

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulations 2018

The purpose of the *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulations 2018* (the Regulations) is to specify Lashkar-e Jhangvi for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹

Lashkar-e Jhangvi is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015*, which is repealed by the Regulations. Details of the Regulations are set out in [Attachment A](#).

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*.

Paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code* provides that regulations can specify organisations for the purposes of the definition of ‘terrorist organisation’.

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.

The Minister for Home Affairs is satisfied on reasonable grounds that Lashkar-e Jhangvi is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration an unclassified Statement of Reasons provided by the Director-General of Security, as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons is at [Attachment B](#).

Effect of the instrument

Division 102 of the *Criminal Code* sets out the following offences relating to terrorist organisations

- directing the activities of a terrorist organisation

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of the *Criminal Code* continue to apply to conduct relating to Lashkar-e Jhangvi. Regulations specifying Lashkar-e Jhangvi as a terrorist organisation have been in effect since 2003.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered. 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 they take effect.

Consultation

The unclassified Statement of Reasons was prepared by the National Threat Assessment Centre in the Australian Security Intelligence Organisation, in consultation with the Department of Foreign Affairs and Trade, Attorney-General’s Department and the Department of Home Affairs (Home Affairs). Home Affairs also sought the advice of the AGS to inform the decision of the Minister for Home Affairs.

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. The Minister for Home Affairs wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that Lashkar-e Jhangvi met the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the states and territories prior to making regulations specifying an organisation for the purposes of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the states and territories object to the making of such a regulation within a time frame nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the states and territories. A majority of the states and territories did not object to the making of the Regulations within the time frame nominated by the Minister for Home Affairs.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulations 2018* (the Regulations) specifies Lashkar-e Jhangvi for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to identify Lashkar-e Jhangvi as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the *Criminal Code* in relation to Lashkar-e Jhangvi.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the Regulations provide that the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Lashkar-e Jhangvi.

Terrorist organisations, including Lashkar-e Jhangvi, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act which includes the causing of serious harm to persons or death and serious damage to property (refer to [Attachment B](#) for details).

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

The Regulations limit the following human rights contained in the ICCPR:

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

The inherent right to life in Article 6

Article 6 of the ICCPR provides that countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

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 Regulations, and the terrorist organisation listing regime more broadly, 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 terrorist organisations, including Lashkar-e Jhangvi. 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 and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance Lashkar-e Jhangvi.

The offence of associating with a terrorist organisation in section 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 practicing 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.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Lashkar-e Jhangvi, the Regulations are subject to the safeguards outlined below. The 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.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations 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 Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations 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 Regulations listing the organisation cease 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 Regulations 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 Regulations within the applicable disallowance period, which is 15 sitting days after the Regulations are laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations achieve a legitimate purpose and are reasonable, necessary and proportionate.

Details of the Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulations 2018

Section 1 – Name

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulations 2018*.

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 Regulations commence the day after the instrument is registered.

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 these Regulations. Column 3 is empty at the time of making the instrument.

Section 3 – Authority

This section would provide that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

This section would provide each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule has effect according to its terms. Schedule 1 to the instrument would repeal the whole of the *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015*.

Section 5 – Terrorist organisation—Lashkar-e Jhangvi

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 Lashkar-e Jhangvi is specified.

Subsection (2) would provide 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-e-Jhangvi Al-Almi
- (e) Lashkar I Jhangvi
- (f) Lashkar-i-Jhangvi
- (g) Lashkar Jhangvi

Schedule 1—Repeals

Schedule 1 would provide that *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015* is repealed.

The *Criminal Code (Terrorist Organisation—Lashkar-e Jhangvi) Regulation 2015* specifies 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 *Criminal Code*. The proposed clause would ensure there is no duplication where the new Regulations are made before the current Regulation ceases to have effect.

ATTACHMENT B

STATEMENT OF REASONS FOR LASHKAR-E JHANGVI

Also known as: Army of Jhangvi, Jhangvi Army, Lashkar Jhangvi, Lashkar-e-Jhangvi al-Alami, Lashkar-e-Jhangvi al-Almi, Lashkar I Jhangvi, Lashkar-i-Jhangvi.

This statement is based on publicly available information about Lashkar-e-Jhangvi (LeJ). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.

1. 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; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation under the *Criminal Code*, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

2. Background to this listing

The Australian Government first proscribed Lashkar-e-Jhangvi as a terrorist organisation under the *Criminal Code* on 11 April 2003. It was relisted on 11 April 2005, 31 March 2007, 14 March 2009, 9 March 2012, and 3 March 2015.

3. Terrorist activity of the organisation

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.

LeJ 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

LeJ directly engages in terrorist attacks in Pakistan, including assassinations, attacks using remote detonated improvised explosive devices (IEDs), and suicide IED attacks. Attacks claimed by, or reasonably attributable to, LeJ include:

- 23 June 2017: at least 67 people were killed and more than 200 people were wounded in an attack against a Bazaar in Parachinar city. LeJ were reported to have claimed responsibility for the attack.
- 21 January 2017: at least 22 people were killed and 90 injured in an attack against a vegetable market in Parachinar city. An LeJ spokesman confirmed it conducted the attack.
- 13 November 2016: 52 people were killed and over 100 injured in an attack against a Sufi Shrine in Baluchistan Province; LeJ were reported to have claimed joint responsibility for the attack with proscribed terrorist group Islamic State (IS).

- 24 October 2016: At least 62 Pakistani security force personnel were killed and 164 injured in an attack against a police training college near Quetta. A LeJ spokesman confirmed it conducted the attack in concert with IS militants.
- 9 August 2016: 70 people were killed at a demonstration in Quetta; LeJ were reported to have claimed joint responsibility with IS for the attack.
- January 2014: Over 20 Shia pilgrims were killed in a bomb attack targeting their bus in Baluchistan. LeJ were reported to have claimed responsibility for the attack.
- 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 Federally Administered Tribal Areas (FATA). LeJ were reported to have claimed responsibility for the attack.
- 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. An LeJ spokesman confirmed it conducted the attacks.
- February 2013: Approximately 1000 kilograms of explosives were planted inside a water tanker which was detonated at a market frequented by Shia Muslims in Baluchistan. The attack killed over 80 people and injured close to 200. LeJ were reported to have claimed responsibility for the attack.
- 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. An LeJ spokesman confirmed it conducted the attack.
- January 2013: A bomb exploded under a Security Force vehicle in Quetta, killing 12 people. LeJ were reported to have claimed responsibility for the attack.
- July 2012: The Assistant Director of Local Government in the Pishin district of Baluchistan 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.

4. Details of the organisation

Leadership

LeJ was founded in 1996 by Riaz Basra, Malik Ishaq and Akram Lahori—former members of Sunni Islamist group Sipah-e-Sahaba which they claimed was deviating from the principles set out by its founder Maulana Jhangvi, who was killed by Shite militants in 1990. Pakistani authorities killed Basra in 2002 and Ishaq and Lahori in 2015. Basra was succeeded as LeJ leader by Asif Chotu, who was killed by Pakistani authorities in January 2017. The current leader is Yousaf Mansoor Khurasani.

Membership

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.

Recruitment and 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.

Links to other terrorist organisations

LeJ has links to other terrorist groups and networks. LeJ militants are alleged to be involved in operations conducted by Tehrik-e-Taliban Pakistan (TTP) and proscribed terrorist group IS. Although LeJ follows the Deobandi school of thought, rather than the Salafist ideology of IS, they are both strongly anti-Shia and anti-Sufi. However, LeJ's alliance with IS is informal—it has not pledged allegiance to IS. 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.

Links to Australia

There are no known direct links between LeJ and Australia.

Threats to Australian interests

No Australian citizens have been killed or injured in LeJ attacks, nor has LeJ specifically mentioned Australia or Australian interests as a target. However, LeJ's ideology is anti-Western and it would consider Westerners—including Australians—to be legitimate targets for attack. Further, 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.

Listed by the United Nations or like-minded 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 and Canada.

Engagement in peace or mediation processes

LeJ is not involved in any peace or mediation processes.

5. Conclusion

On the basis of the above information, ASIO assesses that LeJ continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

In the course of pursuing its objectives, LeJ is known to have committed or threatened actions that:

- a) cause, or could cause, death, serious harm to persons, serious damage to property, endanger 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;
- b) are intended to have those effects;
- c) are done with the intention of advancing LeJ's political, religious or ideological causes;
- d) are done with the intention of intimidating the government of one or more foreign countries; and
- e) are done with the intention of intimidating the public or sections of the public.

