

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Hizballah) Regulations 2021*

The purpose of the *Criminal Code (Terrorist Organisation—Hizballah) Regulations 2021* (the Regulations) is to specify the organisation known as Hizballah for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup>

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*, which prescribes offences against humanity and related offences, and dangers to the community and national infrastructure.

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 for Home Affairs 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 the organisation Hizballah is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information (the Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

### *Effect of the instrument*

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation

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<sup>1</sup> 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 Part 5.3 of the *Criminal Code* apply to conduct relating to Hizballah.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Hizballah’s External Security Organisation) Regulations 2021* (the ESO Regulations). The Regulations specify the organisation Hizballah in its entirety for the purposes of paragraph (b) of the definition of **terrorist organisation**. Hizballah’s External Security Organisation exists within Hizballah’s organisational structure. The repeal of the ESO Regulations therefore ensures clarity in relation to the intent and effect of the Regulations.

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

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

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 A](#).

Further details of the Regulations are set out in [Attachment B](#).

### *Consultation*

The Department of Home Affairs sought advice from the Australian Government Solicitor in relation to the unclassified information (the Statement of Reasons) at [Attachment C](#).

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 regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that Hizballah meets 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 paragraph (b) 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 timeframe 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 timeframe nominated by the Minister.

## **Statement of Compatibility with Human Rights**

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

### **Criminal Code (Terrorist Organisation—Hizballah) Regulations 2021**

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 Disallowable Legislative Instrument**

The *Criminal Code (Terrorist Organisation—Hizballah) Regulations 2021* (the Regulations) specify Hizballah 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 specify Hizballah 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 that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to Hizballah.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 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 offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Hizballah as a listed terrorist organisation.

Terrorist organisations, including Hizballah, 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 an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

#### **Human rights implications**

The Regulations engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

### *The inherent right to life in Article 6*

Under Article 6 of the ICCPR, 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 Hizballah. 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 Hizballah.

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 Hizballah, 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 in the House of Representatives 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 they take 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 being 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 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

### ***Conclusion***

The Regulations are compatible with human rights because they promote the right to life. To the extent that the Regulations limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

**The Hon Karen Andrews MP**  
**Minister for Home Affairs**

**Details of the Criminal Code (Terrorist Organisation—Hizballah) Regulations 2021**

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Hizballah) Regulations 2021*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as 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 provide that the Regulations commence in their entirety on the day after the Regulations are registered on the Federal Register of Legislation.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Hizballah’s External Security Organisation) Regulations 2021*.

Section 5 – Terrorist organisation – Hizballah

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as Hizballah is specified.



10. The effect of specifying Hizballah as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Hizballah.
11. Subsection 5(2) provides a list of names by which the organisation Hizballah is also known:
- (a) Al-Muqawamah al-Islamiyyah (paragraph (a))
  - (b) Ansar al-Allah (paragraph (b))
  - (c) Ansar Allah (paragraph (c))
  - (d) Ansarollah (paragraph (d))
  - (e) Followers of God (paragraph (e))
  - (f) Followers of the Prophet Muhammad (paragraph (f))
  - (g) God's Helpers (paragraph (g))
  - (h) Hezbollah (paragraph (h))
  - (i) Hezbollah (paragraph (i))
  - (j) Hezbollah (paragraph (j))
  - (k) Hisbollah (paragraph (k))
  - (l) Hizbollah (paragraph (l))
  - (m) Hizbullah (paragraph (m))
  - (n) Islamic Holy War (paragraph (n))
  - (o) Islamic Jihad (paragraph (o))
  - (p) Islamic Jihad for the Liberation of Palestine (paragraph (p))
  - (q) Islamic Jihad Organisation (paragraph (q))
  - (r) Islamic Resistance (paragraph (r))
  - (s) Organisation of Right against Wrong (paragraph (s))
  - (t) Organisation of the Oppressed (paragraph (t))
  - (u) Organisation of the Oppressed on Earth (paragraph (u))
  - (v) Partisans of God (paragraph (v))
  - (w) Party of Allah (paragraph (w)), and
  - (x) The Party of God (paragraph (x)).

#### Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021* (the ESO Regulations).

13. The ESO Regulations specified Hizballah's External Security Organisation (ESO) as an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the ESO Regulations would have ceased to have effect on 2 May 2024, being the third anniversary of the day on which they took effect.
14. The ESO exists within Hizballah's organisational structure. The repeal of the ESO Regulations therefore provides clarity in relation to the intended effect of the Regulations, to specify the organisation known as Hizballah in its entirety as a terrorist organisation for the purposes of Part 5.3 of the *Criminal Code*.

## Statement of Reasons

### **Listing of Hizballah as a terrorist organisation under the *Criminal Code Act 1995***

This Statement of Reasons is based on publicly available information about Hizballah. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

#### **Name of the organisation**

Hizballah

#### **Known aliases**

- Al-Muqawamah al-Islamiyyah
- Ansar al-Allah
- Ansar Allah
- Ansarollah
- Followers of God
- Followers of the Prophet Muhammad
- God's Helpers
- Hezbollah
- Hezbollah
- Hezbollah
- Hisbollah
- Hizbollah
- Hizbullah
- Islamic Holy War
- Islamic Jihad
- Islamic Jihad for the Liberation of Palestine
- Islamic Jihad Organisation
- Islamic Resistance
- Organisation of the Oppressed
- Organisation of the Oppressed on Earth
- Organisation of Right against Wrong
- Partisans of God
- Party of Allah

- The Party of God

## **Legislative basis for listing a terrorist organisation**

Division 102 of the *Criminal Code Act 1995* (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the Minister for Home Affairs 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.

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.

## **Background to this listing**

Hizballah has not previously been listed under the Criminal Code. The Australian Government has listed Hizballah's External Security Organisation since 5 June 2003.

## **Details of the organisation**

Hizballah is a multi-faceted organisation with political, social and military components. Hizballah holds seats in Lebanon's parliament and, as at 10 September 2021, holds two cabinet positions in the Lebanese government. Within Lebanon, Hizballah traditionally represents the Lebanese Shia community, the country's largest religious sect, and maintains a social welfare network that encompasses education and health services. Hizballah was founded in 1982 with Iranian assistance during the Israeli occupation of southern Lebanon. Since entering the Lebanese Parliament in 1992 and the government in 1995, Hizballah has sought to strengthen its public image as a legitimate resistance movement and move away from its reputation as a terrorist group.

Hizballah is organised under a consultative council, the Majlis al-Shura, led by Secretary General Hassan Nasrallah. Under the Majlis al-Shura sit five functional councils: the political; parliamentary; executive; judicial; and military—or 'Jihad'. Hizballah promotes itself as a protector of the Lebanese state. Its various functional councils, including the Military Council, work together in a holistic manner in pursuit of a unified Hizballah mission.

The Military Council directs Hizballah's Military Wing, which is responsible for all of Hizballah's armed activities. It comprises all elements of Hizballah's militia and military-relevant functions, including Hizballah's External Security Organization (ESO). Hizballah's Military Wing supports Hizballah's public policy to resist Israeli aggression and to defend and promote Shia interests in the context of Lebanon's historical and ongoing sectarian divisions. Hizballah is involved in regional conflicts in pursuit of this.

The ESO (also known as the Foreign Action Unit, Hizballah International, Special Operations Branch, or Unit 910) is a component of the Military Wing responsible for Hizballah's clandestine activities outside Lebanon.

The ESO is responsible for activities including procurement, intelligence, counter-intelligence, surveillance, planning, coordination and the execution of terrorist attacks against Hizballah's enemies outside Lebanon. The ESO's operations are generally characterised by clandestine activities targeting Israeli and United States (US) interests outside the Middle East. The secretive nature of the ESO makes it difficult to gather detailed information about its role and activities.

## **Leadership**

Hassan Nasrallah is Secretary General of Hizballah.

## **Membership**

The number of Hizballah members and supporters worldwide is estimated to be in the tens of thousands. Hizballah's Military Wing has approximately 50,000 full-time and reserve fighters.

## **Funding**

Hizballah receives most of its funding from Iran, although this has been constrained in recent years due to Iran's financial pressures, including as a result of US sanctions. Other funds are received from several independent channels, including legal businesses, criminal enterprises and the Lebanese diaspora. Hizballah's entrenchment in the Lebanese government also provides opportunities to access public resources, which can be diverted to its supporters.

## **Links to other terrorist organisations**

Since at least the mid-1990s, Hizballah, through its Military Wing, has provided support to Palestinian extremist groups, including Palestinian Islamic Jihad (PIJ) and Hamas' Izz al-Din al-Qassam Brigades, both of which are listed as terrorist organisations in Australia under the Criminal Code.

## **Terrorist activity**

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

- On **3 February 2021**, Hizballah fighters attempted to shoot down an Israeli unmanned aerial vehicle (UAV) over southern Lebanon using a surface-to-air missile. Hizballah has vowed to shoot down Israeli UAVs that breach Lebanese airspace.
- On **30 August 2020**, Hizballah's Secretary General, Hassan Nasrallah, publicly threatened to kill an Israeli soldier to avenge the July 2020 death of a Hizballah fighter in an Israeli air strike in Syria.
- On **12 January 2020**, following an Iranian missile attack on two Iraqi bases housing US troops, Nasrallah publicly threatened further attacks on US military interests. Nasrallah stated the alternative to the US voluntarily removing military installations in the Middle East would be to leave 'horizontally', implying soldiers would leave in coffins. Nasrallah also called for Iranian allies to move towards action in retribution for the killing of Iran's Islamic Revolutionary Guard Corps Quds Force (IRGC-QF) commander, Major General Qassem Soleimani, on 3 January 2020. It is assessed that Nasrallah's speech was designed to justify and broadcast an intent to conduct attacks on US military targets.
- On **5 January 2020**, Nasrallah said US military bases and personnel would be targeted in retribution for the death of Major General Qassem Soleimani on 3 January 2020. Nasrallah said Hizballah would launch a battle against the US military, describing its members as killers and criminals. It is assessed that Nasrallah's language was intended to serve as a threat and a message to Israel.
- On **1 September 2019**, Hizballah fighters fired anti-tank guided missiles at an Israeli Defense Forces (IDF) camp in northern Israel. Hizballah claimed to have destroyed one vehicle, killing its occupants, although the IDF reported no casualties.
- In **September 2019**, an individual in the US was indicted for undertaking terrorist activities on behalf of the ESO, including surveillance of potential targets across the US in support of Hizballah's attack planning efforts.

- In **May 2019**, an individual in the US was convicted of undertaking terrorist activities on behalf of the ESO. The individual had helped to procure weapons and gathered intelligence about potential targets in the US for future terrorist attacks.
- Between 2015 and 2017, stockpiles of explosive precursors seized in Cyprus, the United Kingdom, Guinea and Bolivia were linked to Hizballah. The ESO's contingency planning for terrorist activities outside Lebanon, including intelligence-gathering and the stockpiling of explosive components, is likely ongoing.
- Since at least the mid-1990s and probably at least until May 2021, Hizballah, through its Military Wing, has provided support—such as training, operational assistance, and weapons—to Palestinian extremist groups, including PIJ and Hamas' Izz al-Din al-Qassam Brigades, both of which are listed as terrorist organisations in Australia under *the Criminal Code*. Over the last three years, PIJ and Hamas's Izz al-Din al-Qassam Brigades have conducted attacks against Israel, primarily consisting of indirect rocket and mortar fire into southern Israel.

## **Other considerations**

### ***Links to Australia***

There are no known specific threats to Australia or Australian interests posed by Hizballah. However, it is possible that Australian interests could be harmed by future attacks.

A Bulgarian court has convicted in absentia an Australian-Lebanese citizen for his alleged role in a 2012 terrorist attack attributed to the ESO.

### ***Listings by likeminded countries or the United Nations***

The US currently lists the entirety of Hizballah under a variety of laws and Executive Orders, including the Foreign Terrorist Organizations Sanctions Regulations, the Global Terrorism Sanctions Regulations and the Syrian Sanctions Regulations.

The United Kingdom currently proscribes the entirety of Hizballah under the Terrorism Act 2000. Canada also lists the entirety of Hizballah under the Anti-Terrorism Act 2001.

New Zealand and the European Union list Hizballah's Military Wing.

### ***Engagement in peace or mediation processes***

As a political organisation, Hizballah engages with numerous international organisations and governments.

## **Conclusion**

On the basis of the information above, the Australian Government assesses that Hizballah is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.