

## **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) of 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.

**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.

**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.