

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Repeal and Consequential Amendments) Regulations 2019

The *Criminal Code Act 1995* (the Code) codifies the general principles of criminal responsibility under laws of the Commonwealth, and contains all the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

Section 5 of the Code 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.

As the Minister administering the *Australian Federal Police Act 1979* (the AFP Minister), the Minister for Home Affairs is the rule-maker for regulations made for the purposes of the provisions listed in subsection 5(2) of the Code. For regulations made for the purposes of other provisions, the rule-maker is the Attorney-General who is the Minister responsible for administering the Code under the Administrative Arrangements Order.

The *Criminal Code Regulations 2002* (the 2002 Regulations) are due to sunset on 1 October 2019, and are remade with amendments by the *Criminal Code Regulations 2019*. The *Criminal Code (Repeal and Consequential Amendments) Regulations 2019* (the Repeal Regulations) repeal, and make one consequential amendment as a result of remaking, the 2002 Regulations.

The Code specifies no conditions that need to be satisfied before the power to make regulations may be exercised.

Details of the Repeal Regulations are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 24588.

No other consultation was considered appropriate as the amendment did not substantially change existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where appropriate and reasonably practicable.

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

The Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

Authority: Section 5 of the *Criminal Code Act 1995*

Details of the *Criminal Code (Repeal and Consequential Amendments) Regulations 2019*

Section 1 – Name

This section provides that the title of this instrument is the *Criminal Code (Repeal and Consequential Amendments) Regulations 2019* (the Repeal Regulations).

Section 2 – Commencement

This section provides that the whole of the instrument is to commence at the same time as the *Criminal Code Regulations 2019* commences.

Section 3 – Authority

This section provides that this instrument is made under the *Criminal Code Act 1995* (the Code) and the *Migration Act 1958*.

Section 4 – Schedules

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

Schedule 1 – Repeals and amendments

Part 1 – Repeals

This Part provides that the whole of the *Criminal Code Regulations 2002* be repealed.

Part 2 – Amendments

This Part amends paragraph 8556(b) of Schedule 8 to the *Migration Regulations 1994* (the Migration Regulations) to refer to regulations made under the Code for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

Schedule 8 of the *Migration Regulations 1994* stipulates visa conditions. The intention of paragraph 8556(b) is to stipulate that the holder of a visa must not communicate or associate with a terrorist organisation.

Terrorist organisations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code are specified in a number of separate regulations made for the purposes of that provision. This amendment clarifies on the face of the Migration Regulations that the condition in paragraph 8556(b) relates to terrorist organisations specified for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

ATTACHMENT B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Repeal and Consequential Amendments) Regulations 2019

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Criminal Code (Repeal and Consequential Amendments) Regulations 2019 (the Regulations) repeal, and make one consequential amendment as a result of remaking, the Criminal Code Regulations 2002 (the 2002 Regulations). The Criminal Code Regulations 2019 remake the 2002 Regulations in their entirety, with minor amendments.

Sections 1, 2, 3 and 4

Sections 1, 2, and 3 of the Regulations provide the name, commencement details, and authority of enacting the Regulations.

Section 4 provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Repeals and amendments**Part 1 – Repeals**

Part 1 provides that the whole of the 2002 Regulations be repealed.

Part 2 – Amendments

Part 2 amends paragraph 8556(b) of Schedule 8 to the *Migration Regulations 1994* (the Migration Regulations) to omit reference to the 2002 Regulations and refer to regulations made under the *Criminal Code Act 1995* (the Code) for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code. This amendment is technical in nature and does not change the operation of paragraph 8556(b).

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

The Hon Peter Dutton MP, Minister for Home Affairs