



**THE HON KAREN ANDREWS MP
MINISTER FOR HOME AFFAIRS**

Ref No: MS21-000621

Senator James Paterson
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Chair

I write to advise that, for the purpose of regulations made under Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), I am satisfied that Hizballah's External Security Organisation (ESO) meets the legal threshold for listing as a terrorist organization under Division 102.

The listing will ensure that the offence provisions under Division 102 of the Criminal Code will apply to conduct in relation to Hizballah's ESO.

Under subsection 102.1(2) of the *Criminal Code*, before an organisation is listed as a terrorist organisation, I 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 terrorist act.

Following careful consideration of information provided by the Department of Home Affairs (the Department) in consultation with national security agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that Hizballah's ESO meets that legal threshold.

Subsection 102.1(3) of the *Criminal Code* provides that a regulation listing a terrorist organisation ceases to have effect on the third anniversary of the day on which it takes effect. To ensure there is no gap in the coverage of the terrorist organisation offences in relation to Hizballah's ESO, the regulations re-listing Hizballah's ESO will commence on the day that the previous regulations listing Hizballah's ESO are due to expire. As such, the regulations listing Hizballah's ESO will commence on 2 May 2021.

Before the regulations were made, I wrote on behalf of the Commonwealth to all state and territory First Ministers advising them of the proposed listing, and provided them with copies of the Statement of Reasons with respect to Hizballah's ESO. The states and territories did not object to the listing.

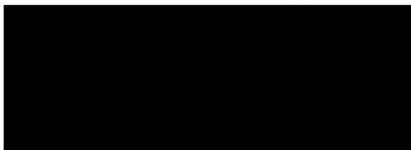
As required under subsection 102.1(2A) of the *Criminal Code*, I also wrote to the Leader of the Opposition advising him of the proposed listing. I provided the Leader of the Opposition with a copy of the Statement of Reasons with respect to Hizballah's ESO, and invited him to contact my office if he wished to receive a further briefing.

Section 102.1A of the *Criminal Code* provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review regulations listing an organisation as a terrorist organisation as soon as possible after they are made, and report the Committee's comments and recommendations to each House of Parliament before the end of the applicable disallowance period for each House.

To assist the Committee, I attach a copy of the *Criminal Code* Regulations and Explanatory Statement. Attached to the Explanatory Statement is the Statement of Reasons prepared by the Department with respect to Hizballah's ESO. The Statement of Reasons provides information on the history, ideology, leadership and activities of the organisation, and is the basis upon which I came to the view that this organisation meets the legal threshold for listing as a terrorist organisation under Division 102 of the *Criminal Code*.

I also attach a document outlining the process for listing this organisation. I understand that this document may be considered as a separate submission should the Committee decide to conduct a review into the listing, and I consent to its publication for that purpose.

Yours sincerely



KAREN ANDREWS

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Process for the 2021 re-listing of Hizballah's External Security Organisation (ESO) as terrorist organisation under the Criminal Code

The Counter-Terrorism Strategic Policy Branch in the Department of Home Affairs (the Department) facilitates the process by which the Minister for Home Affairs is satisfied that an organisation meets the threshold for listing or re-listing as a terrorist organisation under the *Criminal Code Act 1995* (the *Criminal Code*).

This includes coordinating whole-of-Government input to a written Statement of Reasons that assesses the organisation, and seeking the advice of the Australian Government Solicitor (AGS) in relation to this assessment. This information and advice is included in a submission to the Minister for Home Affairs to assist in deciding whether an organisation meets the threshold for listing or re-listing under the *Criminal Code*.

The following processes were undertaken for the purpose of re-listing Hizballah's External Security Organisation (ESO) as a terrorist organisation:

1. The Department coordinated whole-of-Government input to a Statements of Reasons outlining the case for re-listing the ESO.
2. On 25 February 2021, the Department sought initial legal advice from AGS on the case for re-listing the ESO.
3. On 9 March 2021, AGS provided initial written advice to the Department in relation to the legal basis for re-listing the ESO.
4. On 18 March 2021, the Department provided AGS with a Statement of Reasons outlining the case for re-listing the ESO.
5. On 31 March 2021, AGS provided written advice to the Department in relation to the ESO Statement of Reasons.
6. On 1 April 2021, the Department provided a submission to the Minister for Home Affairs advising her that she could be satisfied on reasonable grounds that the legislative criteria for re-listing the ESO as a terrorist organisation under the *Criminal Code* was satisfied.
7. On 8 April 2021, having considered the information provided in the Department's submission, including the Statements of Reasons, the Minister for Home Affairs was satisfied that the ESO met the threshold for re-listing.
8. On 9 April 2021, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of her satisfaction that the ESO met the threshold for re-listing, and attaching a copy of the Statement of Reasons. The letters requested that a response be provided by 23 April 2021, advising whether the First Minister approved of, or objected to, the proposed listing.
9. On 9 April 2021, the Department provided a submission to the Minister for Home Affairs seeking her approval of the Regulations and associated Federal Executive Council (ExCo) documentation, for consideration by the Governor-General at the 29 April ExCo meeting.
10. On 14 April 2021, the Minister for Home Affairs approved the Regulations and associated ExCo documentation.
11. On 16 April 2021, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of her satisfaction that the ESO met the threshold for re-listing, attaching the Statements of Reasons and offering a briefing in relation to the ESO.

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12. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:

- South Australia – responded 15 April 2021
- Northern Territory – 19 April 2021
- Australian Capital Territory – responded 22 April 2021
- Victoria – responded 26 April 2021
- New South Wales – responded 26 April 2021

No objections were made to the re-listing of the ESO as a terrorist organisation.

As the Tasmanian government was in caretaker during the consultation period, the Secretary of the Tasmanian Department of Premier and Cabinet wrote to the Minister for Home Affairs on 21 April 2021, advising that Tasmania had no objections to the proposed re-listing.

At the time of writing, no responses had been received from the premiers of Western Australia and Queensland.

13. On 29 April 2021, the Governor-General made the Regulations re-listing the ESO.

14. On 30 April 2021, the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021* were registered on the Federal Register of Legislation (FRL).

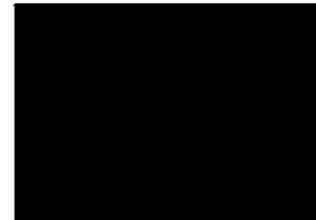
15. On 5 May 2021, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the listing of ESO as a terrorist organisation, and attaching the Regulations, Explanatory Statements and Statements of Reasons.



Criminal Code (Terrorist Organisation— Hizballah's External Security Organisation) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 29 April 2021



David Hurley
Governor-General

By His Excellency's Command



Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	2 May 2021.	2 May 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Criminal Code Act 1995*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Terrorist organisation—Hizballah's External Security Organisation

- (1) 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's External Security Organisation is specified.
- (2) Hizballah's External Security Organisation is also known by the following names:
- (a) External Security Organisation;
 - (b) External Security Organization;
 - (c) External Services Organisation;
 - (d) External Services Organization;
 - (e) Foreign Action Unit;
 - (f) Hezbollah ESO;
 - (g) Hezbollah International;

Section 5

- (h) Hezbollah ESO;
- (i) Hezbollah International;
- (j) Hisbollah ESO;
- (k) Hisbollah International;
- (l) Hizballah ESO;
- (m) Hizballah International;
- (n) Hizbollah ESO;
- (o) Hizbollah International;
- (p) Hizbullah ESO;
- (q) Hizbullah International;
- (r) Islamic Jihad Organisation;
- (s) Revolutionary Justice Organisation;
- (t) Special Operations Branch;
- (u) Unit 910.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2018

1 The whole of the instrument

Repeal the instrument.

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This includes coordinating whole-of-Government input to a written Statement of Reasons that assesses the organisation, and seeking the advice of the Australian Government Solicitor (AGS) in relation to this assessment. This information and advice is included in a submission to the Minister for Home Affairs to assist in deciding whether an organisation meets the threshold for listing or re-listing under the *Criminal Code*.

The following processes were undertaken for the purpose of re-listing Hizballah's External Security Organisation (ESO) as a terrorist organisation:

1. The Department coordinated whole-of-Government input to a Statement of Reasons outlining the case for re-listing the ESO.
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No objections were made to the re-listing of the ESO as a terrorist organisation.

As the Tasmanian government was in caretaker during the consultation period, the Secretary of the Tasmanian Department of Premier and Cabinet wrote to the Minister for Home Affairs on 21 April 2021, advising that Tasmania had no objections to the proposed re-listing.

At the time of writing, no responses had been received from the premiers of Western Australia and Queensland.

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15. On 5 May 2021, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the listing of ESO as a terrorist organisation, and attaching the Regulations, Explanatory Statements and Statements of Reasons.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation)
Regulations 2021*

The purpose of the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021* (the Regulations) is to specify the organisation known as Hizballah's External Security Organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*.¹ Hizballah's External Security Organisation is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2018*, which are repealed by the Regulations.

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 Hizballah's External Security Organisation 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 (Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

¹ 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.

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
- 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's External Security Organisation.

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

The Regulations commence on 2 May 2021. 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 the advice of the Australian Government Solicitor (AGS) in relation to the unclassified information (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 proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition enclosing the information upon which she was satisfied that Hizballah's External Security Organisation met 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.

ATTACHMENT A

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's External Security Organisation)
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

The *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021* (the Regulations) specify Hizballah's External Security Organisation 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 identify Hizballah's External Security Organisation 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's External Security Organisation.

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's External Security Organisation as a listed terrorist organisation.

Terrorist organisations, including Hizballah's External Security Organisation, 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 promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

The Regulations limit the following human rights contained in the ICCPR:

- the right to freedom of expression in Article 19, and
- the right to freedom of association in Article 22.

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's External Security Organisation. 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's External Security Organisation.

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's External Security Organisation, 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 protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also 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

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2021*.

Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) would provide that each provision in the proposed 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 would provide that the proposed Regulations commence in their entirety on 2 May 2021.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of the proposed Regulations as originally made, and will not be amended to deal with any subsequent amendments to the instrument.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

Section 3 – Authority

6. This section would provide that the proposed Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section would provide that each instrument that is specified in a Schedule to the proposed Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the proposed Regulations would have effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Hizballah's External Security Organisation) Regulations 2018*.

Section 5 – Terrorist organisation—Hizballah's External Security Organisation

9. Subsection 5(1) would provide 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's External Security Organisation is specified.

10. The effect of specifying Hizballah's External Security Organisation as a terrorist organisation would be 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's External Security Organisation.
11. Subsection 5(2) would provide a list of names that Hizballah's External Security Organisation is also known as:
 - (a) External Security Organisation (paragraph (a));
 - (b) External Security Organization (paragraph (b));
 - (c) External Services Organisation (paragraph (c));
 - (d) External Services Organization (paragraph (d));
 - (e) Foreign Action Unit (paragraph (e));
 - (f) Hezbollah ESO (paragraph (f));
 - (g) Hezbollah International (paragraph (g));
 - (h) Hezbollah ESO (paragraph (h));
 - (i) Hezbollah International (paragraph (i));
 - (j) Hizbollah ESO (paragraph (j));
 - (k) Hizbollah International (paragraph (k));
 - (l) Hizballah ESO (paragraph (l));
 - (m) Hizballah International (paragraph (m));
 - (n) Hizbollah ESO (paragraph (n));
 - (o) Hizbollah International (paragraph (o));
 - (p) Hizbullah ESO (paragraph (p));
 - (q) Hizbullah International (paragraph (q));
 - (r) Islamic Jihad Organisation (paragraph (r));
 - (s) Revolutionary Justice Organisation (paragraph (s));
 - (t) Special Operations Branch (paragraph (t));
 - (u) Unit 910 (paragraph (u)).

ATTACHMENT C

Statement of Reasons

Statement of Reasons

**Listing of Hizballah's External Security Organisation as a
terrorist organisation under the *Criminal Code Act 1995***

This Statement of Reasons is based on publicly available information about Hizballah's External Security Organisation (ESO). 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's External Security Organisation (ESO).

Known aliases

- External Security Organisation
- External Security Organization
- External Services Organisation
- External Services Organization
- Foreign Action Unit
- Hezbollah ESO
- Hezbollah International
- Hezbollah ESO
- Hezbollah International
- Hisbollah ESO
- Hisbollah International
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- Hizballah International
- Hizbollah ESO
- Hizbollah International
- Hizbullah ESO
- Hizbullah International
- Islamic Jihad Organisation
- Revolutionary Justice Organisation
- Special Operations Branch
- Unit 910.

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

The Australian Government first proscribed the ESO as a terrorist organisation under the *Criminal Code* on 5 June 2003. It was subsequently re-listed on:

- 5 June 2005;
- 25 May 2007;
- 16 May 2009;
- 12 May 2012;
- 2 May 2015; and
- 2 May 2018.

Details of the organisation

The secretive nature of the ESO makes it difficult to gather detailed information about the group's role and activities. The ESO is a discrete entity within Hizballah, 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 their clandestine activities targeting Israeli and US interests outside the Middle East.

The ESO exists within Hizballah's organisational structure. 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'. The Military Council directs Hizballah's Military Wing, which is responsible for all of Hizballah's armed activities. The Military Wing comprises all elements of Hizballah's militia and military-relevant functions, including the ESO which is a discrete entity. As such, the ESO's activities are distinct from Hizballah's formal military actions in the Middle East.

Hizballah is a multi-faceted organisation with political, social and military components, and holds seats in Lebanon's 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.

Leadership

The ESO's leader is Talal Hamiyah. Despite the highly compartmentalised manner in which the ESO operates, it exists within Hizballah's organisational structure.

Hamiyah was implicated in the 1992 and 1994 attacks in Argentina (see below). The US State Department is offering a reward of up to USD 7 million for information on Hamiyah that leads to his location, arrest, or conviction.

Membership

Due to its secretive nature, information about the membership of the ESO is not widely available.

Funding

Due to its secretive nature, little is known about the ESO's funding.

Links to other terrorist organisations

Due to its secretive nature, little is known about the ESO's links to other terrorist organisations, as distinct from Hizballah and its Military Wing. Hizballah's Military Wing has provided training, operational support and material to Palestinian violent extremist groups, including the Palestinian Islamic Jihad and Hamas's Izz al-Din al Qassam Brigades, both of which are proscribed as terrorist organisations in Australia under the *Criminal Code*, as well as Shia militias in Iraq and the Yemeni Houthis.

Terrorist activity

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

Generally, Hizballah does not publicly claim responsibility for terrorist attacks or acknowledge any ESO activities. The clandestine nature of the ESO makes gathering information about its activities difficult.

However, there has been no indication that the ESO's role, including surveillance, planning, coordination and the execution of terrorist attacks against Hizballah's enemies outside Lebanon, has changed in recent times. The ESO's contingency planning—such as intelligence-gathering and the stockpiling of explosive components—for terrorist activities around the world is likely ongoing.

- In **March 2021**, the US Federal Bureau of Investigation's Director, Christopher Wray told the Senate Judiciary Committee, *'Lebanese Hizballah has sent operatives to build terrorist infrastructures worldwide. The arrests of individuals in the United States allegedly linked to Lebanese Hizballah's main overseas terrorist arm, and their intelligence collection and procurement efforts, demonstrate Lebanese Hizballah's interest in long-term contingency planning activities here in the Homeland.'* The ESO is Hizballah's main overseas terrorist arm.
- In **September 2020**, then US Coordinator for Counterterrorism, Nathan Sales, told an audience in Europe *'Since 2012, Hizballah has established caches of ammonium nitrate throughout Europe by transporting first aid kits whose cold packs contain the substance. I can reveal that such caches have been moved through Belgium, France, Greece, Italy, Spain, and Switzerland. I can also reveal that significant ammonium nitrate caches have been discovered or destroyed in France, Greece, and Italy. We have reason to believe that this activity is still underway. As of 2018, ammonium nitrate caches were still suspected throughout Europe, possibly in Greece, Italy, and Spain.'* The methodology, including stockpiling of explosive components in preparation for hostile acts outside of Lebanon is consistent with ESO operational methods as Hizballah's main overseas terrorist arm.
- In **September 2019**, a naturalised American citizen was indicted in the US for undertaking terrorist activities on behalf of the ESO. In March 2019, US law enforcement discovered multiple surveillance photographs on the individual's electronic devices; the dates on which these photographs were taken are unknown. He was charged with providing material support to, and receipt of military-type training from, Hizballah between approximately 1996 and March 2019. His activities allegedly included surveillance of potential targets across the US, including the United Nations headquarters, the Statue of Liberty, Times Square, airports, tunnels and bridges in New York City, in support of Hizballah's attack planning efforts.

- In **July 2019**, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) designated a senior member of the ESO, Salman Raouf Salman, under Executive Order 13224, which targets terrorists and those providing support to terrorists or acts of terrorism. Salman was designated for acting for or on behalf of Hizballah. The US has identified him as the coordinator of the July 1994 attack in Buenos Aires, Argentina (see below for more detail), and as the ESO handler for Mohammed Hamdar, who was arrested by Peruvian counter-terrorism police in October 2014 for planning a terrorist operation in Peru. OFAC noted Salman's designation highlights Hizballah's ongoing operational presence in the Western Hemisphere and that Hizballah continues to pose a threat to the region by actively plotting attacks against civilian targets.
- In **May 2019**, an individual in the US was convicted of undertaking terrorist activities on behalf of the ESO. A court found the individual had, over a period of years until 2015, helped to procure weapons and gathered intelligence about potential targets in the US for future terrorist attacks. He searched for weapons suppliers, identified people who could be recruited or targeted for violence and conducted surveillance of potential targets across the US, including the JFK Airport and law enforcement facilities in New York City, including the federal building at 26 Federal Plaza in Manhattan.
- In **2017**, Bolivian authorities reportedly identified a Hizballah-affiliated warehouse, seizing enough explosive precursor material to produce a 2.5-ton bomb, as well as vehicle-borne improvised explosive device. Separately in **2017**, Guinean authorities seized a cache of more than 1,000 boxes of first aid cold packs from the same Chinese company that had produced the cold packs previously found in Cyprus and Thailand, and attributed to the ESO. Earlier in **2015**, authorities in the United Kingdom arrested a Hizballah operative, who was a dual British-Lebanese citizen, who had amassed 12,500 first aid cold packs containing over three metric tons of ammonium nitrate in a London auto garage. The methodology, including stockpiling of explosive components in preparation for hostile acts outside of Lebanon is consistent with ESO operational methods.
- In **August 2015**, the Kuwait Security Service arrested up to 26 members of the Al-Abdali terror cell for stockpiling munitions and armaments on behalf of Hizballah. In January 2016, 23 members of the cell were found guilty of intent to carry out hostile acts against Kuwait. The methodology, including stockpiling of explosive components in preparation for hostile acts outside of Lebanon is consistent with ESO operational methods.
- In **July 2015**, Cyprus jailed an ESO operative after he pleaded guilty to stockpiling explosive materials. In May 2015, Cypriot authorities uncovered an ammonium nitrate cache—partially in the form of first-aid cold packs—maintained under ESO direction. The cold packs in Cyprus were similar to those previously used in suspected ESO operations.
- In **April 2014**, two ESO operatives were arrested in Thailand for planning attacks against Israeli tourists. In October 2016, OFAC designated one of the men, Yosef Ayad, for acting on behalf of Hizballah by assisting in the planning, and supporting acts, of terrorism. OFAC noted that as an ESO operative, Ayad had procured precursor material used to produce explosives and collected information on tourist targets.

Generally, the ESO has not publicly admitted its responsibility for terrorist attacks outside of Lebanon. Significant attacks against targets outside of Lebanon reliably attributed to ESO include:

- On **18 July 2012**, the ESO carried out an attack on an Israeli tourist bus in Burgas, Bulgaria, which killed six people. In September 2020 a Bulgarian court convicted in absentia an Australian-Lebanese citizen for his role in the attack.
- On **18 July 1994**, a van carrying explosives was detonated outside the Argentinian-Israeli Mutual Association in Buenos Aires, Argentina, killing 85 people and injuring more than 300 others. In 1999, Argentine authorities issued an arrest warrant for then ESO leader Imad

Mughniyah for his alleged involvement. No group claimed responsibility for the attack and Hizballah has repeatedly denied accusations that it conducted the attack. However, Argentine authorities concluded that the ESO was responsible.

- On **17 March 1992**, a truck laden with explosives was used to destroy the Israeli Embassy in Buenos Aires, killing 29 people and injuring 242 others. Although Hizballah denied involvement, responsibility for the attack was claimed in the name of Islamic Jihad Organisation (an ESO alias). Argentine authorities eventually issued an arrest warrant for then ESO leader Imad Mughniyah for organising the attack.

Other considerations

Links to Australia

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

A Bulgarian court convicted in absentia an Australian-Lebanese citizen for his alleged role in a 2012 attack (see above).

Listings by likeminded countries or the United Nations

New Zealand and the European Union list Hizballah's Military Wing—under which the ESO sits—as a terrorist organisation. The United Kingdom previously listed the ESO as a terrorist organisation before extending the proscription to the Military Wing and subsequently, Hizballah in its entirety. Hizballah as a whole, including the ESO, has been listed as terrorist organisation by the governments of the United States and Canada.

Engagement in peace or mediation processes

The ESO is not known to have engaged in peace or mediation processes; however, 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 the ESO continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.