a global network of activists who collect donations from businesses, mosques and individuals. Funding is also supplemented by the individual finances of the operatives. Many operatives and cells are self funded, including through criminal activity, and require a minimum of upkeep when undertaking jihad in Iraq.

Australia is seen as a target by TQJBR. This is demonstrated by its claim of responsibility for an attack against an Australian Defence Force convoy in Baghdad on 25 October 2004 and an attack near the Australian Embassy in Baghdad on 19 January 2005.

TQJBR has been involved in numerous terrorist attacks in Iraq against Multi-National Forces, Iraqi Security Forces, members of the Interim Iraqi Government, Iraqi and foreign civilians and international facilities. Particular terrorist activities include suicide bombings, vehicle bombs, small arms ambushes, kidnappings and executions. The network has also undertaken attacks outside of Iraq, including in Jordan.

TQJBR makes frequent statements advocating the conduct of terrorist activities using al-Qa'ida's media outlet, the Global Islamic Media Group. The statements have advocated the use of violence in achieving its aims.

Objectives

The objectives of TQJBR within Iraq are to overthrow the current Iraqi Government, expel the Multi-National Forces from the country, combat Shiite centres of power and establish an Islamic state under Sharia law.

More broadly, TQJBR seeks, through jihad, to liberate all Muslim territories from infidel regimes, and the removal of governments of Muslim nations assessed by the network to be apostate.

Leadership and membership

TQJBR was established and continuously led by al-Zarqawi until his death on 7 June 2006. As of 13 June 2006 Abu Hamza al-Muhajir has led TQJBR. Field commanders, in coordination with battalion commanders and regional organisation leaders, make decisions with regard to day to day operations but defer to the leadership on major operational issues.

The strength of the operational network in Iraq is not known. The group claims to have 15 brigades with these ranging from 100 to 300 operatives each. Given these figures, an estimate of between 1500 and 4500 operatives is plausible. Zarqawi historically maintained a network in Europe and the Middle East.

TQJBR's engagement in terrorist activities

TQJBR currently conducts several attacks a day in Iraq against a variety of sectarian, Iraqi Government and Coalition targets. Significant terrorist attacks for which responsibility has been claimed by, or reliably attributed to TQJBR have included:

- 10 April 2004: Kidnap and murder of US civilian contractor Nicolas Berg. His decapitated body was found on 10 May 2004;
- 24 April 2004: Attempted suicide boat bombing of Iraq's Basra oil terminal;
- 24 June 2004: Attacks on Iraqi security forces in Baghdad, Baquba, Mosul, Fallujah and Ramadi;
- 16 September 2004: Kidnap of US contractors Jack Hensley (killed 21 September) and Eugene Armstrong (killed 22 September) and UK contractor Kenneth Bigley (killed 7 October);

-
- 25 October 2004: Vehicle bombing of an Australian Defence Force convoy in Baghdad, killing and wounding a number of Iraqi civilians and wounding a further three ADF personnel;
 - 19 January 2005: Vehicle bombing near the Australian Embassy, Baghdad, killing two Iraqi nationals and injuring several people including two ADF personnel;
 - 19 August 2005: Two rockets fired on US warships moored offal Aqaba port in Jordan. Both missed;
 - 24 October 2005: Three suicide car bombs exploded at the Sheraton and Palestine Hotels complex in Baghdad in a coordinated operation. At least 15 people were killed in the operation;
 - 9 November 2005: Grand Hyatt, Radisson SAS and Days Inn hotels bombed killing 52 people and injuring 115. Suicide bombers carried out simultaneous attacks at around 8.50pm on the three hotels;
 - 27 December 2005: Ten rockets fired on northern Israeli towns from southern Lebanon;
 - 22 February 2006: Attack on the Shi'a al-Askariyah Golden Mosque in Samarra;
 - 20 June 2006: Two US soldiers taken hostage on 16 June are found dead. Both bodies were mutilated and one was beheaded; and
 - 25 June 2006: Four Russian diplomats taken hostage on 3 June 2006 were executed. The executions were filmed showing one shot in the head and at least two being beheaded.

Conclusion

The Criminal Code provides that, for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied that:

- (i) the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- (ii) the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

On the basis of the above information, ASIO assesses TQJBR is directly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts. It is submitted that the acts attributable to TQJBR are terrorist acts as they:

(i) are done with the intention of advancing a political cause, namely, creating an Islamic state in Iraq.

(ii) are intended to coerce or influence by intimidation the governments of foreign countries, including Iraq and Coalition countries, and/or intimidate a sections of the public.

(iii) constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

This assessment is corroborated by information provided by reliable and credible intelligence sources.

- 2.7 On the basis of the statement of reasons, Jane's Terrorism and Insurgency Centre database and evidence given at the hearing, TQJBR has been measured against ASIO's stated evaluation process as follows:

Engagement in terrorism

- 2.8 It was clear in the last review of this organisation that it had engaged in terrorist acts of a particularly gruesome kind. On 7 June 2006, the leader of the network, Al-Zarqawi himself, was killed as a result of a Coalition air attack on his safe house.
- 2.9 According to the statement of reasons, in the period under review, 2005 to 2007, TQJBR has been subsumed (January 2006) into a 'larger coalition of groups', the Mujahideen Shura Council, of which TQJBR is the 'dominant group'.⁵ On 15 October 2006, the Council declared the establishment of the Islamic State of Iraq. It is the Council that has claimed responsibility for terrorist activity in the period under review.
- 2.10 The last review listed numerous cases of violence for which the group claimed responsibility. Many of these are included in the new statement of reasons.
- 2.11 The current statement lists seven actions which have occurred since the last review. Of these, four were conducted inside Iraq. These have involved rocket attacks on US war ships, car bombings and suicide bombings, kidnapping and the beheading of hostages. Of these actions, five occurred in the 12 months prior to al-Zarqawi's

5 Statement of Reasons p. 1.

death and two have occurred since his death, both in the same month. [Since October 2004, TQJBR] 'has lost dozens of lieutenants and high ranking network members through Coalition and Iraqi security force operations',⁶ according to the US State Department.

- 2.12 The Committee was advised that there had been no amelioration in the activities of TQJBR and that the death of the leader had not lessened its operations.
- 2.13 TQJBR claims that it has 1500 to 4500 operatives based on 15 brigades ranging from 100 to 300 operatives each.⁷ This is an increased estimate from the last review when the network was said to number 500 to 1000 people. The US State Department describes its strength as 'more than 1,000 members, but the exact number is unknown'. Jane's and other terrorism databases suggest that its strength is 'impossible to estimate', Jane's commenting that 'its membership is likely to be very small given the unpopularity of indiscriminate attacks against Muslim civilians.'⁸
- 2.14 Estimates of the insurgency itself, of which TQJBR is a part, have varied enormously. Much of the information available through open sources predates the period of this review. Jane's quotes US military sources as estimating the number of insurgents active in Iraq as having grown from 5,000 in November 2003 to 15, 000 to 20,000 in June 2005. The Iraqi Intelligence Chief, General Muhammad Adbullah Shahwani said in January 2006 that there were 200,000 insurgents, spearheaded by at least 40,000 hardcore fighters. Foreign fighters have been estimated to be 5 to 10 per cent of the insurgency.⁹ The Australian security commentator, Clive Williams, in a recent article described the Sunni insurgency as 'probably 20,000 fighters, with considerable local support' and the 'international terrorists in Iraq, also mostly Sunnis, including al-Qa'ida in Iraq, probably number 1500.'¹⁰
- 2.15 At the hearing the Committee was told that Iraqis comprised the majority of al-Qa'ida in Iraq, that this was the dominant organisation within the insurgency and that the numbers involved

6 US State Department, The Country Reports on Terrorism 2005, "Al-Qa'ida in Iraq"

7 See the statement of reasons above.

8 <http://jtic.com/JDIC>, *al-Tawhid*, p.6. <http://www.tbk.org/Group.jsp>, *MIPT Terrorism Knowledge Base*, p. 1.

9 <http://jtic.com/JDIC>, *Iraqi Sunni Insurgents*, p. 7.

10 Clive Williams, *Australia's continuing presence in Iraq remains unclear*, The Canberra Times, 8 March 2007.

were trending upward. Officers of DFAT reiterated that the organisation is the dominant part of the Mujahideen Shura Council, but retains a distinct identity and is no less potent because of its cooperation with others.¹¹

Ideology and links to other terrorist groups/networks

Ideology

- 2.16 Although ASIO has listed ideology as one of the criteria for choosing to list an organisation as a terrorist organisation, ideology is not a category addressed in the statement of reasons. The closest the statement comes to ideology is under the heading 'Objectives'. These words are not necessarily synonymous.
- 2.17 In the initial review in 2005, the objective of TQJBR was cited as one that 'supports and promotes the global jihadist movement, as espoused by al-Qa'ida'. The objective of TQJBR within Iraq was reportedly to overthrow the Interim Iraqi Government, to expel the Multi-National Forces from the country and to establish an Islamic state under Sharia law. These objectives are unchanged.¹² There is a mixture here of military, revolutionary and political objectives. Expelling the Multi-National Forces from Iraq is a military objective. This objective, consistent with al-Qa'ida's objectives, is broadened to include the liberation of 'all Muslim territories from infidel regimes and the removal of governments of Muslim nations assessed by the network to be apostate.'¹³
- 2.18 Changing governments and political systems, even to one that institutes Sharia law, is a fundamentally political objective, albeit a revolutionary one in the case of the overthrow of existing regimes in the Middle East. However, it is the use of extreme violence directed at civilians to achieve that aim that defines the organisation as a terrorist organisation and puts the organisation outside acceptable political debate and processes.
- 2.19 TQJBR's record in this respect is self-proclaimed.

11 Transcript, Private hearing 23 March 2007, p.5.

12 ASIO's analysis in the current statement of reasons has altered little since that report, substituting the overthrow of the 'current Iraqi government' for the 'Interim Iraqi government'.

13 See the statement of reasons above.

Links to other terrorist groups

- 2.20 TQJBR is also known as al-Qa'ida in Iraq. The Attorney-General's statement of reasons reports that TQJBR is linked to, and supports, al-Qa'ida. This is evidenced by the 'public pledge of allegiance to Usama bin Laden via an internet posting' and a 'subsequent statement by Usama bin Laden, broadcast on 27 December 2004, [which] welcomed the union and exhorted the mujahideen in Iraq to obey al-Zarqawi.'¹⁴ These statements were part of the original statement of reasons in 2005.
- 2.21 As discussed in the previous review, while not doubting the overlapping objectives between al-Qa'ida and TQJBR to remove foreign forces from Muslim lands, the nature of the relationship between them is not necessarily clear or aligned. In the last review the Committee noted that Jane's argued:
- While they are both committed to waging a violent war in the name of Islam, the nature of the relationship between Zarqawi and Bin Laden remains unclear....The memberships of their groups allude to geographic divisions and rivalries. While Al-Qaeda's core membership is composed largely of Saudi, Yemeni and other Gulf Arab militants allied with a radical faction of El-Gihad (Egyptian Islamic Jihad), Zarqawi and his associates are mostly Jordanian, Syrian and Palestinian, apparently allied with Kurdish Islamists in Iraq.¹⁵
- 2.22 This question as to whether TQJBR and al-Qa'ida are partners, rivals or autonomous entities, has been added to by the alleged reaction of al-Qa'ida to the bombings in Amman in November 2005.
- 2.23 Clearly, since the last review, the organisation has merged with other insurgents groups in Iraq under the umbrella of the Mujahideen Shura Council. These are listed in the statement of reasons as: the Victorious Sect Army; Ansar al-Tawhid; al-Ghuraba; al-Jihad al-Islami; and al-Awhal.

Links to Australia

- 2.24 As noted in previous reports, the Committee understands that a direct link to Australia is not legally necessary in order for an

14 See the statement of reasons above.

15 Jane's Terrorism and Insurgency Centre, *Al-Tawhid*, 21 September 2004, <http://jtic.janes.com>, p. 6.

organisation to be listed under the Criminal Code. However, ASIO has advised the Committee that it is one of the factors that it considers in deciding whether to list an organisation and it has been the Committee's view that it should be a primary consideration. The Attorney-General's statement of reasons does not address whether there are any current or past connections between TQJBR and Australia, either through membership, support, training or financial donations.

- 2.25 At the hearing, the Committee sought further information on whether there are any Australian links with TQJBR. Evidence was given on this matter.

Threat to Australian interests

- 2.26 The current statement of reasons repeats the information in the last regarding TQJBR being a threat to Australian interests:

Australia is seen as a target by TQJBR. This is demonstrated by its claim of responsibility for an attack against an Australian Defence Force convoy in Baghdad on 25 October 2004 and an attack near the Australian Embassy in Baghdad on 19 January 2005.

Proscription by the UN or like-minded countries

- 2.27 The group is included in the UN 1267 Committee List on 18 October 2004 by the name Jama'at al-Tawhid wa'al-Jihad under the category of groups associated with al-Qa'ida. The United States Government designated the group as a Foreign Terrorist Organisation (FTO) under the *Immigration and Nationality Act* on 15 October 2004, although it is not on the US Terrorist Exclusion List.
- 2.28 Since the last review by this Committee, Canada has included the group as a specified group.
- 2.29 As noted in Chapter 1 DFAT has confirmed that TQJBR is listed by the European Union pursuant to UNSCR 1267 and the obligations in relation to travel bans and the freezing of assets are implemented through the law of EU Member States. There was no information made available about whether TQJBR is listed for general criminal law purposes in any EU Member State except for the UK. The UK regards TQJBR as an integral part of al-Qa'ida and as such it is subsumed under the listing of al-Qa'ida.

Engagement in peace/mediation processes

2.30 TQJBR is not involved in any peace processes.

Conclusion

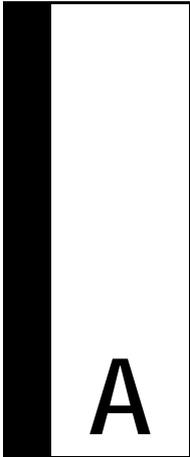
- 2.31 It is evident TQJBR has in the past committed violent crimes in pursuit of its objectives. The group has kidnapped and murdered civilians and attacked Multi-National Forces and members of the Iraqi Government. The US State Department states that 'al-Qa'ida in Iraq (TQJBR) has lost dozens of lieutenants and high ranking network members through Coalition and Iraqi security force operations. The Committee notes, in addition, that apart from two 'activities' shortly after the death of al-Zarqawi in June 2006, no other terrorist activities have been attributed to TQJBR. In making a judgement about the continuing strength of TQJBR and the need to re-list the organisation, the Committee is aware of the incorporation of the organisation into the Mujahideen Shura Council and the paucity of reliable information coming out of the difficult situation in Iraq.
- 2.32 The Committee strongly condemns violent acts in pursuit of political objectives. The proscription of TQJBR in Australia is potentially useful insofar as it prevents Australians from assisting the organisation either financially or personally.

Recommendation 1

The Committee does not recommend disallowance of the regulation.

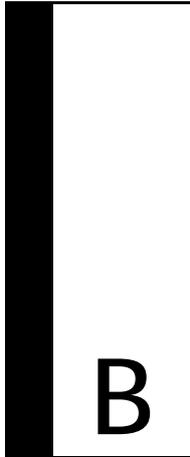
Hon David Jull, MP

Chairman



Appendix A – List of Submissions

1. Attorney-General
2. Attorney-General – Process for listing



Appendix B – Witnesses appearing at private hearing

Canberra - Friday, 23 March 2007 (Private Hearing)

Australian Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Attorney-General's Department

Mr Geoff McDonald, Assistant Secretary, Security Law Branch, Security and Critical Infrastructure Division

Ms Annabel Knott, Senior Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

Ms Amy Lister, Legal Officer, Security Law Branch, Security and Critical Infrastructure Division

Department of Foreign Affairs and Trade

Mr Perry Head, Assistant Secretary, Counter-Terrorism Branch

Mr Paul Robilliard, Head, Iraq Taskforce

Ms Susan Grace, Director, Counter-Terrorism Policy Section

ERRATUM

Page 6, paragraph 1.17

On 19 April 2007, after this report went to print, the Committee received the following information from the Attorney-General, Hon Philip Ruddock, MP:

'My letter of 5 March 2007 advised that no correspondence from the States and Territories had been received in relation to the re-listing of TQJBR. Since this date, I have received a letter dated 20 February 2007 from the Hon Bob Debus MP, Attorney-General of New South Wales, confirming that he has noted the information provided in the attached Statement of Reasons. I have received a letter dated 1 March 2007 from the Hon Peter Beattie, Premier of Queensland in which he advised that he has no objections to the re-listing of TQJBR.'