



Australian Government
Attorney-General's Department

National Security
Law and Policy Division

09/10086, 09/10096, 09/11082, 09/12344

7 October 2009

Mr Robert Little
Committee Secretary
Parliamentary Joint Committee
on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Mr Little

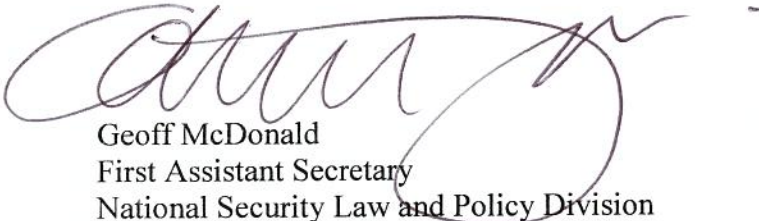
I refer to the Attorney-General's letter to the Chair of the Parliamentary Joint Committee on Intelligence and Security concerning the proposed regulations re-listing Hamas' Izz al-Din al-Qassam Brigades (the Brigades), Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ) as terrorist organisations under the Criminal Code.

I confirm that the *Criminal Code Amendment Regulations 2009 (No. 13)*, *Criminal Code Amendment Regulations 2009 (No. 14)*, *Criminal Code Amendment Regulations 2009 (No. 15)* and *Criminal Code Amendment Regulations 2009 (No. 16)* were made on 7 September 2009 giving effect to the re-listing of the Brigades, PKK, LeT and PIJ as terrorist organisations under the Criminal Code.

These regulations took effect on 8 September 2009.

I now attach a document outlining the process for re-listing the Brigades, PKK, LeT and PIJ as terrorist organisations. I understand that this document will be considered as a submission to the Committee's review into the re-listing of these organisations, and I consent to its publication.

Yours sincerely



Geoff McDonald
First Assistant Secretary
National Security Law and Policy Division

Process for the 2009 re-listing of four terrorist organisations 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 re-listing Hamas' Izz al-Din al-Qassam Brigades (the Brigades), the Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ):

1. Unclassified Statements of Reasons were prepared by ASIO, and endorsed by DFAT, detailing the case for re-listing the Brigades, PKK, LeT and PIJ.
2. On 3 June 2009 Mr George Witynski, Deputy Chief General Counsel provided written advice with respect to the Statements of Reasons for the Brigades, PKK, LeT and PIJ.
3. The Acting Director-General of Security wrote to the Attorney-General on 4 June 2009 outlining the background, training activities, terrorist activities, and relevant statements of the Brigades, PKK, LeT and PIJ.
4. A submission was provided to the Attorney-General on 11 June 2009 providing the following documents:
 - a. copies of the Statements of Reasons received from ASIO with respect to the organisations
 - b. advice from the Deputy Chief General Counsel, and
 - c. regulations and Federal Executive Council documentation.
5. Having considered the information provided in the submission, the Attorney-General signed statements with respect to the Brigades, PKK, LeT and PIJ 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, whether or not the act has occurred or will occur.
6. The Attorney-General also signed *Criminal Code Amendment Regulations 2009* in relation to the organisations, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statements.
7. On 25 June 2009 the Attorney-General wrote to the Prime Minister advising of his intention to re-list the Brigades, PKK, LeT and PIJ as terrorist organisations.

8. On 25 June 2009 the Attorney-General wrote to the Director-General of Security, in response to the Acting Director-General's letter dated 4 June 2009.
9. On 6 July 2009 the Attorney-General advised the Leader of the Opposition of the proposed re-listing of the Brigades, PKK, LeT and PIJ as terrorist organisations by letter, and offered a briefing in relating to these re-listings. The letter also advised the Leader of the Opposition that, as a result of an administrative error, regulations re-listing these organisations were made prematurely but would soon be repealed (see **Attachment A**).
10. On 24 July 2009 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to re-list the Brigades, PKK, LeT and PIJ as terrorist organisations.

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

Victoria – 5 August 2009
Australian Capital Territory – 6 August 2009
Northern Territory – 10 August 2009
Western Australia – 13 August 2009
Tasmania – 18 August 2009
New South Wales – 19 August 2009
Queensland – 31 August 2009

All responses were supportive of the proposed re-listings.

11. A submission was provided to the Attorney-General on 19 August 2009 providing regulations and Federal Executive Council documentation with respect to the re-listing of the Brigades, PKK, LeT and PIJ.

(Due to the administrative error discussed at **Attachment A**, it was necessary for the Attorney-General to approve these documents again.)

12. The Attorney-General signed statements with respect to the Brigades, PKK, LeT and PIJ 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, whether or not the act has occurred or will occur.
13. The Attorney-General also signed *Criminal Code Amendment Regulations 2009* in relation to the organisations, and approved associated Federal Executive Council documentation including an explanatory memorandum, executive council minute and explanatory statements.
14. On 27 August 2009 the Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security advising of his decision to re-list the Brigades, PKK, LeT and PIJ as terrorist organisations.

15. On 7 September 2009 the Governor-General made the *Criminal Code Amendment Regulations 2009 (No. 13)*, *Criminal Code Amendment Regulations 2009 (No. 14)*, *Criminal Code Amendment Regulations 2009 (No. 15)* and *Criminal Code Amendment Regulations 2009 (No. 16)* with respect to the re-listings of the Brigades, PKK, LeT and PIJ.

16. The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 7 September 2009 with the following FRLI Reference Numbers:

F2009L03396 - *Criminal Code Amendment Regulations 2009 (No. 13)*

F2009L03397 - *Criminal Code Amendment Regulations 2009 (No. 14)*

F2009L03398 - *Criminal Code Amendment Regulations 2009 (No. 15)*

F2009L03399 - *Criminal Code Amendment Regulations 2009 (No. 16)*

The Regulations came into effect on 8 September 2009, the day after they were registered on FRLI.

17. The Attorney-General issued a Media Release on 8 September 2009 announcing the re-listing of the terrorist organisations and attaching copies of the Statements of Reasons.

The Attorney-General's Department's National Security website was also updated.

ATTACHMENT A

1. On 25 June 2009, as a result of an administrative error, the *Criminal Code Amendment Regulations 2009* and associated Federal Executive Council documentation were prematurely sent to the Federal Executive Council. As a result, the Governor-General made the *Criminal Code Amendment Regulations 2009 (No. 8)*, *Criminal Code Amendment Regulations 2009 (No. 9)*, *Criminal Code Amendment Regulations 2009 (No. 10)* and *Criminal Code Amendment Regulations 2009 (No. 11)* with respect to the re-listings of the Brigades, PKK, LeT and PIJ.
2. As these regulations did not comply with consultation requirements, a submission was provided to the Attorney-General on 1 July 2009, providing the *Criminal Code (Repeal of Amendments) Regulations 2009* and associated Federal Executive Council documentation to repeal the regulations that were made in error and re-instate the regulations that were previously in operation.
3. The Attorney-General signed the *Criminal Code (Repeal of Amendments) Regulations 2009*, and approved associated Federal Executive Council documentation, including an explanatory memorandum, executive council minute and explanatory statement.
4. On 9 July 2009 the Governor-General made the *Criminal Code (Repeal of Amendments) Regulations 2009*.
5. The Regulations were registered with the Federal Register of Legislative Instruments (FRLI) on 9 July 2009 with the following FRLI Reference Number:

F2009L02684 – *Criminal Code (Repeal of Amendments) Regulations 2009*

The Regulations were expressed to take effect on 25 June 2009, which was the day before the regulations that were made in error came into operation. The result was to reinstate the regulations listing the four organisations as terrorist organisations at that time, before the four regulations that were made in error came into operation on 26 June 2009.