

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 3

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code Amendment Regulations 2007 (No. 1).

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.

‘Terrorist organisation’ in subsection 102.1(1) of the Code is defined 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 Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn (TQJBR) also known as the al-Zarqawi network, al-Tawhid, Jama’at al-Tawhid wa’al-Jihad, Al-Tawhid and al-Jihad, the Monotheism and Jihad Group, Qaida of the Jihad in the Land of the Two Rivers, Al-Qa’ida of Jihad in the Land of the Two Rivers, Al-Qa’ida of Jihad Organization in the Land of the Two Rivers, The Organisation of Jihad’s Base in the Country of the Two Rivers, The Organisation Base of Jihad/Mesopotamia, Tanzeem Qa’idat al-Jihad/Bilad al Raafidaini, Kateab al-Tawhid, Brigades of Tawhid, Unity and Jihad Group, Unity and Holy Struggle, Unity and Holy War, Al-Qa’ida in Iraq, Al-Qa’ida in Iraq – Zarqawi, Islamic State in Iraq and Mujahidin Shura Council,

for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. TQJBR was initially listed as a terrorist organisation under the *Criminal Code Amendment Regulations 2005 (No. 1)*, which took effect on 2 March 2005.

The Regulations enable the offence provisions in Division 102 of the Code to apply to persons with links to TQJBR. Details of the proposed Regulations are set out in Attachment A.

Paragraph 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).

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, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of TQJBR 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, an offer for a briefing was extended to the Federal Leader of the Opposition and the State and Territory Attorneys-General were advised.

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

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

ATTACHMENT A

Details of the Criminal Code Amendment Regulations 2007 (No. 1)

Regulation 1- Name of Regulations

This regulation provides that the title of the Regulations is the *Criminal Code Amendment Regulations 2007 (No. 1)*.

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 4G

This item provides that the existing regulation 4G is to be substituted with the new regulation 4G - ‘Terrorist organisations – Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn (TQJBR)’.

Subregulation 4G(1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code Act 1995* (the Code), the organisation known as Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn (TQJBR) is specified.

The effect of this subregulation is that Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn (TQJBR) is specified as a terrorist organisation under subsection 102.1(1) of the Code.

Subregulation 4G(2) provides that for the purposes of subregulation (1), Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn (TQJBR) is also known by the following names:

- (a) al-Zarqawi network;
- (b) al-Tawhid;
- (c) Jama’at al-Tawhid wa’al-Jihad;
- (d) Al-Tawhid and al-Jihad;
- (e) the Monotheism and Jihad Group;
- (f) Qaida of the Jihad in the Land of the Two Rivers;
- (g) Al-Qa’ida of Jihad in the Land of the Two Rivers;
- (h) Al-Qa’ida of Jihad Organization in the Land of the Two Rivers;
- (i) The Organisation of Jihad’s Base in the Country of the Two Rivers;
- (j) The Organisation Base of Jihad/Mesopotamia;
- (k) Tanzeem Qa’idat al-Jihad/Bilad al Raafidaini;
- (l) Kateab al-Tawhid;

- (m) Brigades of Tawhid;
- (n) Unity and Jihad Group;
- (o) Unity and Holy Struggle;
- (p) Unity and Holy War;
- (q) Al-Qa'ida in Iraq;
- (r) Al-Qa'ida in Iraq – Zarqawi;
- (s) Islamic State in Iraq; and
- (t) Mujahidin Shura Council.

ATTACHMENT B

Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn

(Also known as: the al-Zarqawi network; al-Tawhid; Jama'at al-Tawhid wa'al-Jihad; Al-Tawhid and al-Jihad; The Monotheism and Jihad Group; Qaida of the Jihad in the Land of the Two rivers; Al-Qa'ida of Jihad in the Land of the Two Rivers; Al-Qa'ida of Jihad Organization in the Land of the Two Rivers; The Organisation of Jihad's Base in the Country of the Two Rivers; The Organisation Base of Jihad/Mesopotamia; Tanzeem Qa'idat al-Jihad/Bilad al Raafidaini; Kateab al-Tawhid; Brigades of Tawhid; Unity and Jihad Group; Unity and Holy Struggle; Unity and Holy War; Al-Qa'ida in Iraq; Al-Qa'ida in Iraq – Zarqawi; Islamic State in Iraq and; Mujahidin Shura Council.)

The following information is based on publicly available details about Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (TQJBR). These details have been corroborated by material from intelligence investigations into the activities of the TQJBR. ASIO assesses that the details set out below are accurate and reliable.

TQJBR is listed in the United Nation's 1267 Committee's consolidated list and as a proscribed terrorist organisation by the government of the United States.

Current status of TQJBR

TQJBR is a Sunni Islamic extremist network established and originally led by Abu Mus'ab al-Zarqawi until his death on 7 June 2006. He has been replaced by Abu Hamza al-Muhajir, also known as Abu Ayyub al Masri.

The network, al-Tawhid wal-Jihad, first emerged as a group of, mainly Jordanian, individuals under the leadership of al-Zarqawi over a period of several years, following his release from a Jordanian prison in 1999. From May 2002 al-Zarqawi worked closely with Ansar al-Islam, until Ansar al-Islam and its members were scattered following intense action in northern Iraq in 2003. Al-Zarqawi's group found prominence following the attacks against the UN headquarters in Baghdad on 19 August 2003 and the kidnap and televised beheading of US hostage Nicolas Berg in May 2004.

During 2004 al-Zarqawi's group operated under the name Jama'at al-Tawhid wa'al-Jihad. The name Jama'at al-Tawhid wa'al-Jihad was subsequently changed to Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn on 17 October 2004 in a public pledge of allegiance to Usama bin Laden via an internet posting. A subsequent statement by Usama bin Laden, broadcast on 27 December 2004, welcomed the union and exhorted mujahideen in Iraq to obey al-Zarqawi. TQJBR literally translates to the al-Qa'ida of Jihad Organisation in the Land of the Two Rivers. It is now commonly referred to as al-Qa'ida in Iraq.

On 15 January 2006 it was announced that al-Zarqawi had brought together five jihadi groups in Iraq under one umbrella group, the Mujahideen Shura Council. TQJBR is the dominant group under the Council but other members include Victorious Sect

Army, Ansar al-Tawhid, al-Ghuraba, al-Jihad al-Islami and al-Awhal. On 15 October 2006 the Mujahideen Shura Council declared the establishment of the Islamic State of Iraq. While attacks are claimed by the Ministry of Information of the Islamic State of Iraq, TQJBR conducts or directs these attacks in its own right as the dominant member of the Mujahideen Shura Council. TQJBR no longer publicly claims responsibility for attacks it has conducted.

TQJBR maintains a finance committee which collects the necessary funds to finance TQJBR's various activities. The finance committee relies on a global network of activists who collect donations from businesses, mosques and individuals. Funding is also supplemented by the individual finances of the operatives. Many operatives and cells are self funded, including through criminal activity, and require a minimum of upkeep when undertaking jihad in Iraq.

Australia is seen as a target by TQJBR. This is demonstrated by its claim of responsibility for an attack against an Australian Defence Force convoy in Baghdad on 25 October 2004 and an attack near the Australian Embassy in Baghdad on 19 January 2005.

TQJBR has been involved in numerous terrorist attacks in Iraq against Multi-National Forces, Iraqi Security Forces, members of the Interim Iraqi Government, Iraqi and foreign civilians and international facilities. Particular terrorist activities include suicide bombings, vehicle bombs, small arms ambushes, kidnappings and executions. The network has also undertaken attacks outside of Iraq, including in Jordan.

TQJBR makes frequent statements advocating the conduct of terrorist activities using al-Qa'ida's media outlet, the Global Islamic Media Group. The statements have advocated the use of violence in achieving its aims.

Objectives

The objectives of TQJBR within Iraq are to overthrow the current Iraqi Government, expel the Multi-National Forces from the country, combat Shiite centres of power and establish an Islamic state under Sharia law.

More broadly, TQJBR seeks, through jihad, to liberate all Muslim territories from infidel regimes, and the removal of governments of Muslim nations assessed by the network to be apostate.

Leadership and membership

TQJBR was established and continuously led by al-Zarqawi until his death on 7 June 2006. As of 13 June 2006 Abu Hamza al-Muhajir has led TQJBR. Field commanders, in coordination with battalion commanders and regional organisation leaders, make decisions with regard to day to day operations but defer to the leadership on major operational issues.

The strength of the operational network in Iraq is not known. The group claims to have 15 brigades with these ranging from 100 to 300 operatives each. Given these

figures, an estimate of between 1500 and 4500 operatives is plausible. Zarqawi historically maintained a network in Europe and the Middle East.

TQJBR's engagement in terrorist activities

TQJBR currently conducts several attacks a day in Iraq against a variety of sectarian, Iraqi Government and Coalition targets. Significant terrorist attacks for which responsibility has been claimed by, or reliably attributed to TQJBR have included:

- 10 April 2004: Kidnap and murder of US civilian contractor Nicolas Berg. His decapitated body was found on 10 May 2004;
- 24 April 2004: Attempted suicide boat bombing of Iraq's Basra oil terminal;
- 24 June 2004: Attacks on Iraqi security forces in Baghdad, Baquba, Mosul, Fallujah and Ramadi;
- 16 September 2004: Kidnap of US contractors Jack Hensley (killed 21 September) and Eugene Armstrong (killed 22 September) and UK contractor Kenneth Bigley (killed 7 October);
- 25 October 2004: Vehicle bombing of an Australian Defence Force convoy in Baghdad, killing and wounding a number of Iraqi civilians and wounding a further three ADF personnel;
- 19 January 2005: Vehicle bombing near the Australian Embassy, Baghdad, killing two Iraqi nationals and injuring several people including two ADF personnel;
- 19 August 2005: Two rockets fired on US warships moored off al Aqaba port in Jordan. Both missed;
- 24 October 2005: Three suicide car bombs exploded at the Sheraton and Palestine Hotels complex in Baghdad in a coordinated operation. At least 15 people were killed in the operation;
- 9 November 2005: Grand Hyatt, Radisson SAS and Days Inn hotels bombed killing 52 people and injuring 115. Suicide bombers carried out simultaneous attacks at around 8.50pm on the three hotels;
- 27 December 2005: Ten rockets fired on northern Israeli towns from southern Lebanon;
- 22 February 2006: Attack on the Shi'a al-Askariyah Golden Mosque in Samarra;
- 20 June 2006: Two US soldiers taken hostage on 16 June are found dead. Both bodies were mutilated and one was beheaded;and
- 25 June 2006: Four Russian diplomats taken hostage on 3 June 2006 were executed. The executions were filmed showing one shot in the head and at least two being beheaded.

Conclusion

The Criminal Code provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied that:

- (i) the organisation is directly or indirectly 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
- (ii) the organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

On the basis of the above information, ASIO assesses TQJBR is directly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts. It is submitted that the acts attributable to TQJBR are terrorist acts as they:

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

This assessment is corroborated by information provided by reliable and credible intelligence sources.