

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 212**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code Amendment Regulations 2009 (No. 13).*

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 Code).

Division 102 of the 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; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Code. The effect of applying section 15.4 is that offences in Division 102 of the 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.

Paragraphs (a) and (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code define a ‘terrorist organisation’ as:

- an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs) (paragraph (a));  
or
- an organisation specified in the regulations (paragraph (b)).

The purpose of the Regulations is to amend the *Criminal Code Regulations 2002* to specify the Palestinian Islamic Jihad also known as al-Quds Brigades, Harakat al-Jihad al-Islami fi Filistin, Islamic Jihad, Islamic Jihad Palestine (IJP), Islamic Jihad – Palestine Faction and Islamic Holy War and PIJ for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

The Regulations enable all offence provisions in Division 102 of the Code to apply to persons with links to the Palestinian Islamic Jihad. Details of the Regulations are set out in Attachment A.

Subsection 102.1(2) of the 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) of the Code, the Minister must be satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or

fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

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, the Minister takes into consideration unclassified Statements of Reasons prepared by the Australian Security Intelligence Organisation (ASIO) in consultation with the Department of Foreign Affairs and Trade and the Australian Government Solicitor. The Statement of Reasons in respect of the Palestinian Islamic Jihad is at Attachment B.

Subsection 102.1(2A) of the 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 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 the making of the Regulations, consultations were held with the Department of Foreign Affairs and Trade, ASIO and the Australian Government Solicitor. In addition, the Prime Minister wrote to the Premiers and Chief Ministers of the States and Territories and the Attorney-General has provided a written briefing to the Federal Leader of the Opposition.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Code provides when the regulations will sunset.

**ATTACHMENT A**

**Details of the Criminal Code Amendment Regulations 2009 (No. 13)**

**Regulation 1- Name of Regulations**

This regulation provides that the title of the Regulations is the *Criminal Code Amendment Regulations 2009 (No. 13)*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered.

**Regulation 3 – Amendment of Criminal Code Regulations 2002**

This regulation notes that Schedule 1 amends the *Criminal Code Regulations 2002*.

**Schedule 1 – Amendments**

**Item [1] – Regulation 4T**

This item provides that the existing regulation 4T, ‘Terrorist organisations – Palestinian Islamic Jihad’, is to be substituted with a new regulation 4T.

New subregulation 4T(1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code* (the Code), the organisation known as Palestinian Islamic Jihad is specified.

The effect of this subregulation is that Palestinian Islamic Jihad will continue to be specified as a terrorist organisation under subsection 102.1(1) of the Code for a further 2 years.

Subregulation 4T(2) provides that for the purposes of subregulation (1), Palestinian Islamic Jihad is also known by the following names:

- (a) al-Quds Brigades;
- (b) Harakat al-Jihad al-Islami fi Filistin;
- (c) Islamic Jihad;
- (d) Islamic Jihad Palestine (IJP);
- (e) Islamic Jihad – Palestine Faction and Islamic Holy War;
- (f) PIJ.

## **ATTACHMENT B**

### **Palestinian Islamic Jihad**

**(Also known as: al-Quds Brigades, Harakat al-Jihad al-Islami fi Filistin, Islamic Jihad, Islamic Jihad Palestine (IJP), Islamic Jihad - Palestine Faction and Islamic Holy War, PIJ)**

The following information is based on publicly available details about the Palestinian Islamic Jihad (PIJ). 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, 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).

#### **Details of the organisation**

The PIJ is a Sunni fundamentalist group founded in 1979-80 in Egypt by Palestinian members of the Muslim Brotherhood movement. Inspired by the Iranian revolution and disillusioned with the actions of existing Palestinian nationalist movements, the PIJ rejected the Muslim Brotherhood's non-violent position. It has pursued a strategy of conducting terrorist attacks primarily by firing rockets into Israel from the Palestinian Territories and also using suicide bombers. The al-Quds Brigade is the military wing of the PIJ and is responsible for all its terrorist attacks. The PIJ has grown to become one of the main Palestinian Islamic extremist movements.

In August 1988, Israel expelled two senior leaders of the PIJ at that time, Fathi Shaqaqi and Abd al-Aziz Odah, to Lebanon where Shaqaqi reorganised the group, developing closer ties with Iranian Islamic Revolutionary Guard Corps elements and Lebanese Hizballah. In 1989 the PIJ moved its headquarters to Damascus although it continues to maintain a presence in Lebanon. From this time, the PIJ increasingly used terrorist actions, including suicide bombings and shootings, to promote its cause. Suicide bombings, including explosive belts and car bombs, continue to be a favoured method of attack. In recent years PIJ's primary attack weapon has been firing rockets into Israel from the Gaza Strip. In March 2008, PIJ claimed responsibility for firing 216 rockets into Israel.

The PIJ sees itself as a radical military organisation. The PIJ refused to give a formal commitment to a Palestinian unilateral ceasefire in 2005 and has previously conducted terrorist attacks to derail peace processes. While it has no ostensible political role, the PIJ is politically astute. Since Hamas' victory in the Palestinian Legislative Council election in January 2006, the PIJ has issued statements condemning political compromises made by

Hamas and Fatah towards Israel. The PIJ supported Hamas' victory, but rejected any notion of participating in government itself.

Despite sectarian differences, the PIJ is allied to and receives significant support from Hizballah. The PIJ maintains affiliations with groups such as Hamas, and has carried out joint attacks with other militant groups such as Hamas and the al-Aqsa Martyrs Brigades. The PIJ has confined its activities to the Middle East and has not deliberately targeted Western interests. The PIJ's attacks are generally indiscriminate in nature, seeking to maximise casualties.

Funding for the PIJ is primarily from Iran and Syria. Syria permits the location of the PIJ headquarters in Damascus. The relationship between PIJ and Iran has been publicly acknowledged by PIJ leaders.

Israeli military action against the PIJ over the past decade has impacted adversely on the capabilities of all Palestinian militant groups, including the PIJ, albeit often with only local and short-term effect. Nonetheless, the PIJ remains directly engaged in preparing, planning and carrying out terrorist acts. This includes suicide bombings and rocket attacks in 2007, 2008 and 2009. As recently as December 2008, a member of PIJ's al-Quds Brigades threatened to carry out suicide attacks inside Israel. The PIJ's attacks and statements indicate its arsenal includes improvised explosive devices (IEDs); rockets; firearms and rocket-propelled grenades. Taken together, the PIJ continues to have the capability (including access to the necessary resources) and intent to conduct further terrorist attacks.

The PIJ is led by Dr Ramadan Muhammad Abdullah Shalah, who became Secretary-General after the October 1995 assassination of former leader Fathi Shaqaqi in Malta. Ziyad al-Nakhlah (aka Abu Tariq) is the PIJ deputy Secretary-General.

The precise number of PIJ members is unknown, however the group's membership base is relatively small, with reports estimating the al-Quds Brigades membership at anything from approximately 50 to 1000. The PIJ's main membership base is in the West Bank, Gaza and South Lebanon.

The al-Quds Brigades is the operational arm of the PIJ and is often credited for conducting PIJ terrorist operations. The PIJ maintains liaison offices in Damascus, Lebanon and Tehran. Many of the PIJ leaders are also members of its Shura Council.

### **Terrorist activity of the organisation**

The objectives of the PIJ are the establishment of an Islamic Palestinian state and the destruction of the state of Israel.

Recent terrorist attacks for which responsibility has been claimed by or reliably attributed to the PIJ include:

- August 2007 – Two homemade rockets are fired from the Gaza strip into southern Israel;
- September 2007 – A rocket attack claimed by the Popular Resistance Committees military wing and the al-Quds Brigades injures fifty Israeli soldiers at an Israeli military base in the western Negev desert;
- September 2007 - Al-Aqsa Martyrs Brigades and al-Quds Brigades launch rockets at an Israeli Intelligence building causing damage;

- November 2007 – Two Quds rockets are fired at Sederot;
- December 2007 – Al-Quds Brigades fire an RPG at an Israeli jeep east of the town of al-Qararah;
- December 2007 – Al-Quds Brigades fire thirteen Quds rockets at Sederot;
- January 2008 – Al-Quds Brigades fire two rockets at Sederot;
- February 2008 – PIJ claims responsibility for a suicide bombing in the Israeli city of Dimona which killed one and injured eleven;
- March 2008 – PIJ claims that throughout March they fired 216 rockets and mortar shells, attacked Israeli military vehicles in the Gaza Strip, fired six RPG rockets and detonated roadside bombs;
- April 2008 – Two Israelis are killed and two more injured in an attack claimed by PIJ and al-Aqsa Martyrs Brigades;
- May 2008 – One Israeli woman is killed in a Qassam rocket attack claimed by PIJ and Hamas;
- May 2008 – Over three separate days Al-Quds Brigades fire a total of seven rockets at Sederot and detonate an explosive device next to an Israeli jeep near Juhr al-Dik;
- May 2008 – PIJ claim responsibility for a suicide attack which only kills the attacker;
- November 2008 – Al-Quds Brigades fire two Aqsa rockets at the Magen post, two Quds rockets at Sederot and one Quds rocket east of Khan Yunis;
- December 2008 – Al-Quds Brigades fire one Quds rocket at Sederot and two mortar shells at Kissufim;
- December 2008 – Al-Quds Brigades rocket attack kills one at Nahal Oz kibbutz;
- January 2009 – PIJ claim responsibility for firing twelve rockets at Sederot, Ashqelon, Kefar Aza and Be'eri; and
- February 2009 – PIJ and one of the Popular Resistance Committee factions claim responsibility for firing rockets and mortars into Israel, the first attacks since the ceasefire was declared.

As demonstrated, PIJ is directly preparing, planning, assisting in or fostering the doing of terrorist acts. PIJ's military wing, al-Quds Brigade, carries out the terrorist attacks on behalf of PIJ. It is considered that the acts attributable to the PIJ are terrorist acts as they:

- (i) are done with the intention of advancing a political cause, namely, the establishment of an Islamic Palestinian state and the destruction of the state of Israel;
- (ii) are intended to coerce or influence by intimidation the governments of foreign countries, including Israel, and/or intimidate sections of the public; and
- (iii) constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

**Other relevant information**

The PIJ is listed as a proscribed terrorist organisation by the governments of the United Kingdom, United States and Canada. The PIJ is also listed by the European Union for the purposes of its anti-terrorism financing measures.