



Attorney-General

Reference: MS23-001102

Mr Peter Khalil MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

By email: pjcis@aph.gov.au

Dear Chair

I write to advise that Islamic State East Asia (ISEA) has been re-listed as a terrorist organisation under the *Criminal Code Act 1995* (Criminal Code). This re-listing will ensure that the terrorist organisation offences in Division 102 of the Criminal Code will continue to apply to conduct in relation to the organisation.

Under subsection 102.1(2) of the Criminal Code, before an organisation is listed as a terrorist organisation, as the Australian Federal Police (AFP) Minister, I must be satisfied 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.

Following careful consideration of advice provided to me by relevant agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that ISEA continues to meet the legislative thresholds for listing.

Terrorist organisation Regulations

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. ISEA was re-listed as a terrorist organisation with effect from 12 September 2023.

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 draft Regulations for their consideration, as required under the *Inter-governmental Agreement on Counter-Terrorism Laws*. No jurisdiction objected to the listing.

As required under subsection 102.1(2A) of the Criminal Code, I wrote to the Leader of the Opposition advising him of the proposed listing, and invited him to contact my office if he wished to receive a briefing.

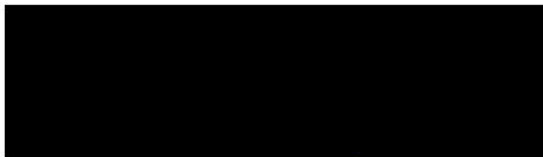
Review by the Parliamentary Joint Committee on Intelligence and Security

Section 102.1A of the Criminal Code provides that the Committee may review listings 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 Regulations and the Explanatory Statement. I also attach the Statement of Reasons that provide information on the ideology and activities of ISEA, and were the basis upon which I made my decision to list ISEA under Division 102 of the Criminal Code.

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

Yours sincerely



THE HON MARK DREYFUS KC MP

7/9/2023

Encl. *Criminal Code Regulations – ISEA*
Explanatory Statement – ISEA
Statement of Reasons – ISEA
Process of re-listing – ISEA

CC. *The Hon Clare O’Neil MP, Minister for Home Affairs*



Australian Government
Department of Home Affairs

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Statement of Reasons

Listing the Islamic State East Asia as a terrorist organisation under Division 102 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about the Islamic State East Asia. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Islamic State East Asia (ISEA)

Known aliases

Islamic State East Asia Province, Islamic State-Philippines, Islamic State in Iraq and Syria-Philippines, Dawlah Islamiyah-Maguindanao, Marawi Front, Ansharul Khilafah Philippines, Bangsamoro Islamic Freedom Fighters-Bungos, Bangsamoro Islamic Freedom Fighters-Abubakar, Jama'atu al-Muhajirin wal Ansar fil Filibin, Dawlah Islamiyah-Torayfie Group, Dawlah Islamiyah-Lanao, Islamic State Lanao, Islamic State Ranao, Maute Group, Dawlatul Islamiyah Waliyatul Masrik, Wilayah East Asia and Syuful Khalifah Fi Luzon.

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister 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, subsection 102.1(20) of the Criminal Code describes the doing of a terrorist act as including 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 listed ISEA on 12 September 2017. The group was re-listed under the Criminal Code on 12 September 2020.

Details of the organisation

ISEA is one of Islamic State's *wilayat-bayat* ("peripheric provinces") and follows an extreme interpretation of Islam, which is anti-Western, promotes sectarian violence, targets those it labels as infidels and crusaders, and those who do not agree with its interpretation of Islam. It opposes elected governments and seeks to remove them through violence.

A number of violent extremist factions first pledged allegiance to the Islamic State in December 2015 and merged under the Islamic State East Asia banner. These factions are comprised of members of extremist

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organisations including the Maute Group, Dawlah Islamiyah a faction of the Bangsamoro Islamic Freedom Fighters (BIFF) under Esmail Abubakar (AKA Commander Bungos), Ansharul Khilafah Philippines, Dawlatul Islamiyah-Maguindanao and Dawlatul Islamiyah Waliyatul Masrik and Jama'atu al-Muhajirin wal Ansar fil Filibin (AKA Dawlatul Islamiyah-Torayfe Group).

Elements of ISEA also share close familial and ethnic links to Abu Sayyaf Group (ASG), which was originally proscribed as a terrorist organisation by the Australian Government in 2004. Although ASG has historically been linked to al-Qa'ida, a faction of ASG has also pledged allegiance to the Islamic State, under the then ISEA emir, Isnilon Hapilon, endorsed by the Islamic State as the region's first emir in 2016. Despite ongoing close connections to ASG, ISEA has a separate leadership structure and is assessed to operate independently from ASG.

ISEA has suffered substantial losses at the hands of state security forces. The Marawi city siege – a five-month long battle between militants and Filipino government forces in 2017 – resulted in the deaths of hundreds of ISEA and ASG fighters, including a significant portion of ISEA's leadership structure and Hapilon himself, who died during an ambush towards the end of the siege.

Despite these losses, ISEA has continued to conduct frequent and violent attacks against Philippines government and local sectarian targets. This has included the introduction of suicide bombings into their ongoing operations, welcoming foreign fighters into their ranks, allowing women to play operational roles, and attempts to expand their presence into Manila to conduct attacks. ISEA has also reiterated its commitment to the Islamic State, renewing its pledge of allegiance in 2019 and again in 2022.

ISEA remains a deadly terrorist threat in the Philippines, with the Southeast Asia country a target destination for foreign terrorist fighters.

Leadership

ISEA's leadership has suffered significant losses at the hands of government forces of the Philippines. ISEA's most recently identified leader, **Abu Zacharia**, was reportedly killed during a government raid in Mindanao on June 15, 2023.

Abu Zacharia was previously confirmed as the emir of ISEA by Philippine authorities on March 2 2022, during an announcement that was corroborated by the United Nations. Zacharia, whose real name is Jer Mimbantas, and is also known as Faharudin Hadji Satar, was previously a member of the Maute Group, and took part in the 2017 Marawi siege.

Abu Zacharia succeeded **Owaida Marohombsar** (alias Abu Dar), who previously led the Maute Group. Reported to be a charismatic religious and effective recruiter, Marobombsar helped plan the Marawi city siege alongside the ISEA's first emir, **Isnilon Hapilon**. Following Hapilon's death near the end of the siege, Marobombsar succeeded Hapilon as emir, and fled the city to focus on recruitment. Marohombsar was later killed in Lanao de Norte in March 2019.

Membership

ISEA total membership is uncertain, however research has estimated that there are as many as 200 fighters in the southern Philippines. While most members are native to Western Mindanao and Sulu Archipelago, there are also members from other parts of the Philippines, Indonesia and Malaysia. The group has welcomed small numbers of extra-regional fighters into its ranks, including individuals from Morocco, Egypt and Spain. These individuals travelled to the Philippines for the express purpose of joining ISEA.

Research has demonstrated that a few dozen foreign fighters, mainly from Indonesia and Malaysia, are responsible for facilitating communication/media, financial, bomb-making, training, and attack planners.

ISEA also receives some media support from the Islamic State.

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Recruitment and funding

ISEA exploits poor economic and social conditions in the Philippines, particularly across Central Mindanao, to attract members. Local and regional recruits are drawn by ISEA's ability to provide economic prospects for its members and to avoid persecution by the group. Some individuals have also joined due to their ideological support for the organisation's objectives, including violently establishing an Islamic State under Shariah law in the Southern Philippines. Groups under ISEA are known to recruit children whose parents have been killed fighting against government forces, which is also a motivating factor for some young people to join. ISEA also uses non-coercive means to recruit children by convening public events aimed at raising awareness of the group and attracting children with toys, candy or ice cream.

ISEA receives some financial assistance from Islamic State-core, but the ISEA groups rely mostly on criminal activities such as extortion and drug trafficking to generate funding. Kidnap for ransom cannot be ruled out as a potential finance source. ISEA controls and maintains training camps in remote areas, acquires weapons through smuggling, and captured or black market purchases of Philippine military arms.

Links to other listed terrorist organisations

ISEA is affiliated with Islamic State. In September 2017, the Islamic State released a video calling for its fighters to travel to the Philippines instead of Iraq and Syria.

ISEA has conducted joint operations with ASG and a faction of BIFF under Kagi Karialan, though each group has well-structured leadership organisations.

Terrorist activity

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

ISEA can be reliably attributed to commission of the following terrorist activity since it was last proscribed.

- 17 April 2023 – ISEA and Bangsamoro Islamic Freedom Fighters (BIFF) detonated an improvised explosive device on a passenger bus in Isulan, Sultan Kudarat Province, Mindanao, Philippines, which injured seven people.
- 17 February 2023 – ISEA militants attempted to assassinate the Governor of Lanao del Sur in Wao, Lanao Del Sur, Philippines. ISEA militants shot the Governor of Lanao del Sur below the waist and killed four of his escorts.
- 5 February 2023 – ISEA published an official claim, reporting that “soldiers of the caliphate” had ambushed a patrol of the “crusader Philippine army” on the previous day on Mindanao Island.
- 4 February 2023 – ISEA militants ambushed an army patrol, which killed a marine sergeant and injured three others in Marogong, Lanao del Sur, Philippines. ISEA operatives also seized three rifles and a motorcycle after the attack.
- 26 October 2022 – ISEA attacked a government-owned telecommunication towers in the Philippines, which killed the suspected terrorist and caused power interruptions in parts of Mindanao.
- 8 May 2022 – ISEA detonated bombs outside a polling station in Datu Unsay municipality that injured nine people.
- 29 April 2022 – ISEA operatives ambushed a Philippine army patrol in Lanao del Sur that wounded 20 Filipino soldiers.
- In November 2021, ISEA bombed an electrical tower in Maguing, Lanao del Sur.
- In September 2021, ISEA ambushed and killed two Filipino soldiers on Basilan Island.

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- 24 August 2020, ISEA conducted twin suicide bombings in downtown Jolo, Sulu, killing 15 and injuring dozens.

On the basis of these examples, ISEA is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Other considerations

Links to Australia and threats to Australian interests

While there are no known links between ISEA and Australia, there have previously been links between Australians and terrorist groups in the Philippines.

ISEA has not made statements specifically threatening Australians or Australian interests since the early 2010s; however, the group has issued statements threatening westerners and western interests in general. It is probable Australians could be harmed in the group's future attacks, due to the considerable Australian business interests and the number of Australian travellers in the Philippines.

Australia maintains a successful partnership with the Philippines through strong counter-terrorism cooperation, and works closely with the Philippines in addressing existing and emerging challenges in the region.

Listings by likeminded countries or the United Nations

The United States listed ISEA under the name ISIS Philippines as a terrorist organisation under section 219 of the *Immigration and Nationality Act* on 28 February 2018.

New Zealand first listed ISEA as a terrorist organisation under the *Terrorism Suppression Act 2002* on 21 March 2018, and re-listed ISEA on 18 March 2021.

Canada listed ISEA as a terrorist organisation under section 83.05 of the Canadian *Criminal Code* on 3 February 2021.

The United Nations Security Council listed ISEA under the name Islamic State in Iraq and the Levant in South-East Asia (ISIL-SEA) as a global terrorist organisation on 27 January 2023.

The Philippines listed ISEA as a terrorist organisation under the *Anti-Terrorism Act 2020* in 2020.

Engagement in peace or mediation processes

ISEA is not engaged in any peace or mediation processes with the Filipino Government.

Conclusion

On the basis of the above information, the Australian Government assesses that Islamic State East Asia continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, Islamic State East Asia is known to have committed or threatened actions that:

- cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public
- are intended to have those effects
- are done with the intention of advancing the Islamic State's political, religious or ideological causes
- are done with the intention of intimidating the government of one or more foreign countries
- are done with the intention of intimidating the public or sections of the public.

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2023

The purpose of the *Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2023* (the Regulations) is to specify the organisation known as Islamic State East Asia for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code).

Islamic State East Asia is currently specified for this purpose by the *Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2020*, which are repealed by the Regulations.

Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Criminal Code to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Criminal Code.

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 **AFP Minister** 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. Subsection 100.1(1) provides that, for Part 5.3 of the Criminal Code, the **AFP Minister** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation Islamic State East Asia 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. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at [Attachment C](#)).

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 enable the offence provisions in Division 102 of 5.3 of the Criminal Code to continue to apply in relation to conduct relating to Islamic State East Asia. Regulations specifying Islamic State East Asia as a terrorist organisation have been in effect since 2017.

The Regulations repeal the *Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2020*, which would otherwise cease to have effect on 12 September 2023 by operation of subsection 102.1(3) of the Criminal Code. Making new regulations ensures that the organisation Islamic State East Asia continues to be specified for the purposes of paragraph (b) of the definition of **terrorist organisation**.

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

The Regulations commence on 12 September 2023. 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 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 this Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

The *Intergovernmental Agreement on Counter-Terrorism Laws* (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 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 Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of States and Territories did not object to the making of the Regulations within the timeframe nominated by the AFP Minister.

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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that Islamic State East Asia meets the legislative requirements for listing.

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 – Islamic State East Asia) Regulations 2023

This Disallowable 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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2023* (the Regulations) specify Islamic State East Asia for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code).

The object of the Regulations is to identify that Islamic State East Asia is 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 which might constitute an offence under Division 102 of the Criminal Code in relation to Islamic State East Asia.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 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. Division 102 offences criminalise being a member of, associating with, directing the activities of, recruiting for, funding, providing support to, and training with a terrorist organisation.

Terrorist organisations, including Islamic State East Asia, 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

Article 6 of the ICCPR provides that 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 Islamic State East Asia. 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 Islamic State East Asia.

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. Given the exemptions, the Regulations are not considered to limit the right to freedom of religion.

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 Islamic State East Asia, 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 to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) of 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 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.

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 Honourable Mark Dreyfus KC MP

Attorney-General

ATTACHMENT B

Details of the *Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2023*

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2023*.

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) provides that each provision in the proposed Regulations, as specified in column 1 of the table, would commence 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 on 12 September 2023.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of this instrument as originally made, and will not be amended to deal with any subsequent amendments to the proposed Regulations.
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 this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule has effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020*.

Section 5 – Terrorist organisation—Islamic State East Asia

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 Islamic State East Asia is specified.
10. The effect of specifying Islamic State East Asia as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 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 Islamic State East Asia.

11. Subsection 5(2) provides a list of 17 names that Islamic State East Asia is also known as:
- a) Ansharul Khilafah Philippines;
 - b) Bangsamoro Islamic Freedom Fighters-Abubakar;
 - c) Bangsamoro Islamic Freedom-Fighters-Bungos;
 - d) Dawlah Islamiyah-Lanao;
 - e) Dawlah Islamiyah-Maguindanao;
 - f) Dawlah Islamiyah-Torayfie Group;
 - g) Dawlatul Islamiyah Waliyatul Masrik;
 - h) Islamic State East Asia Province;
 - i) Islamic State in Iraq and Syria-Philippines;
 - j) Islamic State Lanao;
 - k) Islamic State-Philippines;
 - l) Islamic State Ranao;
 - m) Jama'atu al-Muhajirin wal Ansar fil Filibin;
 - n) Marawi Front;
 - o) Maute Group;
 - p) Syuful Khalifah Fi Luzon;
 - q) Wilayah East Asia.

Schedule 1— Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020* (the Current Regulations).
13. The Current Regulations specify Islamic State East Asia as a terrorist organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the Criminal Code, commencing on 12 September 2020. Pursuant to subsection 102.1(3) of the Criminal Code, 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. Clause 1 of Schedule 1 ensures there is no duplication where the proposed Regulations are made before the Current Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons – Islamic State East Asia

Listing the Islamic State East Asia as a terrorist organisation under Division 102 of the Criminal Code Act 1995
<p>This Statement of Reasons is based on publicly available information about the Islamic State East Asia. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information where available.</p>
<p>Known aliases</p> <p>Islamic State East Asia Province, Islamic State-Philippines, Islamic State in Iraq and Syria-Philippines, Dawlah Islamiyah-Maguindanao, Marawi Front, Ansharul Khilafah Philippines, Bangsamoro Islamic Freedom Fighters-Bungos, Bangsamoro Islamic Freedom Fighters-Abubakar, Jama’atu al-Muhajirin wal Ansar fil Filibin, Dawlah Islamiyah-Torayfie Group, Dawlah Islamiyah-Lanao, Islamic State Lanao, Islamic State Ranao, Maute Group, Dawlatul Islamiyah Waliyatul Masrik, Wilayah East Asia and Syuful Khalifah Fi Luzon.</p>
<p>Legislative basis for listing a terrorist organisation</p> <p>Division 102 of the <i>Criminal Code Act 1995</i> (Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:</p> <ul style="list-style-type: none">a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; orb) advocates the doing of a terrorist act. <p>For the purposes of listing a terrorist organisation under the Criminal Code, subsection 102.1(20) of the Criminal Code describes the doing of a terrorist act as including 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.</p>
<p>Background to this listing</p> <p>The Australian Government first listed ISEA on 12 September 2017. The group was re-listed under the Criminal Code on 12 September 2020.</p>
<p>Details of the organisation</p> <p>ISEA is one of Islamic State’s wilayat-bayat (“peripheric provinces”) and follows an extreme interpretation of Islam, which is anti-Western, promotes sectarian violence, targets those it labels as infidels and crusaders, and those who do not agree with its interpretation of Islam. It opposes elected governments and seeks to remove them through violence.</p> <p>A number of violent extremist factions first pledged allegiance to the Islamic State in December 2015 and merged under the Islamic State East Asia banner. These factions are comprised of members of extremist organisations including the Maute Group, Dawlah Islamiyah a faction of the Bangsamoro Islamic Freedom Fighters (BIFF) under Esmail</p>

Abubakar (AKA Commander Bungos), Ansharul Khilafah Philippines, Dawlatul Islamiyah-Maguindanao and Dawlatul Islamiyah Waliyatul Masrik and Jama'atu al-Muhajirin wal Ansar fil Filibin (AKA Dawlatul Islamiyah-Torayfe Group).

Elements of ISEA also share close familial and ethnic links to Abu Sayyaf Group (ASG), which was originally proscribed as a terrorist organisation by the Australian Government in 2004. Although ASG has historically been linked to al-Qa'ida, a faction of ASG has also pledged allegiance to the Islamic State, under the then ISEA emir, Isnilon Hapilon, endorsed by the Islamic State as the region's first emir in 2016. Despite ongoing close connections to ASG, ISEA has a separate leadership structure and is assessed to operate independently from ASG.

ISEA has suffered substantial losses at the hands of state security forces. The Marawi city siege – a five-month long battle between militants and Filipino government forces in 2017 – resulted in the deaths of hundreds of ISEA and ASG fighters, including a significant portion of ISEA's leadership structure and Hapilon himself, who died during an ambush towards the end of the siege.

Despite these losses, ISEA has continued to conduct frequent and violent attacks against Philippines government and local sectarian targets. This has included the introduction of suicide bombings into their ongoing operations, welcoming foreign fighters into their ranks, allowing women to play operational roles, and attempts to expand their presence into Manila to conduct attacks. ISEA has also reiterated its commitment to the Islamic State, renewing its pledge of allegiance in 2019 and again in 2022.

ISEA remains a deadly terrorist threat in the Philippines, with the Southeast Asia country a target destination for foreign terrorist fighters.

Leadership

ISEA's leadership has suffered significant losses at the hands of government forces of the Philippines. ISEA's most recently identified leader, Abu Zacharia, was reportedly killed during a government raid in Mindanao on June 15, 2023.

Abu Zacharia was previously confirmed as the emir of ISEA by Philippine authorities on March 2 2022, during an announcement that was corroborated by the United Nations. Zacharia, whose real name is Jer Mimbantas, and is also known as Fahaudin Hadji Satar, was previously a member of the Maute Group, and took part in the 2017 Marawi siege.

Abu Zacharia succeeded Owaida Marohombsar (alias Abu Dar), who previously led the Maute Group. Reported to be a charismatic religious and effective recruiter, Marobombsar helped plan the Marawi city siege alongside the ISEA's first emir, Isnilon Hapilon. Following Hapilon's death near the end of the siege, Marobombsar succeeded Hapilon as emir, and fled the city to focus on recruitment. Marohombsar was later killed in Lanao de Norte in March 2019.

Membership

ISEA total membership is uncertain, however research has estimated that there are as many as 200 fighters in the southern Philippines. While most members are native to Western Mindanao and Sulu Archipelago, there are also members from other parts of the Philippines,

Indonesia and Malaysia. The group has welcomed small numbers of extra-regional fighters into its ranks, including individuals from Morocco, Egypt and Spain. These individuals travelled to the Philippines for the express purpose of joining ISEA.

Research has demonstrated that a few dozen foreign fighters, mainly from Indonesia and Malaysia, are responsible for facilitating communication/media, financial, bomb-making, training, and attack planners.

ISEA also receives some media support from the Islamic State.

Recruitment and funding

ISEA exploits poor economic and social conditions in the Philippines, particularly across Central Mindanao, to attract members. Local and regional recruits are drawn by ISEA's ability to provide economic prospects for its members and to avoid persecution by the group. Some individuals have also joined due to their ideological support for the organisation's objectives, including violently establishing an Islamic State under Shariah law in the Southern Philippines. Groups under ISEA are known to recruit children whose parents have been killed fighting against government forces, which is also a motivating factor for some young people to join. ISEA also uses non-coercive means to recruit children by convening public events aimed at raising awareness of the group and attracting children with toys, candy or ice cream.

ISEA receives some financial assistance from Islamic State-core, but the ISEA groups rely mostly on criminal activities such as extortion and drug trafficking to generate funding. Kidnap for ransom cannot be ruled out as a potential finance source. ISEA controls and maintains training camps in remote areas, acquires weapons through smuggling, and captured or black market purchases of Philippine military arms.

Links to other groups

ISEA is affiliated with Islamic State. In September 2017, the Islamic State released a video calling for its fighters to travel to the Philippines instead of Iraq and Syria.

ISEA has conducted joint operations with ASG and a faction of BIFF under Kagi Karialan, though each group has well-structured leadership organisations.

Terrorist activity

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

ISEA can be reliably attributed to commission of the following terrorist activity since it was last proscribed.

- 17 April 2023 – ISEA and Bangsamoro Islamic Freedom Fighters (BIFF) detonated an improvised explosive device on a passenger bus in Isulan, Sultan Kudarat Province, Mindanao, Philippines, which injured seven people.
- 17 February 2023 – ISEA militants attempted to assassinate the Governor of Lanao del Sur in Wao, Lanao Del Sur, Philippines. ISEA militants shot the Governor of Lanao del Sur below the waist and killed four of his escorts.

- 5 February 2023 – ISEA published an official claim, reporting that “soldiers of the caliphate” had ambushed a patrol of the “crusader Philippine army” on the previous day on Mindanao Island.
- 4 February 2023 – ISEA militants ambushed an army patrol, which killed a marine sergeant and injured three others in Marogong, Lanao del Sur, Philippines. ISEA operatives also seized three rifles and a motorcycle after the attack.
- 26 October 2022 – ISEA attacked a government-owned telecommunication towers in the Philippines, which killed the suspected terrorist and caused power interruptions in parts of Mindanao.
- 8 May 2022 – ISEA detonated bombs outside a polling station in Datu Unsay municipality that injured nine people.
- 29 April 2022 – ISEA operatives ambushed a Philippine army patrol in Lanao del Sur that wounded 20 Filipino soldiers.
- In November 2021, ISEA bombed an electrical tower in Maguing, Lanao del Sur.
- In September 2021, ISEA ambushed and killed two Filipino soldiers on Basilan Island.
- 24 August 2020, ISEA conducted twin suicide bombings in downtown Jolo, Sulu, killing 15 and injuring dozens.

On the basis of these examples, ISEA is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Other considerations

Links to Australia and threats to Australian interests

While there are no known links between ISEA and Australia, there have previously been links between Australians and terrorist groups in the Philippines.

ISEA has not made statements specifically threatening Australians or Australian interests since the early 2010s; however, the group has issued statements threatening westerners and western interests in general. It is probable Australians could be harmed in the group's future attacks, due to the considerable Australian business interests and the number of Australian travellers in the Philippines.

Australia maintains a successful partnership with the Philippines through strong counter-terrorism cooperation, and works closely with the Philippines in addressing existing and emerging challenges in the region.

Listings by likeminded countries or the United Nations

The United States listed ISEA under the name ISIS Philippines as a terrorist organisation under section 219 of the Immigration and Nationality Act on 28 February 2018.

New Zealand first listed ISEA as a terrorist organisation under the Terrorism Suppression Act 2002 on 21 March 2018, and re-listed ISEA on 18 March 2021.

Canada listed ISEA as a terrorist organisation under section 83.05 of the Canadian Criminal Code on 3 February 2021.

The United Nations Security Council listed ISEA under the name Islamic State in Iraq and the Levant in South-East Asia (ISIL-SEA) as a global terrorist organisation on 27 January 2023.

The Philippines listed ISEA as a terrorist organisation under the Anti-Terrorism Act 2020 in 2020.

Engagement in peace or mediation processes

ISEA is not engaged in any peace or mediation processes with the Filipino Government.

Conclusion

On the basis of the above information, the Australian Government assesses that Islamic State East Asia continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, Islamic State East Asia is known to have committed or threatened actions that:

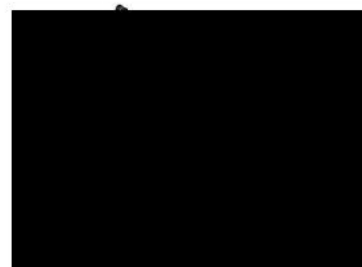
- cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public
- are intended to have those effects
- are done with the intention of advancing the Islamic State's political, religious or ideological causes
- are done with the intention of intimidating the government of one or more foreign countries
- are done with the intention of intimidating the public or sections of the public.



Criminal Code (Terrorist Organisation— Islamic State East Asia) Regulations 2023

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 *31 August* 2023



David Hurley
Governor-General

By His Excellency's Command



Mark Dreyfus
Attorney-General

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2023*.

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	12 September 2023.	12 September 2023

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—Islamic State East Asia

- (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 Islamic State East Asia is specified.
- (2) Islamic State East Asia is also known by the following names:
- (a) Ansharul Khilafah Philippines;
 - (b) Bangsamoro Islamic Freedom Fighters-Abubakar;
 - (c) Bangsamoro Islamic Freedom Fighters-Bungos;
 - (d) Dawlah Islamiyah-Lanao;
 - (e) Dawlah Islamiyah-Maguindanao;
 - (f) Dawlah Islamiyah-Torayfie Group;
 - (g) Dawlatul Islamiyah Waliyatul Masrik;
 - (h) Islamic State East Asia Province;

Section 5

- (i) Islamic State in Iraq and Syria-Philippines;
- (j) Islamic State Lanao;
- (k) Islamic State-Philippines;
- (l) Islamic State Ranao;
- (m) Jama'atu al-Muhajirin wal Ansar fil Filibin;
- (n) Marawi Front;
- (o) Maute Group;
- (p) Syuful Khalifah Fi Luzon;
- (q) Wilayah East Asia.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY MEMORANDUM

Minute No. _____ of 2023 – Attorney-General

Subject - *Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation – Islamic State East Asia)
Regulations 2023*

The proposed Regulations would continue to specify Islamic State East Asia as a terrorist organisation for the purposes of the Criminal Code and therefore, offences in connection with this organisation under the Criminal Code would continue to apply.

Subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code) defines terrorist organisation to mean:

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph (a) of the definition); or
- an organisation that is specified by the regulations (paragraph (b) of the definition).

Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Criminal Code to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Criminal Code.

The proposed Regulations would specify the organisation Islamic State East Asia for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the Criminal Code.

Islamic State East Asia is currently specified as a terrorist organisation by regulations made under the Criminal Code in September 2020. By operation of subsection 102.1(3) of the Criminal Code, the current regulations will cease to have effect on the third anniversary of the day they took effect, which is on 12 September 2023.

The proposed Regulations would ensure Islamic State East Asia continues to be specified as a terrorist organisation under the Criminal Code after the current regulations cease to have effect. The proposed Regulations would also repeal the current Regulations, to provide clarity and ensure there is no duplication.

Specifying Islamic State East Asia in the proposed Regulations would have the effect that the offences relating to terrorist organisations set out in Division 102 of Part 5.3 of the Criminal Code continue to apply in respect of Islamic State East Asia. Division 102 includes offences in relation to directing the activities of, being a member of, or participating in recruitment or training activities for, a terrorist organisation.

Division 102 also includes offences in relation to funding or receiving funding from a terrorist organisation, as well as associating with or providing support to a terrorist organisation. These offences apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or result) occurs in Australia.



Subsection 102.1(2) 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 administering the *Australian Federal Police Act 1979* (the AFP Minister), currently the Attorney-General, 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.

Subsection 102.1(2A) of the Criminal Code also provides that, before the Governor-General makes the proposed Regulations, the AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations. In his capacity as the AFP Minister, the Attorney-General has written to the Leader of the Opposition, enclosing the information upon which he was satisfied that Islamic State East Asia meets the legislative requirements for listing.

In coming to the position that Islamic State East Asia meets the legislative requirements for listing, the Attorney-General has taken into consideration information prepared by relevant agencies. The Attorney-General also wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories seeking feedback on the proposed Regulations. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Attorney-General.

The proposed Regulations would commence on 12 September 2023. Subsection 102.1(3) of the Criminal Code provides that the proposed Regulations would cease to have effect on the third anniversary of the day on which they take effect.

The Minute recommends the Regulations be made in the form proposed.

Under subsection 102.1(2) of the Criminal Code, I am satisfied on reasonable grounds that Islamic State East Asia 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.

In accordance with subsection 102.1(2A) of the Criminal Code, I have made arrangements for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations.

.....
Attorney-General

Authority: Section 5 of the *Criminal Code Act 1995*

ATTACHMENT A

Details of the Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2023

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2023*.

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) provides that each provision in the proposed Regulations, as specified in column 1 of the table, would commence 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 on 12 September 2023.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of this instrument as originally made, and will not be amended to deal with any subsequent amendments to the proposed Regulations.
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 this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule has effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020*.

Section 5 – Terrorist organisation—Islamic State East Asia

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 Islamic State East Asia is specified.

10. The effect of specifying Islamic State East Asia as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 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 Islamic State East Asia.
11. Subsection 5(2) provides a list of 17 names that Islamic State East Asia is also known as:
- a) Ansharul Khilafah Philippines;
 - b) Bangsamoro Islamic Freedom Fighters-Abubakar;
 - c) Bangsamoro Islamic Freedom-Fighters-Bungos;
 - d) Dawlah Islamiyah-Lanao;
 - e) Dawlah Islamiyah-Maguindanao;
 - f) Dawlah Islamiyah-Torayfie Group;
 - g) Dawlatul Islamiyah Waliyatul Masrik;
 - h) Islamic State East Asia Province;
 - i) Islamic State in Iraq and Syria-Philippines;
 - j) Islamic State Lanao;
 - k) Islamic State-Philippines;
 - l) Islamic State Ranao;
 - m) Jama'atu al-Muhajirin wal Ansar fil Filibin;
 - n) Marawi Front;
 - o) Maute Group;
 - p) Syuful Khalifah Fi Luzon;
 - q) Wilayah East Asia.

Schedule 1— Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020* (the Current Regulations).
13. The Current Regulations specify Islamic State East Asia as a terrorist organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code, commencing on 12 September 2020. Pursuant to subsection 102.1(3) of the Criminal Code, 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. Clause 1 of Schedule 1 ensures there is no duplication where the proposed Regulations are made before the Current Regulations cease to have effect.

Process for the 2023 re-listing of Islamic State East Asia (ISEA) as a terrorist organisation under the *Criminal Code Act 1995*

1. 15 June 2023: The Department of Home Affairs (Home Affairs) formally raised the re-listing of ISEA with relevant agencies and sought whole-of-government input to inform the Statement of Reasons.
2. 26 June 2023: Home Affairs provided the Australian Government Solicitor (AGS) with the consolidated Statement of Reasons, seeking advice as to whether, based on the information contained within the Statement of Reasons provided, the Attorney-General could be satisfied that ISEA met the legislative thresholds to be listed as a terrorist organisation.
3. 6 July 2023: AGS provided its finalised advice to Home Affairs.
4. 7 July 2023: Home Affairs provided a submission to the Minister for Home Affairs seeking her consideration of the Statement of Reasons.
5. 12 July 2023: Home Affairs provided copies of the Statements of Reasons and accompanying AGS advice to the Attorney-General's Department.
6. 13 July 2023: The Attorney-General's Department provided a submission to the Attorney-General recommending that he agree to the re-listing.
7. 13 July 2023: The Attorney-General agreed to the re-listing of ISEA having been satisfied that ISEA met the statutory criteria and approved the Regulations, and:
 - A. The Attorney-General wrote to the Prime Minister advising of his decision to re-list ISEA and notified the Prime Minister that he has written to the First Ministers of each state and territory regarding the proposed re-listing.
 - B. The Attorney-General wrote to the Leader of the Opposition advising of his decision to re-list ISEA, attaching the Statements of Reasons and offering a briefing in relation to ISEA.
 - C. The Attorney-General wrote to First Ministers on behalf of the Prime Minister, advising of his decision to re-list ISEA, and attached copies of the draft Regulations and Statement of Reasons. The letters requested that a response be provided by 18 August 2023, advising whether the First Minister objected to the re-listing, and reasons for any objection.
8. 21 July 2023: The Minister for Home Affairs wrote to the Attorney-General endorsing the proposed re-listing of ISEA as a terrorist organisation.
9. 8 August 2023: The Attorney-General's Department provided a submission to the Attorney-General, requesting his approval and signature of the Regulations and supporting documents for Federal Executive Council, in the case that a majority of jurisdictions did not oppose the re-listing by 18 August 2023.
10. The following responses were received from the First Ministers of the following states and territories:
 - A. New South Wales – received 20 August
 - B. Victoria – received 14 August
 - C. Western Australia – received 11 August
 - D. Australian Capital Territory – received 9 August
 - E. Queensland – received 8 August
 - F. South Australia – received 8 August
 - G. Northern Territory – received 26 July

No objections were made to the re-listing.

11. 21 August 2023: The Attorney-General approved the documents for Federal Executive Council.
12. 31 August 2023: The Governor-General made the Regulations.
13. 31 August 2023: The *Criminal Code (Terrorist Organisation – Islamic State East Asia) Regulations 2023* were lodged on the Federal Register of Legislation [reference: F2023L01158].