



ATTORNEY-GENERAL

14/15521

CANBERRA

Mr Dan Tehan MP
Chair
Parliamentary Joint Committee
on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Chair

I am writing to advise of the recent making of the *Criminal Code (Terrorist Organisation—Ansar al-Islam) Regulation 2015*, *Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulation 2015* and *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015*, giving effect to the proscription of Ansar al-Islam (AAI), Islamic Movement of Uzbekistan (IMU) and Lashkar-e Jhangvi (LeJ) as terrorist organisations under subsection 102.1 of the *Criminal Code Act 1995* (Criminal Code).

These organisations have previously been listed (and re-listed) as terrorist organisations under the Criminal Code. AAI was first listed under the Criminal Code on 27 March 2003 and was re-listed on 27 March 2005, 24 March 2007, 14 March 2009 and 9 March 2012. IMU was first listed under the Criminal Code on 11 April 2003 and was re-listed on 11 April 2005, 31 March 2007, 14 March 2009 and 9 March 2012. LeJ was first listed under the Criminal Code on 11 April 2003 and was re-listed on 11 April 2005, 31 March 2007, 14 March 2009 and 9 March 2012. The current regulations listing AAI, IMU and LeJ will cease to have effect on the third anniversary of the day on which they took effect, 10 March 2015.

The organisations are also listed in Australia by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945*. That Act implements United Nations Security Council Resolutions 1267 and 1373 which impose travel bans, arms embargoes and freezes assets of entities and individuals listed on the Consolidated List, maintained by the Department of Foreign Affairs and Trade (DFAT).

I have made the Regulations as I am satisfied on reasonable grounds that the organisations are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocate the doing of terrorist acts. The listing of these organisations will ensure that all offence provisions under Division 102 of the Criminal Code will apply in relation to AAI, IMU and LeJ.

My decision to re-list AAI, IMU and LeJ was made following careful consideration of information provided by the Australian Security Intelligence Organisation, in consultation with DFAT, and after receiving legal advice from the Australian Government Solicitor.

Before the Regulations were made, I wrote to all State and Territory Premiers and Chief Ministers, on behalf of the Prime Minister, advising them of the proposed re-listings and providing them with a copy of the Statements of Reasons. All the First Ministers have responded in writing in support of the proposed re-listings.

As required by the Criminal Code, I also wrote to the Leader of the Opposition advising of my decision to re-list AAI, IMU and LeJ as terrorist organisations for the purposes of section 102.1 of the Criminal Code. I provided the Leader of the Opposition with a copy of the Statements of Reasons and invited him to contact my office if he wished to receive an oral briefing in relation to the re-listings.

Section 102.1 of the Criminal Code provides that the Parliamentary Joint Committee on Intelligence and Security may review the regulations re-listing AAI, IMU and LeJ as soon as possible after they are made, and report the Committee's comments and recommendations to each House of Parliament before the end of the applicable disallowance period for that House.

To assist the Committee, I enclose a copy of the Regulations, Explanatory Statements and Statements of Reasons upon which my decision to re-list AAI, IMU and LeJ was based. The Regulations have been drafted to commence the day after their registration on the Federal Register of Legislative Instruments. This is to avoid a lapse in coverage of the Division 102 terrorist organisation offences in relation to these currently listed organisations.

I also attach a document outlining the process for re-listing AAI, IMU and LeJ. I understand this document may be considered as a separate submission should the Committee decide to conduct a review into the re-listings, and I consent to its publication for that purpose.

Yours faithfully

(George Brandis)

Encl:

Regulations
Explanatory Statements
Statements of Reasons
Process of re-listing AAI, IMU and LeJ



Criminal Code (Terrorist Organisation—Ansar al-Islam) Regulation 2015

Select Legislative Instrument No. , 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 26 FEB , 2015

Peter Cosgrove

Peter Cosgrove
Governor-General

By His Excellency's Command

~~George Brandis QC.~~
~~Attorney-General~~

OPC61129 - A

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Section 1

1 Name

This is the *Criminal Code (Terrorist Organisation—Ansar al-Islam) Regulation 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Criminal Code Act 1995*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Terrorist organisation—Ansar al-Islam

- (1) For paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code Act 1995*, the organisation known as Ansar al-Islam is specified.
- (2) Ansar al-Islam is also known by the following names:
 - (a) Ansar al-Islam Army;
 - (b) Ansar al-Sunna;
 - (c) Army of Ansar al-Islam;
 - (d) Devotees of Islam;
 - (e) Followers of Islam in Kurdistan;
 - (f) Jaish Ansar al-Islam;
 - (g) Jaish Ansar al-Sunna;
 - (h) Jund al-Islam;
 - (i) Kurdish Taliban;
 - (j) Kurdistan Supporters of Islam;

Section 5

- (k) Partisans of Islam;
- (l) Protectors of Islam;
- (m) Protectors of the Sunni Faith;
- (n) Soldiers of God;
- (o) Soldiers of Islam;
- (p) Supporters of Islam in Kurdistan.

Amendments **Schedule 1**

Schedule 1—Amendments

Criminal Code Regulations 2002

1 Regulation 4H

Repeal the regulation.

No. , 2015	<i>Criminal Code (Terrorist Organisation—Ansar al-Islam)</i>	3
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EXPLANATORY STATEMENT

Select Legislative Instrument No. 6, 2015

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the Code (the Criminal Code).

Division 102 of the Criminal Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; provide training to, receive training from or participate in training with a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Criminal Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Criminal Code. The effect of applying section 15.4 is that offences in Division 102 of the Criminal Code apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or the result) occurs in Australia.

Terrorist organisation is defined in subsection 102.1(1) of the Criminal Code as:

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph 102.1(1)(a)); or
- an organisation that is specified by the regulations for the purposes of this paragraph (paragraph 102.1(1)(b)).

Subsection 102.1(20) of the Criminal Code provides that a reference to the doing of a terrorist act includes a reference to the doing of a terrorist act, even if a terrorist act does not occur; a reference to the doing of a specific terrorist act; and a reference to the doing of more than one terrorist act.

The purpose of the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* (the Regulation) is to specify Ansar al-Islam, also known as Ansar al-Islam Army, Ansar al-Sunna, Army of Ansar al-Islam, Devotees of Islam, Followers of Islam in Kurdistan, Jaish Ansar al-Islam, Jaish Ansar al-Sunna, Jund al-Islam, Kurdish Taliban, Kurdistan Supporters of Islam, Partisans of Islam, Protectors of Islam, Protectors of the Sunni Faith, Soldiers of God, Soldiers of Islam and Supporters of Islam in Kurdistan, for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code.

The Regulation enables the offence provisions in Division 102 of the Criminal Code to apply to persons with links to Ansar al-Islam. Details of the Regulation are set out in Attachment A.

Subsection 102.1(2) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in this section, 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; or advocates the doing of a terrorist act.

In determining whether he is 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, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Ansar al-Islam is at Attachment B.

Subsection 102.1(2A) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

Prior to making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, Australian Security Intelligence Organisation and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation repeals existing Regulation 4 of the *Criminal Code Regulations 2002* which specify Lashkar-e Jhangvi, for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. The existing Regulation 4L ceased to have effect on 10 March 2015. The repeal of Regulation 4L ensured there is no duplication if the new Regulation was made before the current Regulation ceases.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Criminal Code provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which it takes effect.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit for, train, receive or participate in training, get funds to, from or for Ansar al-Islam, and provide support or associate with Ansar al-Islam.

The offence of association with a terrorist organisation in subsection 102.8 of the Criminal Code is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or legal representation.

The object of the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

Human rights implications

This instrument engages the following rights:

- Article 6
- Article 19 and
- Article 22.

The *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Whilst the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* may limit the right to freedom of association with Ansar al-Islam, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Ansar al-Islam are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life, as detailed in the Statement of Reasons ([Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons (Attachment B) supports the Attorney-General's decision made on reasonable grounds, that Ansar al-Islam satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) of the Criminal Code the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed regulation
- under subsection 102.1(3) the Criminal Code the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) of the Criminal Code provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the Criminal Code, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the regulation listing the organisation ceases to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Criminal Code and
- both Houses of Parliament may disallow the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4) of the Criminal Code.

Conclusion

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

ATTACHMENT A

Details of the Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015

Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Ansar al-Islam) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation – Ansar al-Islam

Subsection (1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Ansar al-Islam is specified.

Subsection (2) provides that Ansar al-Islam is also known by the following names:

- (a) Ansar al-Islam Army;
- (b) Ansar al-Sunna;
- (c) Army of Ansar al-Islam;
- (d) Devotees of Islam;
- (e) Followers of Islam in Kurdistan;
- (f) Jaish Ansar al-Islam;
- (g) Jaish Ansar al-Sunna;
- (h) Jund al-Islam;
- (i) Kurdish Taliban;
- (j) Kurdistan Supporters of Islam;
- (k) Partisans of Islam;
- (l) Protectors of Islam;
- (m) Protectors of the Sunni Faith;
- (n) Soldiers of God;
- (o) Soldiers of Islam; and
- (p) Supporters of Islam in Kurdistan.

Schedule 1 – Amendments

This schedule amends the *Criminal Code Regulations 2002*.

Clause 1 - Regulation 4H

This clause provides that regulation 4H of the *Criminal Code Regulations 2002* is repealed. Regulation 4H was the regulation listing Ansar al-Islam as a terrorist organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. This clause ensures there is no duplication if the new Regulation was made before the current Regulation ceases.

ATTACHMENT B

Ansar al-Islam

(Also known as: **Ansar al-Islam Army, Ansar al-Sunna, Army of Ansar al-Islam, Devotees of Islam, Followers of Islam in Kurdistan, Jaish Ansar al-Islam, Jaish Ansar al-Sunna, Jund al-Islam, Kurdish Taliban, Kurdistan Supporters of Islam, Partisans of Islam, Protectors of Islam, Protectors of the Sunni Faith, Soldiers of God, Soldiers of Islam, Supporters of Islam in Kurdistan**)

The following information is based on publicly available details about Ansar al-Islam (AAI). To the Australian Government's knowledge, these details are accurate and reliable and have been corroborated by classified information.

Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

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

Details of the organisation

AAI is a Sunni Islamist militant group that operates mainly in the north-west region of Iraq. It originally emerged from several smaller Kurdish Sunni extremist groups active within the Kurdish areas of northern Iraq. AAI was first proscribed on 27 March 2003, and was last re-listed as a proscribed group on 9 March 2012.

AAI is predominately comprised of Iraqis, some of whom are former intelligence and security personnel. However, AAI's ranks also include a number of Sunni Arab foreign fighters – predominately Yemenis and Saudis.

AAI was formed in 2001 when Abdallah al-Shafii, leader of the Jund al-Islam (Soldiers of Islam), merged his force with Mullah Krekar's splinter faction of the Islamic Movement of Kurdistan. Mullah Krekar emerged as the spiritual leader of AAI while al-Shafii was appointed the military commander.

AAI is aligned ideologically with al-Qa'ida. Al-Shafii trained at an al-Qa'ida training camp in Afghanistan and reportedly had close ties to Usama bin Laden. When captured by Iraqi and United States (US) forces on 3 May 2010, al Shafii also admitted to carrying out joint operations with the group now known as the Islamic State.

Mullah Krekar remains AAI's spiritual leader despite living in Norway, where he was deported to from the Netherlands in 2003. Krekar is now in prison after receiving a five-year term in 2012 for making death threats. Despite Norwegian claims that he is a threat

to national security, Krekar cannot be deported to Iraq due to Norwegian policies that prohibit deporting those who may face the death penalty if repatriated.

On 15 December 2011, AAI announced that its new leader was Abu Hashim Muhammad bin Abdul Rahman al-Ibrahim.

AAI's original goal was to contest the control of the secular political parties in Iraqi Kurdistan and establish a fundamentalist Islamic state. The group was disrupted during the 2003 US invasion of Iraq, but re-emerged later that year under the name of Ansar al-Sunna. By November 2007, it returned to its original name of AAI.

AAI and the Islamic State have conducted joint attacks and have similar ideologies and goals, and some members of AAI left the group to join the Islamic State in 2014. As rivals, the two groups have also fought against each other, although AAI prioritises attacks against Iraqi security forces over targeting the Islamic State.

AAI's area of operations is predominately in the north-west of Iraq. It also operates in Baghdad and the provinces of Ninewa, al-Anbar, Salah ad-Din and Diyala. AAI maintains a presence in Mosul and Kirkuk, using these cities as staging grounds for attacks against Kurdish interests in Arbil and Sulaymaniyah.

Arrests and weapons seizures made throughout 2009 and 2010 eroded AAI's overall capability to conduct attacks in Iraq. While AAI does not have the capability to achieve its objective of overthrowing the Iraqi Government, it continues to pose a threat to security, particularly in the north of the country, and is capable of conducting attacks against foreign forces, Iraqi security forces and Kurdish targets.

Terrorist activity of the organisation

AAI conducts attacks against Shia, Kurdish and Iraqi Government interests. AAI's attacks most commonly target Iraqi security forces using improvised explosive devices and indirect fire.

Directly or indirectly engaged in the doing of terrorist acts

AAI has claimed responsibility through a video or media statement for the following attacks since AAI's last re-listing in 2012:

- 10 August 2014: YouTube user 'Ansar al-Islam Front' posted a video of an attack on an Iraqi tank, claiming that the tank was destroyed and all crew onboard were killed.
- 22 June 2014: AAI posted a series of photographs on Twitter claiming to depict areas it had captured from Iraqi and Kurdish security forces.
- 12 June 2014: AAI claimed responsibility on its official Twitter feed for 14 attacks against Iraqi and Kurdish military and police.
- 1 January 2014: An AAI member posted a statement claiming eight attacks against Iraqi police and security forces during December 2013.
- 23 June 2013: AAI claimed responsibility for 48 attacks against Iraqi security forces in Kirkuk province between 23 April and 29 May 2013. In its statement of responsibility, AAI claimed the attacks were revenge for a government raid on a Sunni protest camp in April 2013.

- 1 July 2012: AAI posted a video showing the preparation and execution of a bombing against an Iraqi Federal Police patrol in Baghdad.

Fostering and advocating the doing of terrorist acts

AAI has released several statements since its last re-listing that advocate violent jihad and encourage Muslims to participate.

- 1 July 2014: AAI released a statement for the holy month of Ramadan and congratulated all Muslims for the recent conquests in Iraq.
- 6 November 2013: AAI responded to the formation of Sunni 'Sons of Iraq' militias to combat Sunni insurgents by releasing a statement reaffirming its commitment to jihad and stating that the 'Sons of Iraq' must be 'fought and eradicated'.
- 13 June 2013: AAI released a documentary detailing the group's history, goals and operations. It re-stated AAI's plans to 'do jihad in order to bring back the Islamic Caliphate, and this means the globalism of jihad and its goal'.
- 22 September 2012: AAI released a statement calling upon Muslims to kill those who insult the Prophet Muhammad, encouraging rocket attacks against Israel and congratulating extremists for attacks against US Embassies in Egypt, Libya, Sudan, Tunisia and Yemen.

Conclusion

ASIO assesses that AAI continues to directly and indirectly engage in, preparing, planning, assisting in, advocating and fostering the doing of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources, as well as by terrorist acts conducted by AAI.

In the course of pursuing its objectives in Iraq, AAI is known to have committed or threatened action:

- that causes, or could cause, serious damage to property, the death of persons or endanger a person's life or create a serious risk to a person's safety;
- are done with the intention of advancing AAI's political, religious or ideological causes;
- are done with the intention of coercing or influencing by intimidation the government of a foreign country; and
- are done with the intention of intimidating sections of the public globally.

Other relevant information

Links to other terrorist groups or networks

Since January 2009, AAI has exhibited links to, expressed support for, or received verbal support from other jihadi extremist groups, including al-Qa'ida senior leadership (AQSL), the Islamic State and its predecessor organisations.

- 12 December 2013: AAI released a statement that announced the graduation of a group of fighters from a training camp. The camp was named in honour of Pakistani cleric Abdul

Rashid Ghazi, who was killed in 2007 after openly calling for the overthrow of the Pakistani Government and whose followers engaged in violent protests, kidnappings and clashes with authorities.

- 1 December 2013: AAI claimed responsibility for a joint attack with the Islamic State militants. AAI stated that it conducted a suicide bombing targeting Shia militia in Rabia, a town near the Iraqi-Syrian border. According to the statement, militants from the Islamic State (then known as the Islamic State of Iraq and the Levant) attacked the survivors of the blast.
- 17 September 2012: AAI released a eulogy for al-Qa'ida senior member Abu Yahya al-Libi, praising him for his jihadist activities.
- 6 September 2012: AAI released a statement offering condolences to Lebanese extremist group Fatah al-Islam for the death of its leader, Abu Hussam al-Shami, praising Shami for his jihadist activities.
- 7 May 2011: AAI released a eulogy for the death of al-Qa'ida overall leader Osama bin Laden, consoling Muslims for bin Laden's death and encouraging continued jihad.

Threat to Australian interests

AAI does not pose a direct threat to Australian interests.

Proscription by the UN and other countries

AAI is listed on the United Nations 1267 Committee's Consolidated List and as a proscribed terrorist organisation by the governments of the US, United Kingdom, New Zealand and Canada.

Peace and mediation processes

AAI is not known to have participated in peace or mediation processes.



Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulation 2015

Select Legislative Instrument No. , 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated **26 FEB** . 2015

Peter Cosgrove

Peter Cosgrove
Governor-General

By His Excellency's Command

~~George Brandis QC~~
~~Attorney General~~

OPC61130 - A

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Section 1

1 Name

This is the *Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulation 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Criminal Code Act 1995*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Terrorist organisation—Islamic Movement of Uzbekistan

- (1) For paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code Act 1995*, the organisation known as Islamic Movement of Uzbekistan is specified.
- (2) Islamic Movement of Uzbekistan is also known by the following names:
 - (a) Islamic Movement of Turkestan;
 - (b) Islamic Party of Turkestan.

Schedule 1 Amendments

Schedule 1—Amendments

Criminal Code Regulations 2002

1 Regulation 4J

Repeal the regulation.

EXPLANATORY STATEMENT

Select Legislative Instrument No. 7, 2015

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the Code (the Criminal Code).

Division 102 of the Criminal Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; provide training to, receive training from or participate in training with a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Criminal Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Criminal Code. The effect of applying section 15.4 is that offences in Division 102 of the Criminal Code apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or the result) occurs in Australia.

Terrorist organisation is defined in subsection 102.1(1) of the Criminal Code as:

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph 102.1(1)(a)); or
- an organisation that is specified by the regulations for the purposes of this paragraph (paragraph 102.1(1)(b)).

Subsection 102.1(20) of the Criminal Code provides that a reference to the doing of a terrorist act includes a reference to the doing of a terrorist act, even if a terrorist act does not occur; a reference to the doing of a specific terrorist act; and a reference to the doing of more than one terrorist act.

The purpose of the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* (the Regulation) is to specify Islamic Movement of Uzbekistan, also known as Islamic Movement of Turkestan and Islamic Party of Turkestan, for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code.

The Regulation enables the offence provisions in Division 102 of the Criminal Code to apply to persons with links to Islamic Movement of Uzbekistan. Details of the Regulation are set out in Attachment A.

Subsection 102.1(2) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in this section, 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; or advocates the doing of a terrorist act.

In determining whether he is 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, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Islamic Movement of Uzbekistan is at Attachment B.

Subsection 102.1(2A) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

Prior to making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, Australian Security Intelligence Organisation and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation repeals existing Regulation 4J of the *Criminal Code Regulations 2002* which specify Lashkar-e Jhangvi, for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. The existing Regulation 4L ceased to have effect on 10 March 2015. The repeal of Regulation 4L ensured there is no duplication if the new Regulation was made before the current Regulation ceases.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Criminal Code provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which it takes effect.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit for, train, receive or participate in training, get funds to, from or

for Islamic Movement of Uzbekistan, and provide support or associate with Islamic Movement of Uzbekistan.

The offence of association with a terrorist organisation in subsection 102.8 of the Criminal Code is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or legal representation.

The object of the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

Human rights implications

This instrument engages the following rights:

- Article 6
- Article 19 and
- Article 22.

The *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Whilst the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* may limit the right to freedom of association with Islamic Movement of Uzbekistan, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Islamic Movement of Uzbekistan are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life, as detailed in the Statement of Reasons ([Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons (Attachment B) supports the Attorney-General's decision made on reasonable grounds, that Islamic Movement of Uzbekistan satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) of the Criminal Code the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed regulation
- under subsection 102.1(3) the Criminal Code the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) of the Criminal Code provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the Criminal Code, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the regulation listing the organisation ceases to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Criminal Code and
- both Houses of Parliament may disallow the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4) of the Criminal Code.

Conclusion

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

ATTACHMENT A

Details of the Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015

Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation – Islamic Movement of Uzbekistan

Subsection (1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic Movement of Uzbekistan is specified.

Subsection (2) provides that Islamic Movement of Uzbekistan is also known by the following names:

- (a) Islamic Movement of Turkestan; and
- (b) Islamic Party of Turkestan.

Schedule 1 – Amendments

This schedule amends the *Criminal Code Regulations 2002*.

Clause 1 - Regulation 4J

This clause provides that regulation 4J of the *Criminal Code Regulations 2002* is repealed. Regulation 4J was the regulation listing the Islamic Movement of Uzbekistan as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code. This clause ensures there is no duplication if the new Regulation was made before the current Regulation ceases.

ATTACHMENT B

Islamic Movement of Uzbekistan

(Also known as: **Islamic Movement of Turkestan,**
Islamic Party of Turkestan)

The following information is based on publicly available details about the Islamic Movement of Uzbekistan (IMU). To the Australian Government's knowledge, these details are accurate and reliable and have been corroborated by classified information.

Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

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

Details of the organisation

Objectives

The origins of the IMU date from the early 1990s, when Juma Namangani, a former Soviet Army soldier who fought in Afghanistan joined forces with Tahir Yuldashav (variant Yuldosh), an unofficial mullah and head of the Adolat (Justice) Party. Their aim was to implement Sharia law in the city of Namangan in Uzbekistan's part of the Ferghana Valley.

Alarmed by Adolat's demands to transform Uzbekistan into an Islamist state, the government banned the Adolat Party in March 1992. A period of repression followed, forcing many Islamic militants to flee the Ferghana Valley. Namangani fled to Tajikistan, where he participated in the Tajik Civil War and established a base for his fighters in that country. Yuldashev travelled to Afghanistan, Pakistan and Saudi Arabia, establishing links to other Islamic militants. He also made clandestine trips to Uzbekistan, maintaining contact with his supporters and setting up underground cells. By the late 1990s, the IMU was officially formed.

The IMU's stated goal, as posted on the internet in August 1999, is the 'establishment of an Islamic state with the application of the Shariah' in Uzbekistan.

The IMU expanded its territorial focus to encompass an area stretching from the Caucasus to China's western province of Xinjiang, under the new banners of the Islamic Party of Turkestan in April 2001 and the Islamic Movement of Turkestan in May 2001. Despite the name changes, the group's name continues to be reported as the IMU, and it is listed under this name by the US Office of the Coordinator for Counterterrorism as a foreign terrorist organisation.

By the end of the 1990s, the IMU had relocated to Afghanistan and the tribal areas of Pakistan, due to the lack of support for the movement in Uzbekistan and the measures taken against it by the Uzbek government.

Leadership

The former chief and co-founder of the IMU, Tahir Yuldashev, was killed in a US drone strike in South Waziristan, Pakistan, on 27 August 2009. Yuldashev's death was confirmed by the IMU in August 2010. His successor Usmon Odil, a long time associate of Yuldashev was in turn killed by a US drone strike in North Waziristan on 29 April 2012. Odil's death was confirmed by the IMU in August 2012. Odil was replaced by his deputy Usman Ghazi who remains the current leader of the IMU. On 26 September 2014, Ghazi reportedly pledged the allegiance of the IMU to the Islamic State of Iraq and the Levant (ISIL).

Membership

The IMU has attracted supporters from a variety of ethnic backgrounds, principally Uzbeks, Kyrgyz, Tajiks, Chechens and Uighurs. The IMU's recruitment efforts have also been aimed at Germans, with a German member of the group, in a video released in 2010, inviting entire families to leave Germany to join the IMU in Pakistan's tribal areas.

The IMU continues to recruit fighters, and IMU members have fought alongside the Taliban, al-Qa'ida, and the Tehrik-e-Taliban Pakistan (TTP) against Coalition and Afghan government forces in Afghanistan and Pakistani forces in Pakistan. The Ferghana Valley, where the Uzbek, Kyrgyz and Tajik borders converge, is a fertile recruiting ground for the IMU, which has successfully exploited the widespread poverty in the region in its recruitment strategy.

The IMU's losses in Afghanistan and Pakistan, as well as the defection of fighters to a splinter group, the Islamic Jihad Union, have not diminished the group's capability and intent to conduct terrorist attacks. As of late 2013 the IMU claimed to have some 700 fighters and 140 advisers and trainers in Afghanistan, a further 2000 fighters in Pakistan, and an undisclosed number active elsewhere, including Central Asia, the Caucuses, Iran and Syria.

Funding

Sources of funding for the IMU have included Uzbeks who migrated to Islamic countries in the 1920s, in particular Saudi Arabia's Uzbek diaspora, which numbers 300,000 people. Funds also come from a number of Turkish foundations and Islamist and pan-Turkic organisations, the Taliban, al-Qa'ida and sympathetic foundations and banks throughout the Arab world.

The IMU also generates funds through drug trafficking, racketeering and solicitation of donations abroad. In May 2008, French, German and Dutch authorities detained ten individuals suspected of running a network to funnel money to the IMU in Uzbekistan, Afghanistan and Pakistan. On 08 January 2013, a French Court sentenced a Turkish/Dutch national, Irfan Demirtas, to eight years' incarceration for leading the network which French prosecutors said had raised at least 300,000 Euros, with 170,000 Euros specifically designated for jihad. Eight others belonging to the group received lesser sentences.

Terrorist activity of the organisation

Directly or indirectly engaged in the doing of terrorist acts

IMU is directly engaged in the doing of terrorist acts. Significant attacks for which responsibility has been claimed by, or attributed to, the IMU (since the IMU proscription was last updated by Australia in March 2012) include:

- 08 June 2014: the attack at Jinnah International Airport, Karachi, Pakistan, which killed 36 including the 10 attackers;
- The IMU claimed joint responsibility with TTP for the assault;
- 18 October 2013: a suicide bomb attack conducted near Bagram Air Base, Parwan Province, Afghanistan, targeting an International Security Assistance Force (ISAF) convoy. The IMU claimed responsibility for the attack;
- 29 May 2013: in concert with the Taliban, the IMU assaulted the Governor's compound in Panjshir Province, Afghanistan. Two of the attackers and a policeman died in the attack;
- 12 May 2013: the director of the Police Department in Quetta, Pakistan, was murdered in an IMU suicide attack; and
- 15 April 2012: IMU fighters attacked Bannu Prison, Pakistan, liberating 384 prisoners - 20 described by a Pakistani government spokesman as "very dangerous".

Directly or indirectly fostering the doing of terrorist acts

The IMU indirectly fosters the doing of terrorist acts by releasing propaganda material of its militant activities. The IMU maintains a media wing, known as Jundallah Studio, which produces and releases propaganda video and audio statements.

- On 12 February 2014 the IMU released a 32 minute video featuring scenes from Mir Ali, North Waziristan, filmed in December 2013, depicting IMU and other jihadi factions attacking Pakistani government forces.
- On 31 May 2013 the IMU released a video statement indicating it had participated in an attack conducted in concert with the Afghan Taliban in Panjshir province Afghanistan on May 29 2013.
- On 26 June 2012 the IMU released a video of two female fighters calling on Muslims to conduct Jihad and urging women to marry fighters and to prepare their children for jihad.
- On 17 March 2011, the IMU released a 21 minute video recording apparently showing a series of attacks on Coalition forces in July-August 2010 in the Chahar Dara District of Afghanistan's Kunduz Province.
- In June 2010, the IMU produced a video compilation containing footage of operations and attacks conducted by militants, including Germans, from April to June 2010. These videos contained German introductions and German subtitles.
- In December 2009, the IMU released English and German-subtitled videos showing a meeting between its former chief, Tahir Yuldashev, and the leader of Tehrik-e-Taliban Pakistan (TTP), Hakimullah Mahsud. The video shows Tahir and Mahsud talking with each other, walking together and taking turns firing a gun. The video also shows Tahir

reading a eulogy for slain TTP leader Baitullah Mahsud, stressing that jihad will not cease with the death of its leaders.

Conclusion

On the basis of the above information, ASIO assesses that the IMU continues to directly and/or indirectly engage in preparing, planning, assisting, advocating or fostering the doing of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources.

In the course of pursuing its objectives, the IMU is known to have committed or threatened action:

- that causes, or could cause, serious damage to property, the death of persons or endanger a person's life or create a serious risk to a person's safety;
- are done with the intention of advancing the IMU's political, religious and ideological causes;
- are done with the intention of coercing or influencing by intimidation the governments of foreign countries; and
- are done with the intention of intimidating sections of the public globally.

Other relevant information

Links to other terrorist groups or networks

The IMU has had historically close ties with al-Qa'ida, the Taliban and other militant groups in the Afghanistan/Pakistan theatre. Senior IMU leaders have held positions in the al-Qa'ida hierarchy. In Pakistan the IMU has conducted joint operations with the TTP. On 26 September 2014 the IMU reportedly pledged allegiance to ISIL.

Threat to Australian interests

The IMU does not represent a direct threat to Australian interests. However given the sometimes indiscriminate nature of IMU attacks and its disregard for loss of life, Australians could be caught up in attacks directed at others in Afghanistan and Pakistan.

Proscription by the UN and other countries

The IMU has been listed in the United Nations 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of the United Kingdom, United States, Canada and New Zealand.

Peace and mediation processes

The IMU is not known to have participated in peace or mediation processes.



Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015

Select Legislative Instrument No. , 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated **26 FEB .** 2015

Peter Cosgrove

Peter Cosgrove
Governor-General

By His Excellency's Command


George Brandis QC
Attorney-General

OPC61131 - A

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Section 1

1 Name

This is the *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Criminal Code Act 1995*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Terrorist organisation—Lashkar-e Jhangvi

- (1) For paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code Act 1995*, the organisation known as Lashkar-e Jhangvi is specified.
- (2) Lashkar-e Jhangvi is also known by the following names:
 - (a) Army of Jhangvi;
 - (b) Jhangvi Army;
 - (c) Lashkar-e-Jhangvi al-Alami;
 - (d) Lashkar I Jhangvi;
 - (e) Lashkar-i-Jhangvi.

Schedule 1 Amendments

Schedule 1—Amendments

Criminal Code Regulations 2002

1 Regulation 4L

Repeal the regulation.

EXPLANATORY STATEMENT

Select Legislative Instrument No. 9, 2015

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the Code (the Criminal Code).

Division 102 of the Criminal Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; provide training to, receive training from or participate in training with a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Criminal Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Criminal Code. The effect of applying section 15.4 is that offences in Division 102 of the Criminal Code apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or the result) occurs in Australia.

Terrorist organisation is defined in subsection 102.1(1) of the Criminal Code as:

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph 102.1(1)(a)); or
- an organisation that is specified by the regulations for the purposes of this paragraph (paragraph 102.1(1)(b)).

Subsection 102.1(20) of the Criminal Code provides that a reference to the doing of a terrorist act includes a reference to the doing of a terrorist act, even if a terrorist act does not occur; a reference to the doing of a specific terrorist act; and a reference to the doing of more than one terrorist act.

The purpose of the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* (the Regulation) is to specify Lashkar-e Jhangvi, also known as Army of Jhangvi; Jhangvi Army; Lashkar-e-Jhangvi al-Alami; Lashkar I Jhangvi and Lashkar-i-Jhangvi, for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code.

The Regulation enables the offence provisions in Division 102 of the Criminal Code to apply to persons with links to Lashkar-e Jhangvi. Details of the Regulation are set out in Attachment A.

Subsection 102.1(2) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in this section, 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; or advocates the doing of a terrorist act.

In determining whether he is 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, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Lashkar-e Jhangvi is at Attachment B.

Subsection 102.1(2A) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

Prior to making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, Australian Security Intelligence Organisation and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation repeals existing Regulation 4L of the *Criminal Code Regulations 2002* which specify Lashkar-e Jhangvi, for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. The existing Regulation 4L ceased to have effect on 10 March 2015. The repeal of Regulation 4L ensured there is no duplication if the new Regulation was made before the current Regulation ceases.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Criminal Code provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which it takes effect.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a

member of, recruit for, train, receive or participate in training, get funds to, from or for Lashkar-e Jhangvi, and provide support or associate with Lashkar-e Jhangvi.

The offence of association with a terrorist organisation in subsection 102.8 of the Criminal Code is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or legal representation.

The object of the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

Human rights implications

This instrument engages the following rights:

- Article 6
- Article 19 and
- Article 22.

The *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Whilst the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* may limit the right to freedom of association with Lashkar-e Jhangvi, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Lashkar-e Jhangvi are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life, as detailed in the Statement of Reasons ([Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons (Attachment B) supports the Attorney-General's decision made on reasonable grounds, that Lashkar-e Jhangvi satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) of the Criminal Code the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed regulation
- under subsection 102.1(3) the Criminal Code the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) of the Criminal Code provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the Criminal Code, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the regulation listing the organisation ceases to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Criminal Code and
- both Houses of Parliament may disallow the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4) of the Criminal Code.

Conclusion

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

ATTACHMENT A

Details of the Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015

Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Lashkar-e Jhangvi) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation – Lashkar-e Jhangvi

Subsection (1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Lashkar-e Jhangvi is specified.

Subsection (2) provides that Lashkar-e Jhangvi is also known by the following names:

- (a) Army of Jhangvi;
- (b) Jhangvi Army;
- (c) Lashkar-e-Jhangvi al-Alami;
- (d) Lashkar I Jhangvi; and
- (e) Lashkar-i-Jhangvi.

Schedule 1 – Amendments

This schedule amends the *Criminal Code Regulations 2002*.

Clause 1 - Regulation 4L

This clause provides that regulation 4L of the *Criminal Code Regulations 2002* is repealed. Regulation 4L was the regulation listing Lashkar-e Jhangvi as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code. This clause ensures there is no duplication if the new Regulation was made before the current Regulation ceases.

ATTACHMENT B

Lashkar-e Jhangvi (Also known as: Army of Jhangvi, Jhangvi Army, Lashkar-e-Jhangvi al-Alami, Lashkar I Jhangvi and Lashkar-i-Jhangvi)

The following information is based on publicly available details about Lashkar-e Jhangvi (LeJ). To the Australian Government's knowledge, these details are accurate and reliable and have been corroborated by classified information.

Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

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

Details of the organisation

LeJ is a Sunni Islamist terrorist group which follows Deobandi traditions and has a reputation as the most violent Sunni extremist organisation in Pakistan. LeJ is primarily active in Pakistan's Punjab province, the Federally Administered Tribal Areas (FATA) and Balochistan province.

The group was formed in 1996 by Malik Ishaque, Akram Lahori (aka Mohammed Ajmal) and Riaz Basra, who were senior members of the radical sectarian organisation Sipah-e-Sahaba Pakistan (SSP) — now Ahl-e-Sunnat Wal Jamaat (ASWJ). These three individuals formed LeJ as they claimed SSP's leadership had deviated from the ideals of SSP's co-founder, Maulana Haq Nawaz Jhangvi.

LeJ mostly targets Shia, including politicians, professionals, scholars and lobbyists. Although sectarian attacks remain LeJ's primary focus, it has in the past targeted Western interests in Pakistan. In 2002, LeJ operatives participated in the abduction and murder of US Jewish journalist Daniel Pearl. In 2008, LeJ were involved in the suicide vehicle borne improvised explosive attack on the Marriott Hotel in Islamabad that killed over 50 people.

Objectives

LeJ's objectives are to establish an Islamist Sunni state in Pakistan based on Sharia law, by violent means if necessary; to have all Shias declared non-believers; and to kill Shia, Jews, Christians and other minorities.

Leadership and membership

In 2014, Malik Ishaq was acknowledged as the leader of LeJ. Of the other LeJ founding members, Riaz Basra was killed in 2002 and Akram Lahori probably remains a senior leader. LeJ membership is estimated to be in the low hundreds and members typically operate in small cells—usually ranging from five to eight personnel. LeJ activities have come under increased scrutiny by Pakistani authorities, resulting in the arrest of key leaders and hundreds of activists. However, the group is resilient and remains a significant threat to Shia and other minorities in Pakistan.

Funding

Most of LeJ's funding is derived from wealthy donors in Pakistan and across the Middle East, particularly Saudi Arabia. Additional funding is attained through criminal activities, such as protection rackets and extortion.

Terrorist activity of the organisation

LeJ is directly engaged in the doing of terrorist acts. LeJ mostly conducts suicide bombings but has also conducted non-suicide attacks using assault rifles, rockets, landmines and small arms. In 2013, two of the ten worst terrorist attacks (by number of casualties) were attributed to LeJ.

Significant attacks for which responsibility has been claimed by, or attributed to, LeJ (since LeJ proscription was last updated by Australia in March 2012) include:

- January 2014: Over 20 Shia pilgrims were killed in a bomb attack targeting their bus. The attack took place in Balochistan and LeJ claimed responsibility.
- January 2014: A 15-year-old boy, Aitzaz Hasan, was killed when he attempted to stop a suicide bomber from entering his school in the FATA. LeJ claimed responsibility.
- June 2013: 14 female students in Quetta were killed and 22 injured when a bomb was detonated on a bus. Later that day, gunmen attacked the hospital treating survivors, killing a further 11 people. LeJ is believed responsible.
- February 2013: Approximately 1000 kilograms of explosives were planted inside a water tanker which was detonated at a market frequented by Shia Muslims in Balochistan. The attack killed over 80 people and injured close to 200. LeJ claimed responsibility.
- January 2013: Suicide bombers detonated at a snooker hall in Quetta killing over 100 people and injuring close to 200. Globally, this was the third worst terrorist incident of 2013 in terms of casualty numbers. Victims were predominantly Shia Muslim and LeJ claimed responsibility.
- January 2013: A bomb exploded under a Security Force vehicle in Quetta, killing 12 people. LeJ claimed responsibility.
- July 2012: The Assistant Director of Local Government in the Pishin district of Balochistan province was killed along with his assistant and driver when LeJ militants opened fire on their vehicle.
- April 2012: In five separate attacks, 23 ethnic Hazara Shia Muslim civilians were shot dead by LeJ militants in Quetta.

Conclusion

On the basis of the above information, ASIO assesses LeJ continues to directly or indirectly engage in preparing, planning, assisting, or fostering the doing of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources.

In the course of pursuing its objectives LeJ is known to have committed action:

- that causes, or could cause, serious damage to property, the death of persons or endanger a person's life or create a serious risk to a person's safety;
- are done with the intention of advancing LeJ's religious and ideological causes;
- are done with the intention of coercing or influencing by intimidation the government of a foreign country; and
- are done with the intention of intimidating sections of the public globally.

Other relevant information

Links to other terrorist groups or networks

LeJ has links to other terrorist groups and networks. LeJ militants are alleged to be involved with Tehrik-e-Taliban Pakistan (TTP) operations. LeJ also has a long-standing relationship with the Afghan Taliban and is known for its close ties with al-Qa'ida. Further, LeJ extremists often belong to multiple networks within Pakistan, with varying degrees of intermingling, especially at the lower levels. Therefore, there is probably overlap in personnel between LeJ and other extremist networks in Pakistan.

Threat to Australian interests

LeJ has no known links to Australia.

LeJ does not represent a direct threat to Australian interests. However, given the sometimes indiscriminate nature of LeJ attacks and its disregard for loss of life, Australians could be caught up in attacks directed at others in Pakistan.

Peace and mediation processes

LeJ is not engaged in any peace/mediation process.

Proscription by the UN and other countries

LeJ is proscribed by the UN and other countries; it is listed in the UN 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of the United Kingdom, the United States, Canada, New Zealand and Pakistan.

Process for the 2015 proscription of Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi as terrorist organisations under the Criminal Code

The National Security Law and Policy Division of the Attorney-General's Department (the 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 Act 1995* (the Criminal Code). This includes obtaining products from the Australian Security Intelligence Organisation (ASIO) that assess organisations and seeking the advice of the Australian Government Solicitor in relation to the assessments. These are included in a package of information submitted to the Attorney-General to assist him 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 Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi:

1. Unclassified Statements of Reasons were prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, outlining the case for re-listing Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi.
2. On 23 December 2014, the Australian Government Solicitor provided written advice with respect to the Statements of Reasons for Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi – stating that the Attorney-General could, on the basis of the statements, be satisfied on reasonable grounds that the matters specified in section 102.1(2) of the Criminal Code have been met.
3. On 16 January 2015, the Director-General of Security wrote to the Attorney-General outlining the background, training activities, terrorist activities, and relevant statements of Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi.
4. On 21 January 2015, the department provided a submission to the Attorney-General containing a copy of the following documents:
 - the Statements of Reasons with respect to Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi and
 - legal advice from the Australian Government Solicitor.
5. On 22 January 2015, having considered the information provided in the submission, the Attorney-General approved and signed separate Statements that he is satisfied on reasonable grounds that Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi are directly or indirectly engaged in, preparing, planning, assisting in, fostering or advocating the doing of a terrorist act.
6. On 22 January 2015, the Attorney-General wrote to the Prime Minister advising of his decision to re-list Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi as a terrorist organisation.
7. On 22 January 2015, the Attorney-General wrote to the Leader of the Opposition on the proposed re-listing of Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi as terrorist organisations, offering a briefing in relation to the re-listings.
8. On 22 January 2015, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to re-list Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi

- as terrorist organisations, requesting their comments on the proposed re-listing by 6 February 2015.
9. On 27 January 2015, State and Territory officials were advised by email of the proposed re-listing of Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi.
 10. The Premiers of the States and Chief Ministers of the Territories responded on the dates recorded below in relation to Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi:
 - New South Wales – response dated 9 February 2015
 - Victoria – response dated 4 February 2015
 - Queensland – response not received in time
 - Western Australia – response dated 4 February 2015
 - South Australia – response dated 11 February 2015
 - Tasmania – response dated 10 February 2015
 - Australian Capital Territory – response not received in time, and
 - Northern Territory – response dated 2 February 2015.
 11. None of the State and Territory responses objected to the proposed re-listings.
 12. State and Territory responses did not object to the proposed re-listing of Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi.
 13. On 16 February 2015, the Attorney-General signed the following:
 - *Criminal Code (Terrorist Organisation—Ansar al-Islam) Regulation 2015;*
 - *Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulation 2015 and*
 - *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015* and approved associated Federal Executive Council (ExCo) documentation, including ExCo Minutes, Explanatory Memorandums and Explanatory Statements in preparation for the meeting of ExCo on Thursday 26 February 2015.
 14. On 20 February 2015, the Leader of the Opposition (represented by the Hon Mark Dreyfus QC MP and the Hon Tanya Plibersek MP) was briefed in relation to the re-listings in accordance with subsection 102.1(2A) of the Criminal Code.
 15. On Thursday 26 February 2015, ExCo made the four Regulations.
 16. On 2 March 2015, the Regulations were registered on the Federal Register of Legislative Instruments (FRLI) (see references: [F2015L00234](#), [F2015L00235](#) and [F2015L00236](#)).
 17. On 3 March 2015, the Regulations came into effect, the day after they were registered on FRLI.
 18. On 4 March 2015, the Attorney-General issued a Media Release announcing the re-listing of Ansar al-Islam, Islamic Movement of Uzbekistan and Lashkar-e Jhangvi.
 19. On 4 March 2015, the Australian Government's [National Security website](#) was updated to reflect the re-listings.