

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 253**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code Amendment Regulations 2010 (No. 6).*

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 Abu Sayyaf Group and its aliases, Abou Sayaf Armed Band, Abou Sayyef Group, Abu Sayaff Group, Al-Harakat Al-Aslamiya, Al-Harakat Al-Islamiyya, Al-Harakat-ul Al-Islamiyya, Al-Harakatul-Islamia and Mujahideen Commando Freedom Fighters, for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

The Regulations enable the offence provisions in Division 102 of the Code to apply to persons with links to Abu Sayyaf Group. 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, as well advice from the Australian Government Solicitor. The Statement of Reasons in respect of Abu Sayyaf Group 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 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 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 commenced on the day after they were registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Code provides that 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.

**ATTACHMENT A**

**Details of the Criminal Code Amendment Regulations 2010 (No. 6)**

**Regulation 1- Name of Regulations**

This regulation provides that the title of the Regulations is the *Criminal Code Amendment Regulations 2010 (No. 6)*.

**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 provides that Schedule 1 amends the *Criminal Code Regulations 2002*.

**Schedule 1 – Amendments**

**Item [1] – Regulation 4C**

This item substitutes the existing regulation with a new regulation 4C to provide 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 Abu Sayyaf Group is specified.

Subregulation 4C(1) provides that Abu Sayyaf Group is specified as a terrorist organisation under subsection 102.1(1) of the Code.

Subregulation 4C(2) provides that for the purposes of subregulation (1), Abu Sayyaf Group is also known by the following names:

- (a) Abou Sayaf Armed Band;
- (b) Abou Sayyef Group;
- (c) Abu Sayaff Group;
- (d) Al-Harakat Al-Aslamiya;
- (e) Al-Harakat Al-Islamiyya;
- (f) Al-Harakat-ul Al-Islamiyya;
- (g) Al-Harakatul-Islamia;
- (h) Mujahideen Commando Freedom Fighters.

## **ATTACHMENT B**

### **Abu Sayyaf Group (ASG)**

(Also known as: Abou Sayaf Armed Band; Abou Sayyef Group; Abu Sayaff Group; Al-Harakat Al-Aslamiya; Al-Harakat Al-Islamiyya; Al-Harakat-ul Al-Islamiyya; Al-Harakatul-Islamia and Mujahideen Commando Freedom Fighters)

The following information is based on publicly available details about the ASG. To the Australian Government's knowledge, these details are accurate and reliable and have been corroborated by reliable and credible 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, 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**

##### ***Objectives***

The ASG's founding objective is to create an autonomous Islamic state encompassing the southern Philippines islands of Mindanao and surrounding islands and the Sulu Archipelago, whose main islands are Basilan, Jolo and Tawi Tawi. The ASG was founded in 1991 as a militant Islamic movement by Abdurajak Janjalani, who fought in Afghanistan in the 1980s where he was influenced by radical Wahhabi thought. Janjalani's original intent was to fuse Salafi Wahhabist ideology with a southern Philippines separatist agenda.

The ASG is a fundamentally clan-centric terrorist network with a fluid peripheral membership which includes foreign jihadists and enjoys support from a portion of the local population in Jolo and Basilan. The ASG's sub-groups also undertake criminal activities in order to sustain its leaders and membership and to provide resources for its terrorist activities, including its capacity to oppose military operations of the Armed Forces of the Philippines (AFP).

The ASG views kidnap-for-ransom ventures as a profitable operational tactic – along with extortion and related activity – and these attacks have been a trademark of ASG since its creation and represent the main funding mechanism for the ASG and subordinate groups. Aside from the financial gains for ASG in conducting the above activities, ASG's activities – including the targets chosen for kidnapping and extortion operations – remain heavily influenced by the religious, political and ideological considerations as originally dictated by Janjalani. Westerners and other wealthy

foreign nationals, as well as local politicians and business people feature among the targets.

### ***Leadership***

It is currently unclear whether a single leader of the ASG has emerged since former Emir, Khadaffy Janjalani, was killed in an AFP operation in September 2006. There are a number of key leadership figures with extensive operational experience, such as Radullan Sahiron, Gumbahli Jumdail (aka Dr Abu), Isnilon Hapilon and Yasir Igasan, all of whom maintain contact and retain the ability and personnel to conduct their own independent operations.

### ***Membership***

The ASG membership consists primarily of young Tausug Filipino Muslims from the Sulu archipelago, but the ASG attracts poverty-stricken unemployed young Muslims from across the southern Philippines. The ASG originally consisted of jihadi volunteers who had fought in Afghanistan. Janjalani was eventually able to attract hundreds of recruits who were mostly derived from the Moro National Liberation Front (MNLF). ASG rank-and-file numbers fluctuate in response to successful terrorist operations and pressure from the Philippines military, which dictate the available resources and relative incentives for membership.

Since its inception, the ASG has consisted of loosely affiliated groups, mostly organised along traditional clan and familial lines, with as many as 26 clan groupings of security interest to the Philippines authorities. These sub-groups are based mainly in the Sulu archipelago in the southern Philippines – primarily on the Islands of Jolo and Basilan. The commanders of each sub-group are largely autonomous clan leaders. Despite its relatively small core numbers, the ASG draws its strength from a large local support base.

### ***Current Status of the ASG***

Since the expulsion of the ASG from Mindanao and the subsequent death of senior leaders, the ASG has continued to fragment, leaving the ASG clan groups largely confined to their home islands in the Sulu archipelago and under significant operational constraints compared to its first decade of existence. The AFP, with US military logistical support, has continued to mount operations against ASG groups in the Sulu archipelago and still consider the group to be a significant threat, particularly when acting in concert with other Philippines-based militant groups, including the Moro Islamic Liberation Front (MILF).

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

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

The ASG has been responsible for the planning and conduct of terrorist attacks against a wide range of targets, but particularly Philippine government, Christian and Western interests. ASG attacks in the past few years (2008 to 2010) have to a large degree been motivated by financial gain rather than purely political, religious or

ideological purposes – but the proceeds of these attacks are used to support the ASG's operations. Funding is especially important for sustaining ASG's capacity to resist pressure from the AFP counter-insurgency operations – including its interaction with other terrorist groups (MILF, MNLF, Indonesia-based networks).

The history of target locations also highlight the ongoing operational interest and reach of ASG into areas frequented by tourists, including in Malaysia's Sabah State located southeast of the Sulu archipelago. Attacks attributed to the ASG have included:

- 23 April 2000: 21 people, including 10 foreign tourists, were kidnapped from the Malaysian resort island of Sipadan. This kidnapping was resolved in 2001 when the ASG received a \$15 million ransom.
- 28 August 2000: US national Jeffrey Schilling was kidnapped in Zamboanga City; the ASG reportedly believed he was a CIA spy. Schilling was rescued in April 2001.
- 27 May 2001: 20 people were kidnapped from the Philippine tourist resort of Dos Palmas on Palawan Island, in the course of which several victims were murdered – including a US citizen. Another US citizen was killed during the rescue operation.
- 2 October 2002: a karaoke bar in Zamboanga City was bombed, killing four people, including a US soldier and injuring 24 others.
- 27 February 2004: *Superferry 14* was bombed, killing over 100 people.
- 14 February 2005: a coordinated series of bombings in Philippines cities of Makati, Davao and General Santos, killed at least seven people and left approximately 150 injured.
- 10 August 2005: two bombings in Zamboanga City wounded eight people.
- 27 March 2006: a convenience store in Jolo was bombed, killing nine and wounding 24 people after extortion demands were not met.
- April 2007: ASG clansmen led by Albader Parad kidnapped seven local workers on Jolo. When ransom money was not paid by the local employer all of the hostages were beheaded.
- 10 June 2007: an Italian priest was kidnapped in Zamboanga and subsequently released on 20 July 2007.
- 11 October 2009: an Irish priest was kidnapped in Mindanao and subsequently released on 12 November 2009.
- January 2009: three ICRC representatives were kidnapped on Jolo and subsequently released.
- September 29 2009: two US servicemen were killed after an IED struck their vehicle in Jolo.
- 8 February 2010: two Chinese-Malay workers were kidnapped from a seaweed farm in Semporna, Sabah, Malaysia by suspected ASG members.

- 27 February 2010: suspected ASG gunmen attacked the village of Tubigan, Basalan, killing 11 people and wounding 10. These revenge attacks followed the death of ASG sub-commander Parad who was killed during a Philippine military operation a week earlier; and
- 3 March 2010: three ASG members were arrested due to their involvement in a plot to launch bomb attacks in retaliation to the killing of ASG commander Albader Parad. Philippines authorities confirmed that the men arrested were ASG members and that they had been trained in bomb-making skills by Jemaah Islamiyah (JI).

*Directly or indirectly fostering the doing of terrorist acts*

The ASG has been linked to dozens of kidnappings over the past decade in Basilan, Sulu, Tawi-Tawi, Zamboanga City and other areas in Western Mindanao. According to the Philippine authorities, the ASG has links to al-Qa'ida and Indonesia-based terrorist networks including JI and they attribute bombings in key areas in Mindanao and in Manila to ASG.

ASG has a history of association with other terrorist organisations since its founding – most notably with al-Qa'ida, JI and other Indonesia-based extremist networks. The current primary association between ASG and other anti-Western terrorists is its provision of safe haven to JI-linked fugitives, which was first seen in 2003 and occurs to this day.

Indonesian extremists, under the protection of the ASG, continue to support terrorist operations by ASG and MILF in the Philippines and also provide bomb-making training to Philippines-based militant networks.

- Information from March 2009, recovered from ASG training camps, documented the collusion between MILF, ASG, and JI in effecting 'technology transfer' and the provision of safe haven in exchange for weapons.
- ASG clansmen on Jolo have harboured Indonesian JI members Umar Patek and Dulmatin (deceased), both of whom fled to the southern Philippines in 2003 to avoid arrest after their involvement in the October 2002 Bali bombings was exposed.
- As of January 2010, Jolo-based ASG groups also harboured Marwan – a JI fugitive and US-trained engineer and explosives trainer – who had been in the Philippines since mid 2007. Patek and Marwan currently have a combined total of US\$6 million in reward money posted for their capture by the United States.

ASG also maintains operational and logistical links with other Philippines-based networks that are actively engaged in terrorist activity, including MILF and MNLF, all of which benefit from the proceeds of kidnapping operations and fundraising activities.

## **Conclusion**

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

- (a) 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
- (b) 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 the ASG is indirectly preparing, planning, assisting in or fostering the doing of terrorist acts. As well as conducting its own terrorist activity, ASG is providing assistance to terrorist fugitives, who retain the intent to conduct, and continue to plan, terrorist actions in the Philippines.

ASIO further assesses that elements of the ASG remain active, retain a capability to conduct attacks, and an enduring intent to directly prepare, plan, assist in, or foster the doing of terrorist acts. It is submitted that the acts attributable to the ASG are terrorist acts as they:

- (i) Are done with the intention of advancing a political cause, namely, the establishment of an Islamic state encompassing the southern Philippines;
- (ii) Are intended to coerce or influence by intimidation the government of a foreign country, namely the Philippines, and/or intimidate a section of the Filipino public; and
- (iii) Constitute acts which cause serious physical harm to persons, including deaths, as well as serious damage to property.

In view of the above information, the ASG is assessed to be preparing, planning, and fostering the conduct of terrorist acts. Such acts include actions which are to be done and threats of actions which are to be made with the intention of advancing a political, religious or ideological cause and with the intention of coercing, or influencing by intimidation of the Government and people of the Philippines. The actions or threatened actions which ASG are assessed to be involved in would, if successfully completed, cause serious physical harm and death to persons and serious damage to property.

This assessment is corroborated by information from reliable and credible intelligence sources

#### **Other relevant information**

ASG is listed in the United Nations' 1267 Committee's Consolidated List as an entity associated with al-Qa'ida and as a proscribed organisation by the governments of Canada, New Zealand, the United Kingdom and the United States of America. ASG was last proscribed in Australia on 3 November 2008.