

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Jamiat ul-Ansar) Regulation 2016

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 *Criminal 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; receiving training from or providing training to a terrorist organisation; getting funds to, from or for a terrorist organisation; providing support to a terrorist organisation; and, associating with 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)).

The purpose of the Regulation is to specify Jamiat ul-Ansar, also known as Al-Faran, Al-Hadid, Al-Hadith, Harakat ul-Ansar, Harakat ul-Mujahideen, Harakat ul-Mujahidin, HuM and JuA, for the purposes 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 continue to apply to persons in relation to Jamiat ul-Ansar. 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 regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1), 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 engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation (ASIO), in consultation with the Department of Foreign Affairs and Trade (DFAT), as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons in respect of Jamiat ul-Ansar 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 DFAT, ASIO and the AGS. 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 is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 28 June 2016. 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—Jamiat ul-Ansar) Regulation 2016* (the Regulation) makes it an offence under Division 102 of the *Criminal Code*, to direct the activities, become a member of, recruit for, train, get funds to, from or for, provide support to, or associate with, Jamiat ul-Ansar.

The offence of associating with a terrorist organisation in subsection 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practising a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

The object of the Regulation 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 human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6
- the right to freedom of expression in Article 19, and
- the right to freedom of association in Article 22.

The object of the Regulation is to protect national security, public safety and the rights and freedoms of persons within and outside Australia. This engages the inherent right to life expressed in Article 6 of the ICCPR.

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulation may limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with Jamiat ul-Ansar. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests. This is in accordance with a legitimate purpose in Article 19(3) on the grounds of national security.

Article 22(1) of the ICCPR provides that everyone shall have the right to freedom of association with others. However, Article 22(2) provides that freedom of association may be limited if it is necessary to achieve a legitimate purpose, including the interests of national security or public safety. This Regulation, and more broadly the terrorist organisation listing regime, limits the right of freedom of association to prevent people engaging with and participating in terrorist organisations. Terrorist organisations, including Jamiat ul-Ansar, present a threat to the security of Australia and often seek to harm Australians and Australia's democratic institutions. The statutory definition of a 'terrorist organisation' in subsection 102.1(1) requires that these organisations are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. A terrorist act includes the causing of serious harm or death to persons and serious damage to property. Due to the severity of the danger posed by terrorist organisations, including Jamiat ul-Ansar, it is reasonable, necessary and proportionate to limit the right of individuals who by their association with Jamiat ul-Ansar, pose a threat to Australians.

Whilst the Regulation may limit the right to freedom of expression and the right to freedom of association with Jamiat ul-Ansar, the Regulation is subject to the safeguards outlined below. The general limits on these rights 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 information in the Statement of Reasons ([Attachment B](#)) supports the Minister's decision made on reasonable grounds, that Jamiat ul-Ansar satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the *Criminal Code*.

There are safeguards and accountability mechanisms in the *Criminal Code* requiring prior consultation and enabling review of the Regulation. 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 Regulation may only be made if a majority of the States and Territories do not object to the Regulation within a reasonable time specified by the Commonwealth;
- 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 Regulation 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) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister;
- the Regulation 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 Regulation within the applicable disallowance period, which is 15 sitting days after the regulation was laid before that House, as provided for 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 achieve a legitimate purpose and are reasonable, necessary and proportionate.

Details of the Criminal Code (Terrorist Organisation—Jamiat ul-Ansar) Regulation 2016

Section 1 – Name

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Jamiat ul-Ansar) Regulation 2016*.

Section 2 – Commencement

This section would provide for the commencement of each paragraph in the instrument, as set out in the table.

Subsection (1) would provide that each provision in the instrument specified in column 1 of the table commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the Regulation commences on 28 June 2016.

The note to subsection (1) would clarify that the table only relates to the provisions of this instrument as originally made, and that it will not be amended to deal with any later amendments to the instrument.

Subsection (2) would provide that information in column 3 of the table is not part of the instrument. It is designed to assist readers, and may be updated or changed in any published version of this Regulation. Column 3 clarifies that the instrument would commence on 28 June 2016.

Section 3 – Authority

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

Section 4 – Schedules

This section would provide that the instrument specified in Schedule 1 is repealed as set out in Schedule 1.

Section 5 – Terrorist organisation—Jamiat ul-Ansar

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

Subsection (2) would provide that Jamiat ul-Ansar is also known by the following names:

- (a) Al-Faran;
- (b) Al-Hadid;
- (c) Al-Hadith;
- (d) Harakat ul-Ansar;
- (e) Harakat ul-Mujahideen;

- (f) Harakat ul-Mujahidin;
- (g) HuM; and
- (h) JuA.

Schedule 1—Repeals

Schedule 1 would provide that *Criminal Code (Terrorist Organisation—Jamiat ul-Ansar) Regulation 2013* is repealed.

The *Criminal Code (Terrorist Organisation—Jamiat ul-Ansar) Regulation 2013* specifies Jamiat ul-Ansar as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The proposed clause would ensure there is no duplication where the new Regulation is made before the current Regulation ceases to have effect.

Jamiat ul-Ansar

(Also known as: Al-Faran; Al-Hadid; Al-Hadith; Harakat ul-Ansar; Harakat ul-Mujahideen; Harakat ul-Mujahidin; HuM; JuA)

This statement is based on publicly available information about Jamiat ul-Ansar, formerly known as Harakat ul-Mujahideen, a name that is still commonly used for the group. To the Australian Government's knowledge, this information is accurate and reliable and has 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, or assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

Background to this listing

The Australian Government first proscribed Jamiat ul-Ansar as a terrorist organisation under the Criminal Code in 2002, and relisted Jamiat ul-Ansar in 2004, 2006, 2008, 2010 and 2013.

Terrorist activity of the organisation

Objectives

Jamiat ul-Ansar seeks to unite all of Kashmir with Pakistan and establish a caliphate based on Islamic law. Jamiat ul-Ansar has advocated the use of Pakistan's nuclear weapons against India, and opposes efforts to normalise relations between the two countries.

Jamiat ul-Ansar has also pledged support for Afghan militants fighting Coalition forces in Afghanistan. This may have involved indirect assistance such as training militants or the travel of Jamiat ul-Ansar affiliated fighters to Afghanistan. Some elements within Jamiat ul-Ansar have wanted to re focus their activities to bring them more into line with global jihad inspired by al-Qa'ida against the United States (US) and Israel and their allies.

Jamiat ul-Ansar has undertaken the following to advance its ideology and achieve its objectives:

Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts

Jamiat ul-Ansar has directly or indirectly engaged in a number of terrorist attacks, although not for a number of years. Incidents reliably attributed to Jamiat ul-Ansar include:

- 23 February 2010: two Jamiat ul-Ansar members were among five militants killed by Indian security forces in Sopore, Kashmir; the militants blew up two houses in the battle with security forces;
- February 2009: members of a terrorist cell with links to Jamiat ul-Ansar, reportedly responsible for six attacks in Kabul, Afghanistan, over the preceding two years, were arrested;
- February 2007: a Hindu businessman was kidnapped in Pakistan's Sindh Province and subsequently beheaded;
- In 2004, individuals trained by Jamiat ul-Ansar were arrested for their involvement in separate suicide car bomb attacks outside the US Consulate and the Sheraton Hotel in Karachi in May and June 2002, respectively;
- 9 June 2004: Jamiat ul-Ansar-trained members were involved in an attack against a convoy in Karachi, carrying Karachi's military commander, resulting in seven deaths;
- 26 May 2004: the same Jamiat ul-Ansar cell was among a number of militants drawn from several Pakistani extremist groups responsible for a twin car bomb attack near the US Consulate in Karachi;
- 23 January 2002: US journalist Daniel Pearl was abducted and later murdered (on 1 February 2002) in Karachi, Pakistan. Four people, including Jamiat ul-Ansar member Ahmed Omar Sheikh, were subsequently convicted of Pearl's murder; and
- December 1999: An Indian airliner was hijacked by Jamiat ul-Ansar members en route from Nepal to India; one passenger was stabbed to death.

Jamiat ul-Ansar members and individuals trained by Jamiat ul-Ansar, including individuals from Western countries, have been implicated in various disrupted terrorist attacks, including:

- 23 January 2016: Five Jamiat ul-Ansar militants were arrested by Indian security forces in the Sopore area of north Kashmir India for planning attacks against Indian dignitaries and security forces.
- 21 February 2013: three British nationals were convicted in London on terrorism charges for plotting to carry out terror attacks in the United Kingdom. Two of these individuals undertook terrorist training with Jamiat ul-Ansar in Pakistan in 2009 and later trained with al Qa'ida in Pakistan in 2011.
- December 2008: United Kingdom national Rangzieb Ahmed, who had confessed to membership in Jamiat ul-Ansar, was convicted on terrorism charges;

- 19 June 2005: several Jamiat ul-Ansar trained individuals were arrested in Afghanistan in possession of explosive devices preparatory to carrying out acts of terrorism;
- June 2005: two American citizens were arrested for suspected participation in an al-Qa'ida plot to attack the US. Both claimed to have attended a terrorist training camp run by Jamiat ul-Ansar's leader, Fazlur Rehman Khalil;
- In 2004, individuals trained by Jamiat ul-Ansar were arrested for a failed attempt to assassinate Pakistani President Pervez Musharraf with a remote-controlled car bomb in April 2002.

Reporting indicates Jamiat ul-Ansar has encouraged, inspired, assisted and fostered like-minded individuals. Examples of this assistance include:

- In August 2014, the US State Department confirmed that Jamiat ul-Ansar continued to operate terrorist training camps in eastern Afghanistan;
- In June 2003, Jamiat ul-Ansar reportedly helped facilitate training by members of the United Kingdom Pakistani Diaspora who reportedly travelled to Afghanistan for instruction in bomb making—some of whom may have intended to return home to conduct terrorism-related activities;
- Jamiat ul-Ansar terrorist training camps in Pakistan have provided both religious instruction and military training and support to terrorist organisations and individuals from around the world; and
- Individuals trained at Jamiat ul-Ansar facilities engaged in terrorist operations in Tajikistan and Bosnia and Herzegovina in the 1990s.

Advocating the doing of terrorist acts

Jamiat ul-Ansar has made statements advocating the conduct of terrorist attacks against Coalition forces in Afghanistan and at least one political figure in India:

- On 4 February 2009, a death threat was posted on the website of India's leader of the opposition and prime ministerial candidate L.K. Advani, likely by an India-based person inspired by Jamiat ul-Ansar.
- Following his release from Pakistani detention in 2006, Jamiat ul-Ansar's leader, Fazlur Rehman Khalil, reportedly visited Jamiat ul-Ansar-linked mosques and madrassas in Pakistan, advocating jihad against Coalition forces in Afghanistan.

Details of the organisation

Jamiat ul-Ansar is a terrorist organisation based in Pakistan. In 1991, Jamiat ul-Ansar leader, Fazlur Rehman and his followers split from Harakat ul-Jihad Islami (HuJI), a group that fought the Soviets in Afghanistan and later turned its attention to Indian-administered Kashmir, to form Harakat ul-Mujahideen. In 1993, Harakat ul-Mujahideen reunited with HuJI under the name Harakat ul-Ansar (HuA).

As a consequence of reports linking the group to al-Qa'ida, HuA was proscribed as a terrorist organisation by the US in 1997. The group re-adopted the name Harakat ul-Mujahideen to escape the ramifications of proscription.

Harakat ul-Mujahideen was listed as a terrorist organisation by both the US and Pakistan following the 11 September 2001 terrorist attacks, and adopted the name Jamiat ul-Ansar. Jamiat ul-Ansar was also subsequently banned by Pakistan in November 2003.

Jamiat ul-Ansar associates itself with the Deobandi revivalist movement within Sunni Islam. It adheres strictly to Islamic law and adopts an anti-Western outlook.

Leadership

The leader of Jamiat ul-Ansar is Fazlur Rehman (sometimes, Rahman) Khalil, also known as Maulana Farzul Ahmed Khalil, and Maulana Ahmed Khalil.

Membership

Jamiat ul-Ansar has been reported to have a likely strength of no more than a few hundred, but exact membership numbers cannot be determined with accuracy. Jamiat ul-Ansar's membership is mostly drawn from Pakistan, Afghanistan and the Indian State of Jammu and Kashmir. However, Jamiat ul-Ansar also has attracted recruits and provided training to Islamic militants from around the world, including Bangladesh, and South-East Asia, the United Kingdom and the US.

Recruitment and funding

Jamiat ul-Ansar's funding is likely sustained through charitable donations via front organisations and Islamic charities in South Asia and the Middle East.

Links to other terrorist organisations

Jamiat ul-Ansar has cooperated with other militant groups operating in Afghanistan, Kashmir and Pakistan such as Hizb-ul-Mujahideen, Lashkar-e-Tayyiba, Jaish-e-Muhammad, Lashkar-e-Jhangvi and Sipah-e-Sahaba Pakistan.

Jamiat ul-Ansar's leader, Fazlur Rehman Khalil, has strong ties to al-Qa'ida, and in 1998, he signed Usama bin Laden's fatwa calling for attacks on the US and its allies.

Links to Australia

There are no known Australian links to Jamiat ul-Ansar.

Threats to Australian interests

Jamiat ul-Ansar does not specifically target Australian interests.

Listed by the United Nations or like-minded countries

Jamiat ul-Ansar is listed by the United Nations Security Council 1267 (al-Qa'ida) Sanctions Committee and as a proscribed terrorist organisation by the governments of Canada, the United Kingdom, the US and Pakistan.

Engagement in peace or mediation processes

Jamiat ul-Ansar is not engaged in any peace or mediation processes.

Conclusion

On the basis of the above information, ASIO assesses Jamiat ul-Ansar continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, Jamiat ul-Ansar is known to have committed or threatened actions that:

- cause, or could cause, death, serious harm to persons, serious damage to property, endangered life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;
- are intended to have those effects;
- are done with the intention of advancing JI's political, religious or ideological causes;
- are done with the intention of intimidating, the government of one or more foreign countries; and
- are done with the intention of intimidating the public or sections of the public.