

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 85

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

Criminal Code Act 1995

Criminal Code Amendment Regulations 2005 (No. 9)

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.

Paragraphs (a) to (e) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code define a 'terrorist organisation' to be:

- an organisation engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph (a));
- an organisation specified in the regulations (paragraph (b));
- a Hizballah organisation (paragraph (c));
- a Hamas organisation (paragraph (d)); or
- a Lashkar-e-Tayyiba organisation (paragraph (e)).

The purpose of the proposed Regulations is to amend the *Criminal Code Regulations 2002* to specify the organisation Hizballah's External Security Organisation (ESO) and its alias Islamic Jihad Organisation for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. The effect of specifying the organisation would be to enable the offence provisions in Division 102 of the Code to apply to persons with links to this organisation.

Pursuant to subsection 102.1(3) of the Code, regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the second anniversary of the day on which they take effect.

Subsection 102.1(1) of the Code prescribes Hizballah External Security Organisation as a terrorist organisation. Schedule 1A Part 1 was inserted by *Statutory Rules 2003 No. 184* with effect on 5 June 2003 and will cease to have effect on 5 June 2005. This organisation was listed as Hizballah External Security Organisation and its aliases

Islamic Jihad and Hizballah External Security Apparatus. The Regulations continue the listing of this organisation for a further 2 years.

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.

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.

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.

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

The Regulations commenced on 5 June 2005.