

## **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) of 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.

**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.

**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.