



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

Ref No: MS22-000108

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

Dear Chair

I write to advise that, as the Minister responsible for the purpose of regulations made under Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), I am satisfied that Abu Sayyaf Group, al-Qa'ida, al-Qa'ida in the Lands of the Islamic Maghreb, Hay'at Tahrir al-Sham, Hurras al-Din, Jemaah Islamiyah and National Socialist Order meet the legal threshold for listing as terrorist organisations under Division 102. These listings will ensure that all offence provisions under Division 102 of the Criminal Code apply to conduct in relation to these organisations.

Under subsection 102.1(2) of the Criminal Code, before listing an organisation 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 a terrorist act.

Following careful consideration of information provided by the Department of Home Affairs in consultation with national security agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that these organisations each meet the legal threshold to be listed as terrorist organisations.

In accordance with a previous recommendation of the Parliamentary Joint Committee on Intelligence and Security, I have given consideration to delaying the commencement of the regulations listing National Socialist Order until after the end of the applicable disallowance period. However, I have decided that the close nexus between National Socialist Order and listed terrorist organisation The Base necessitates that the regulations commence immediately.

The current regulations listing Jabhat Fatah al-Sham will cease on 9 April 2022. On advice from security agencies that Jabhat Fatah al-Sham is defunct, I have decided not to re-list this organisation. As Hay'at Tahrir al-Sham and Hurras al-Din are successors to Jabhat Fatah al-Sham and partly comprise former members of that organisation, the regulations listing these organisations will commence on 9 April 2022 in order to maintain coverage for the relevant offences in Division 102.

The current regulations listing Abu Sayyaf Group, al-Qa'ida, al-Qa'ida in the Lands of the Islamic Maghreb and Jemaah Islamiyah will cease on 9 and 10 April 2022. Accordingly, the regulations re-listing these organisations will commence 9 April 2022.

Before the regulations were made, I wrote on behalf of the Commonwealth to all state and territory First Ministers advising them of the proposed listings, and provided them with copies of the statements of reasons with respect to these organisations. The states and territories did not object to the listings.

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 listings. I provided the Leader of the Opposition with a copy of the statements of reasons with respect to these organisations, 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 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 enclose a copy of the Criminal Code regulations and explanatory statements. Attached to the explanatory statements are the statements of reasons prepared by the Department with respect to these organisations. The statements of reasons provide information on the history, ideology, leadership and activities of each organisation, and are the bases upon which I came to the view that each 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 these organisations. I understand that this document may be considered as a separate submission should the Committee decide to conduct a review into the listings, and I consent to its publication for that purpose.

Yours sincerely



KAREN ANDREWS

22/2/2022



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Process for listing seven terrorist organisations under the Criminal Code

Abu Sayyaf Group, al-Qa'ida, al-Qa'ida in the Lands of the Islamic Maghreb, Hay'at Tahrir al-Sham, Hurras al-Din, Jemaah Islamiyah and National Socialist Order – February 2022

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 legal threshold for listing or re-listing as a terrorist organisation under the *Criminal Code Act 1995* (the *Criminal Code*).

This process involves coordinating whole-of-government input to a written statement of reasons that assess the organisation and seeking the advice of the Australian Government Solicitor (AGS) in relation to this assessment. This information and advice is submitted to the Minister for Home Affairs to assist in their decision on whether an organisation meets the legal threshold for listing or re-listing as a terrorist organisation under the *Criminal Code*.

The following steps were undertaken for the purpose of listing Hay'at Tahrir al-Sham (HTS), Hurras al-Din (HaD), National Socialist Order (NSO), and re-listing Abu Sayyaf Group (ASG), al-Qa'ida (AQ), al-Qa'ida in the Lands of the Islamic Maghreb (AQIM), and Jemaah Islamiyah (JI) as terrorist organisations:

1. From 11 October 2021, the Department coordinated input to a statement of reasons outlining the case for listing NSO.
2. From 1 November 2021, the Department coordinated input to statements of reasons outlining the cases for listing HTS and HaD, and re-listing ASG, AQ, AQIM and JI.
3. On 30 November 2021, AGS provided advice to the Department in relation to the legal basis for listing NSO.
4. On 7 January 2022, AGS provided advice to the Department in relation to the legal basis for listing HaD and re-listing AQ, AQIM and ASG.
5. On 14 January 2022, AGS provided legal advice to the Department in relation to the legal basis for listing HTS and re-listing JI.
6. On 20 January 2022, the Department provided a submission to the Minister for Home Affairs seeking consideration of the statements of reasons and agreement that she was satisfied that ASG, AQ, AQIM, HTS, HaD, JI and NSO met the legislative threshold to be listed as terrorist organisations.
7. On 1 February 2022, having considered the information provided in the Department's submission, the Minister for Home Affairs was satisfied that all seven organisations met the legislative threshold to be listed, and approved the regulations and Federal Executive Council documents for each organisation.

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8. On 1 February 2022, the Minister for Home Affairs wrote to state and territory First Ministers on behalf of the Prime Minister, advising of her satisfaction that all seven organisations meet the threshold for listing as terrorist organisations.

The letters attached copies of the statement of reasons for each organisation and sought their consideration of the proposed listings. The letters requested a response by 14 February 2022, advising whether the First Minister approved of, or objected to, the proposed listings.

9. On 1 February 2022, the Minister wrote to the Leader of the Opposition, advising of her satisfaction that the seven organisations meet the legislative threshold for listing, attaching the statements of reasons and offering a briefing in relation to the organisations.
10. The Department received the following responses to the Minister for Home Affairs's correspondence to First Ministers:
 - Tasmania – received 11 February 2022
 - Western Australia – received 14 February 2022
 - Northern Territory – received 15 February 2022
 - South Australia – received 16 February 2022
 - New South Wales – received 17 February 2022
 - Victoria – received 17 February 2022

At the time of writing, no response had been received from the First Ministers of the Australian Capital Territory and Queensland.

No objections were made to the proposed listing of the seven organisations.

11. On 17 February 2022, the Governor-General made regulations giving effect to the listing of the seven organisations.
12. On 17 February 2022, the regulations listing the seven organisations were registered on the Federal Register of Legislation.
13. On 18 February 2022, the regulations listing NSO came into effect.
14. The regulations listing ASG, AQ, AQIM and JI will come into effect on 9 April 2022, in line with the sunset of the current regulations listing these organisations.
15. The regulations listing HTS and HaD will come into effect on 9 April 2022, in line with the sunset of the regulations listing their defunct predecessor Jabhat Fatah al-Sham.



Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022*.

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	9 April 2022.	9 April 2022

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—Abu Sayyaf Group

- (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 Abu Sayyaf Group is specified.
- (2) Abu Sayyaf Group is also known by the following names:
- (a) Abou Sayaf Armed Band;
 - (b) Abou Sayyef Group;
 - (c) Al-Harakat al-Islamiya;
 - (d) Al-Harakatul Islamia;
 - (e) Mujahideen Commando Freedom Fighters.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022* (the Regulations) is to specify the organisation known as Abu Sayyaf Group for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation Abu Sayyaf Group 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 provided by the Department of Home Affairs (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

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.

- 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 the Abu Sayyaf Group.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019*, which would otherwise cease to have effect on 10 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures the organisation Abu Sayyaf Group 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 9 April 2022. 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* (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.

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 the Abu Sayyaf Group meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

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—Abu Sayyaf Group) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022* (the Regulations) specify the Abu Sayyaf Group 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 specify Abu Sayyaf Group 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 the Abu Sayyaf Group.

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. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with the Abu Sayyaf Group as a listed terrorist organisation.

Terrorist organisations, including the Abu Sayyaf Group, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 the Abu Sayyaf Group. 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 the Abu Sayyaf Group.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 the Abu Sayyaf Group, 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Abu Sayyaf Group) Regulations 2022*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019*.

Section 5 – Terrorist organisation – Abu Sayyaf Group

9. Subsection 5(1) provides 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 Abu Sayyaf Group is specified.

10. The effect of specifying the Abu Sayyaf Group as a terrorist organisation is 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 the Abu Sayyaf Group.
11. Subsection 5(2) provides a list of names by which the organisation Abu Sayyaf Group is also known, at paragraphs 5(2)(a) to (e):
 - Abou Sayaf Armed Band;
 - Abou Sayyef Group;
 - Al-Harakat al-Islamiya;
 - Al-Harakatul Islamia;
 - Mujahideen Commando Freedom Fighters.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Abu Sayyaf Group for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 10 April 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Abu Sayyaf Group as a terrorist organisation under the *Criminal Code Act 1995*

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

Name of the organisation

Abu Sayyaf Group (ASG)

Known aliases

- Abou Sayaf Armed Band
- Abou Sayyef Group
- Al-Harakat al-Islamiya
- Al-Harakatul Islamia
- Mujahideen Commando Freedom Fighters

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 AFP Minister (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 listed Abu Sayyaf Group as a terrorist organisation under the Criminal Code on 14 November 2002. ASG was re-listed on 5 November 2004, 3 November 2006, 1 November 2008, 29 October 2010, 12 July 2013, 28 June 2016, and 10 April 2019.

Details of the organisation

Abu Sayyaf Group (ASG) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group, which was founded in 1991 after splintering from the Moro National Liberation Front (MNLF). ASG primarily operates in the southern Philippines, but maintains a presence in eastern Malaysia. ASG's objective is to establish an Islamic state in the southern Philippines, and the group has historically aligned itself with listed terrorist organisations al-Qa'ida and Jemaah Islamiyah.

Leadership

ASG's leadership has suffered significant losses over the past 12 months, leaving the group without a strong hierarchy. Rabdullah Sahiron remains the most senior active ASG leader.

Membership

Despite the recent deaths of senior leaders, as well as surrenders and arrests of lower-level or inactive members, ASG continues to recruit young Muslims, students and family of existing members. ASG has used online platforms and local issues, such as poor education and underdevelopment, to garner support.

ASG has approximately 100 active members, not including their extensive local support network. Its members and supporters are located throughout the Sulu archipelago, the Zamboanga peninsula, and Sabah, Malaysia – and comprise both local Filipinos and foreign nationals. Sub-groups of ASG include ASG Urban Terrorist Group, the Lucky Nine, and the Ajang-Ajang group.

Links to other groups

Although ASG has historically aligned itself with al-Qa'ida and Jemaah Islamiyah, some ASG sub-groups have pledged allegiance to Islamic State and aligned themselves with its Philippines-based affiliate, Islamic State East Asia (ISEA). ISEA is comprised of members who were previously aligned with other RMVE groups, including Dawlah Islamiyah, Maute Group, Bangsamoro Islamic Freedom Fighters, Ansharul Khilafah Philippines, and Jama'atul al-Muhajirin wal Ansar fil Filibin. Although elements of ISEA share close familial and ethnic links to ASG and the groups conduct joint operations, they maintain separate leadership structures. ISEA is listed as a terrorist organisation by the Australian Government.

Terrorist activity

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

ASG is currently focused on re-building its membership and influence in local communities, while continuing a low-level insurgency against Philippine security forces. ASG also continues to conduct kidnap-for-ransom activities – which, while conducted primarily for financial purposes, are used to fund the group's insurgent operations. Recent examples of ASG engaging in, preparing, planning or assisting in the doing of terrorist acts include:

- On 23 February 2021, Philippine law enforcement arrested nine women in Sulu Province for allegedly assembling explosives to be used in suicide bombings. Many of the women were relatives of senior ASG members.
- On 29 August 2020, ASG members engaged in a firefight with Philippine Army forces in Patikul, Sulu Province. One soldier was killed and seven were injured.
- On 24 August 2020, ASG carried out twin bombings at Paradise Food Plaza in Jolo, Sulu Province, killing 14 people and injuring 75. The attack was directed by ISEA but carried out by ASG members.
- On 13 August 2019, a Philippine Army soldier was injured in a bombing in Patikul, Sulu Province. Philippine law enforcement has attributed the attack to ASG.
- On 25 May 2019, pro-Islamic State insurgents, including approximately 30 ASG members, engaged in a firefight with Philippine Army forces in Jolo, Sulu Province. Two civilians and five soldiers were killed. Islamic State claimed responsibility for the attack.
- On 27 January 2019, 20 people were killed and 102 injured in twin suicide bombings at the Cathedral of our Lady of Mount Carmel in Jolo, Sulu Province. Although ISEA claimed responsibility for the attack, the Philippine military has attributed the bombings to the Ajang-Ajang faction of ASG. It is likely that ASG and ISEA collaborated in carrying out the attack.

Other considerations

Links to Australia and threats to Australian interests

Australians are not directly involved with ASG.

Although Australians are not the primary focus of ASG attacks in the southern Philippines, Australians could be opportunistically targeted in kidnappings and could be harmed in terrorist attacks carried out by ASG. Westerners – including Australians – are among a broad range of kidnap targets, primarily due to their ransom value but also for their value in Islamic State-inspired propaganda.

- ASG kidnapped an Australian national, Warren Rodwell, from his residence in western Mindanao in December 2011. Mr Rodwell was released in March 2013.

Listings by likeminded countries or the United Nations

The United Nations Security Council ISIL (Da'esh) and al-Qa'ida **Sanctions** Committee designates ASG for targeted financial sanctions. ASG is proscribed as a terrorist organisation by the United States, United Kingdom, Canada and New Zealand.

Engagement in peace or mediation processes

ASG is not involved in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as Abu Sayyaf Group is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.



Criminal Code (Terrorist Organisation— Al-Qa’ida) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency’s Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2022*.

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	9 April 2022.	9 April 2022

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—Al-Qa’ida

- (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 Al-Qa’ida is specified.
- (2) Al-Qa’ida is also known by the following names:
- (a) Al-Jihad al-Qa’eda;
 - (b) Al-Qa’eda;
 - (c) Al-Qaida;
 - (d) International Front for Fighting Jews and Crusaders;
 - (e) Islamic Army;
 - (f) Islamic Army for the Liberation of Holy Places;
 - (g) Islamic Salvation Foundation;
 - (h) New Jihad;

Section 5

- (i) The Base;
- (j) The Group for the Preservation of the Holy Sites;
- (k) The Jihad Group;
- (l) The World Islamic Front for Jihad against Jews and Crusaders;
- (m) Usama bin Laden Network;
- (n) Usama bin Laden Organisation.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2019

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2022* (the Regulations) is to specify the organisation known as Al-Qa’ida for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation Al-Qa’ida is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (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

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.

- 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 Al-Qa'ida.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Al-Qa'ida) Regulations 2019*, which would otherwise cease to have effect on 10 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures the organisation Al-Qa'ida 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 9 April 2022. 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* (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.

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 Al-Qa'ida meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

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—Al-Qa’ida) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2022* (the Regulations) specify Al-Qa’ida 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 specify Al-Qa’ida 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 Al-Qa’ida.

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. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Al-Qa’ida as a listed terrorist organisation.

Terrorist organisations, including Al-Qa’ida, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 Al-Qa'ida. 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 Al-Qa'ida.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Al-Qa'ida, 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) 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 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Al-Qa’ida) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida) Regulations 2019* (the 2019 Regulations).

Section 5 – Terrorist organisation – Al-Qa’ida

9. Subsection 5(1) provides 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 Al-Qa’ida is specified.

10. The effect of specifying Al-Qa'ida as a terrorist organisation is 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 Al-Qa'ida.
11. Subsection 5(2) provides a list of names by which the organisation Al-Qa'ida is also known, at paragraphs 5(2)(a) to (n):
 - Al-Jihad al-Qa'eda;
 - Al-Qa'eda;
 - Al-Qaida;
 - International Front for Fighting Jews and Crusaders;
 - Islamic Army;
 - Islamic Army for the Liberation of Holy Places;
 - Islamic Salvation Foundation;
 - New Jihad;
 - The Base;
 - The Group for the Preservation of the Holy Sites;
 - The Jihad Group;
 - The World Islamic Front for Jihad against Jews and Crusaders;
 - Usama bin Laden Network;
 - Usama bin Laden Organisation.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Qa'ida) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Al-Qa'ida for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 10 April 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of al-Qa'ida as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Al-Qa'ida (AQ)

Known aliases

- Al-Jihad al-Qa'eda
- Al-Qa'eda
- Al-Qaida
- International Front for Fighting Jews and Crusaders
- Islamic Army
- Islamic Army for the Liberation of Holy Places
- Islamic Salvation Foundation
- New Jihad
- The Base
- The Group for the Preservation of the Holy Sites
- The Jihad Group
- The World Islamic Front for Jihad against Jews and Crusaders
- Usama bin Laden Network
- Usama bin Laden Organisation

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 AFP Minister (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 listed al-Qa'ida under the Criminal Code on 21 October 2002. Al-Qa'ida was re-listed on 1 September 2004, 26 August 2006, 9 August 2008, 22 July 2010, 12 July 2013, 28 June 2016, and 10 April 2019.

Details of the organisation

Al-Qa'ida (AQ) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group, which seeks to establish a transnational Islamic caliphate by removing, using violence as necessary, governments in Muslim-majority countries that it deems 'un-Islamic'. The group's overall aim is to replace these governments with Sharia-based Islamic governance in an attempt to supplant foreign influence. To achieve this, the group supports Islamist causes in various global conflicts. Al-Qa'ida views the United States (US) and its allies, including Australia, as enemies and a significant obstacle to achieving its objective.

AQ was founded by Usama bin Laden and Abdullah Azzam in 1988, to continue their jihad against perceived enemies of Islam following the Soviet withdrawal from Afghanistan. Bin Laden gained full control of the organisation after Azzam's death in 1989. During the 1990s, AQ developed a global network of affiliates to secure a cadre of fighters to promote global jihad.

AQ cultivates influence over affiliates and assigned groups by incorporating local grievances into their global strategy and consulting with the leaders and deputies of its global affiliates. Education and religious outreach, exploitation of local insurgencies, and a terrorist campaign against the 'far enemy' – primarily Western countries – remain AQ's long-term objectives.

Sustained counter-terrorism pressure has weakened the group, which has conducted fewer attacks against Western countries since 11 September 2001 and is likely prioritising efforts to rebuild. In doing so, AQ's senior leadership probably seek to minimise direct, public links to significant attacks in Western countries or against Western interests globally.

Leadership

AQ's core leadership and surviving senior commanders are dispersed across countries including Afghanistan, Pakistan, Syria, Iran, Libya and Yemen, in a likely attempt to protect the group from a single strike eliminating the entire senior cohort. The group's overall leader is Ayman al-Zawahiri, who succeeded bin Laden after his death in 2011. Al-Zawahiri is reportedly in poor health and, if alive, probably operates from within the Afghanistan-Pakistan border region.

Membership

In 2016, al-Zawahiri delegated oversight of the group's operational activities to the Hattin Committee, a core group of AQ's senior members located in Iran. The committee facilitates operational and financial connections between AQ's senior leadership and its affiliates. Al-Zawahiri's deputy and Hattin Committee member Abu Muhammad al-Masri was killed in Tehran in 2020. This group likely includes al-Zawahiri's successor.

AQ has a number of global affiliate organisations which operate with varying degrees of independence and are listed separately under the Criminal Code, including:

- al-Qa'ida in the Arabian Peninsula (AQAP)
- al-Qa'ida in the Lands of the Islamic Maghreb (AQIM)
- al-Qa'ida in the Indian Subcontinent (AQIS)
- Harakaat al-Shabaab al-Mujahidin (al-Shabaab)
- Hurras-al-Din (HaD)
- Jama'at Nusrat al-Islam wal-Muslimin (JNIM)

Links to other groups

AQ has been known to engage with and provide guidance to other RMVE groups, including Abu Sayyaf Group, Asbat al-Ansar, Jemaah Islamiyah, Harakat ul Mujahideen, Lashkar-e-Tayyiba, and Jaish-e-Mohammad.

Terrorist activity

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

It has been over a decade since AQ's senior leadership has been directly linked to a significant attack against the West. Instead, senior AQ members outline strategic priorities and guidelines, and global affiliate leaders have discretion to adapt these priorities to suit local conditions – distancing AQ's core from terrorist acts conducted by affiliates or ideologically-aligned groups.

While AQ's senior leadership does not direct affiliate activity, its message shapes and inspires attacks by affiliates, ideologically-aligned groups and lone actors. Affiliates generally adhere to the global goals, objectives and strategy outlined by AQ senior leadership figures. AQ's leadership probably seeks to minimise its direct, public links to significant attacks against Western interests globally as a deliberate strategy to avoid counter-terrorism pressure.

Recent examples of AQ fostering the doing of terrorist acts by affiliated groups include:

- On 5 January 2021, AQ affiliate al-Shabaab conducted an attack on Manda Bay Airfield in Kenya, killing three US nationals. Al-Shabaab's official statements claimed the attack was carried out under the guidance and direction of AQ leader al-

Zawahiri, and was part of the ‘*Jerusalem will never be Judaized*’ campaign directed by AQ senior leadership.

- On 20 January 2019, AQ affiliate JNIM attacked a United Nations base in Mali, killing 10 Chadian peacekeepers and injuring 25 others. JNIM’s official statements claimed the attack was part of the ‘*Jerusalem will never be Judaized*’ campaign directed by AQ senior leadership. JNIM probably considered the attack to have been sanctioned by AQ senior leaders.

Advocates the doing of a terrorist act

AQ’s leadership and media outlets often encourage, promote and praise terrorist attacks conducted by affiliates, other terrorist organisations or lone-actor jihadists against ‘enemies of Islam’, including Western countries. AQ’s ‘*Jerusalem will never be Judaized*’ campaign attempts to prevent global acceptance of the state of Israel with Jerusalem as its capital, and targets governments perceived to support Israel.

Recent examples of AQ advocating the doing of terrorist acts include:

- On 11 September 2021, AQ leader al-Zawahiri praised attacks by lone actors and affiliates, including a lone-actor attack at Naval Air Station Pensacola in the US on 6 December 2019, and a claimed suicide attack by affiliate Hurras al-Din against a Russian military base in Syria in January 2021. Al-Zawahiri’s statements were likely made with the intention of leading other persons to engage in similar terrorist acts and pose a substantial risk of doing so.
- On 12 March 2021, AQ’s official media outlet as-Sahab released a propaganda video denouncing the lack of response to the Rohingya refugee crisis. The video featured audio clips of al-Zawahiri, who called on Muslims to attack Myanmar and its interests to avenge the violence committed against the Rohingya people.
- On 2 January 2021, as-Sahab released a statement encouraging Muslims to respond to statements made by the president of France by conducting jihad ‘by all means’, including repeating the 2015 terrorist attack on the Charlie Hebdo offices in France.
- On 8 June 2020, as-Sahab published an article promoting ‘e-jihad’ – which is stated to include hacking and leaking information as well as cyber-attacks to cause serious disruptions to electronic systems such as financial, communications and other critical infrastructure.
- On 11 September 2019, as-Sahab released a speech by al-Zawahiri, calling for Muslims to attack American, European, Israeli and Russian interests. Speaking in response to the US president’s recent claim that the Golan Heights were Israeli territory, al-Zawahiri insisted that violent jihad was the only method to make the enemy reconsider their actions, and encouraged Palestinians to seek ‘martyrdom’ and engage in attacks against Israelis.
- On 23 March 2019, as-Sahab published a statement calling on young people to conduct violent attacks to avenge the 15 March 2019 terrorist attack against two

mosques in Christchurch, New Zealand. As-Sahab directed potential attackers to target ‘crusaders’ in crowded places.

Other considerations

Links to Australia and threats to Australian interests

Australians have previously been killed and injured in attacks directed or inspired by AQ, including 10 Australians killed in the 11 September 2001 attacks.

While AQ has directed large-scale terrorist attacks in the past, most AQ-inspired attacks in Western countries in the last five years have been relatively simple and unsophisticated. Australia remains a terrorist target, and an attack by a lone actor or small group could be conducted by Sunni Islamist violent extremists, including those affiliated with or inspired by AQ.

A small number of Australians overseas are currently affiliated with AQ.

Listings by likeminded countries or the United Nations

The United Nations Security Council ISIL (Da’esh) and al-Qa’ida Sanctions Committee designates AQ for targeted financial sanctions. AQ is proscribed as a terrorist organisation by the US, United Kingdom, Canada, New Zealand, and the European Union.

Engagement in peace or mediation processes

AQ is not engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as al-Qa’ida is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.



Criminal Code (Terrorist Organisation—Hay’at Tahrir al-Sham) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency’s Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Hay’at Tahrir al-Sham) Regulations 2022*.

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	9 April 2022.	9 April 2022

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—Hay’at Tahrir al-Sham

- (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 Hay’at Tahrir al-Sham is specified.
- (2) Hay’at Tahrir al-Sham is also known by the following names:
- (a) Tahrir al-Sham;
 - (b) Organisation for the Liberation of the Levant.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Hay’at Tahrir al-Sham) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Hay’at Tahrir al-Sham) Regulations 2022* (the Regulations) is to specify the organisation known as Hay’at Tahrir al-Sham for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation Hay’at Tahrir al-Sham is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (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

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.

- 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 Hay'at Tahrir al-Sham.

The Regulations also repeal the *Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019* (the JFS Regulations), which would otherwise cease to have effect on 9 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Hay'at Tahrir al-Sham is a militant organisation formed from an alliance between Jabhat Fatah al-Sham and other Syrian opposition groups, and which has ceased its affiliation with Al-Qa'ida in order to pursue local political and military objectives. With the Regulations now specifying Hay'at Tahrir al-Sham as a terrorist organisation, the repeal of the JFS Regulations reflects this development. It also provides clarity and ensures there is no duplication where the Regulations specifying Hay'at Tahrir al-Sham are made before the JFS Regulations would otherwise have ceased to have effect.

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

The Regulations commence on 9 April 2022. 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* (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.

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 Hay'at Tahrir al-Sham meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at [Attachment C](#).

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—Hay’at Tahrir al-Sham) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Hay’at Tahrir al-Sham) Regulations 2022* (the Regulations) specify Hay’at Tahrir al-Sham 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 specify Hay’at Tahrir al-Sham 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 Hay’at Tahrir al-Sham.

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. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Hay’at Tahrir al-Sham as a listed terrorist organisation.

Terrorist organisations, including Hay’at Tahrir al-Sham, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 Hay'at Tahrir al-Sham. 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 Hay'at Tahrir al-Sham.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Hay'at Tahrir al-Sham, 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Hay’at Tahrir al-Sham) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Hay’at Tahrir al-Sham) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. Information in this column is intended to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019* (the JFS Regulations).

Section 5 – Terrorist organisation—Hay’at Tahrir al-Sham

9. Subsection 5(1) provides 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 Hay’at Tahrir al-Sham is specified.

10. The effect of specifying Hay'at Tahrir al-Sham as a terrorist organisation is 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 Hay'at Tahrir al-Sham.
11. Subsection 5(2) provides that the organisation Hay'at Tahrir al-Sham is also known by the names names Tahrir al-Sham and Organisation for the Liberation of the Levant.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Jabhat Fatah al-Sham) Regulations 2019* (the JFS Regulations).
13. The JFS Regulations specify the organisation Jabhat Fatah al-Sham for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the JFS Regulations cease to have effect on 9 April 2022, being the third anniversary of the day on which they took effect.
14. Hay'at Tahrir al-Sham is a militant organisation formed from an alliance between Jabhat Fatah al-Sham and other Syrian opposition groups, and which has ceased its affiliation with Al-Qa'ida in order to pursue local political and military objectives. With the Regulations now specifying Hay'at Tahrir al-Sham as a terrorist organisation, the repeal of the JFS Regulations reflects this development. It also provides clarity and ensures there is no duplication where the regulations specifying Hay'at Tahrir al-Sham are made before the JFS Regulations would otherwise ceased to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Hay'at Tahrir al-Sham as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Hay'at Tahrir al-Sham. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Hay'at Tahrir al-Sham (HTS)

Known aliases

- Tahrir al-Sham
- Organisation for the Liberation of the Levant

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 AFP Minister (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

Hay'at Tahrir al-Sham has not previously been listed under the Criminal Code. The group's predecessor, Jabhat al-Nusra, also known as Jabhat Fatah al-Sham, was listed by the Australian Government on 29 June 2013 and re-listed on 28 June 2016 and 9 April 2019.

Details of the organisation

Hay'at Tahrir al-Sham (HTS) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group based in north-western Syria. HTS opposes the government of Bashar al-Assad and aims to replace the government with an Islamic caliphate. HTS leaders have sought to transition the group from an insurgency to an organised paramilitary force and civilian authority in an attempt to gain domestic and international support for its objectives.

HTS' predecessor, Jabhat al-Nusra, was aligned with al-Qa'ida. In July 2016, the organisation changed its name to Jabhat Fatah al-Sham (JFS) and announced it was no longer affiliated with al-Qa'ida. In January 2017, JFS announced it had merged with a number of other Syrian opposition groups to form HTS. HTS is an independent organisation focused primarily on operations in Syria – it almost certainly retains no formal links to al-Qa'ida, and does not publicly advocate for global jihad.

Leadership

Abu-Muhammad al-Jawlani (also known as Ahmad Hussayn al-Shara) is the leader of HTS, and is likely guided by a Shura council. HTS operates a number of paramilitary units, and likely controls the Salvation Government – a civilian-run administrative and political body in north-western Syria.

Membership

In 2020, HTS reportedly had between 12,000 and 15,000 fighters. HTS largely recruits from the Syrian population, including from other extremist groups in the region.

HTS' approach towards foreign fighters is unclear. HTS sought to remove foreign fighters from Idlib in 2021, likely viewing them as drawing unwanted targeting by security forces and carrying the risk of infiltration by rival groups. More recently, al-Jawlani stated that the group would protect foreign fighters according to its religious and cultural teachings.

Links to other groups

HTS was formed from a merger of JFS and a number of other Syrian opposition groups, including Ansar al-Din, Jaysh al-Sunna, and Nour al-Din al-Zenki. Some former members of JFS have since separated to form the al-Qa'ida-aligned group Hurras al-Din. HTS is aligned with the Idlib-based Salvation Government.

Terrorist activity

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

HTS is engaged in ongoing hostilities against Syrian Government forces and rival militant groups in pursuit of its political objectives. Recent terrorist attacks which can be reliably attributed to the group include:

- On 11 June 2021, HTS claimed to have fired 140 rockets and artillery shells at positions held by Russian and Syrian forces in Idlib, as revenge for the killing of senior HTS members.
- On 24 August 2020, HTS claimed to have killed three members of a pro-Syrian government militia in Jabal az Zawiyah south of Idlib.
- On 24 January 2020, HTS artillery fire reportedly injured 15 members of a pro-Syrian government militia in western Aleppo.

- From 10-11 July 2019, militant groups including HTS attacked the town of Hamamiyat. Forty-one Syrian soldiers and pro-government fighters were reportedly killed in the engagement.
- On 25 February 2019, an HTS missile attack on Syrian Army forces killed eight soldiers and injured at least 17.
- On 7 September 2018, an HTS rocket attack on the town of Mahardeh killed nine civilians and injured 20.

Other considerations

Links to Australia and threats to Australian interests

Although HTS does not publicly call for attacks against Western interests and is focused primarily on the Syrian conflict, there is a possibility that Australians may be incidentally harmed in attacks undertaken by HTS.

A number of Australians and former Australians in Syria are members of or affiliated with HTS.

Listings by likeminded countries or the United Nations

HTS is proscribed as a terrorist organisation by the United Kingdom and Canada. The United States specifies HTS as Specially Designated Global Terrorists.

Engagement in peace or mediation processes

HTS is not engaged in any peace or mediation processes. HTS has been involved in several local ceasefires with other elements of the Syrian opposition – however, these agreements are usually short and fail soon after they are formed.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as Hay'at Tahrir al-Sham is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.



Criminal Code (Terrorist Organisation— Hurras al-Din) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022*.

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	9 April 2022.	9 April 2022

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 Terrorist organisation—Hurras al-Din

- (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 Hurras al-Din is specified.
- (2) Hurras al-Din is also known by the following names:
- (a) Al-Qa'ida in Syria;
 - (b) Guardians of Religion;
 - (c) Tanzim Hurras ad-Din.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022* (the Regulations) is to specify the organisation known as Hurras al-Din for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation known as Hurras al-Din 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 provided by the Department of Home Affairs (the Statement of Reasons at [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 Hurras al-Din.

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

The Regulations commence on 9 April 2022. Subsection 102.1(3) of the *Criminal Code* provides that the Regulations will 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* (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.

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 Hurras al-Din meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022* (the Regulations) specify the organisation known as Hurras al-Din 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 specify Hurras al-Din as a terrorist organisation under Australian law, and to 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 Hurras al-Din.

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. In particular, the offence of associating with a **terrorist organisation** in section 102.8 of the *Criminal Code* applies in relation to associating with Hurras al-Din as a listed **terrorist organisation**.

Terrorist organisations, including Hurras al-Din, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Detering 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 Hurras al-Din. 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 Hurras al-Din.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Hurras al-Din, 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Hurras al-Din) Regulations 2022*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. Information in this column is intended to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation□Hurras al-Din

7. Subsection 4(1) provides 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 Hurras al-Din is specified.

8. The effect of specifying Hurras al-Din as a terrorist organisation is to ensure that offences under Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate in relation to conduct in connection with Hurras al-Din. In particular, the offences under section 102.8 (associating with terrorist organisations) apply only in relation to organisations that have been specified by regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1).
9. Subsection 4(2) provides that the organisation Hurras al-Din is also known by the names:
 - Al-Qa'ida in Syria;
 - Guardians of Religion;
 - Tanzim Hurras ad-Din.

Statement of Reasons

Listing of Hurras al-Din as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Hurras al-Din. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Hurras al-Din (HaD)

Known aliases

- Al-Qa'ida in Syria
- Guardians of Religion
- Tanzim Hurras ad-Din

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 AFP Minister (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

Hurras al-Din has not previously been listed under the Criminal Code.

Details of the organisation

Hurras al-Din (HaD) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group which was established in Idlib, Syria in early 2018 as part of al-Qa'ida's global network. HaD adheres to a violent jihadist ideology that encourages violence as a key tactic for pursuing religious and political outcomes aligned with al-Qa'ida's objectives.

HaD is likely at its weakest point since its formation, following conflict with Syria-based RMVE group Hay'at Tahrir al-Sham (HTS) and operations by United States-led coalition forces. HaD has likely expanded its focus from the Idlib region in an effort to evade pressure from HTS and Syrian security forces.

Leadership

HaD's current leader, Faruq al-Suri (also known as Abu Hamman al-Shami / Sami Hijazi), is a veteran member of al-Qa'ida who was the military commander of defunct RMVE group Jabhat al-Nusra (also known as Jabhat Fatah al-Sham) until he left the group in 2016. Much of HaD's leadership have been killed or imprisoned, and the remainder have largely been in hiding since early 2021.

Membership

In mid-2019, HaD was estimated to have between 700 and 2,500 fighters – half of which were foreign fighters – but this has likely decreased due to recent losses. Many of HaD's members are former members of Jabhat al-Nusra.

Links to other groups

HaD is an affiliate of al-Qa'ida and has maintained close integration with al-Qa'ida's central leadership. HaD maintains ties to other Syrian militant groups, including Ansar al-Tawhid and remaining elements of Ansar al-Islam. The group's predecessor, Jabhat al-Nusra, was listed as a terrorist organisation by the Australian Government in 2013.

Terrorist activity

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

HaD is engaged in ongoing hostilities against Syrian Government forces and rival militant groups in pursuit of its political objectives. Recent terrorist attacks which can be reliably attributed to HaD include:

- On 4 August 2021, HaD conducted a bombing against a bus in Damascus, killing at least four people.
- On 1 January 2021, HaD conducted a vehicle-borne improvised explosive device and small arms attack against a Russian military base in Raqqah Province. Two Russian soldiers were injured.
- On 10 May 2020, HaD fighters attacked the town of Tanjarah in Sahl al-Gahb. More than 30 Syrian Army soldiers and pro-government fighters were reportedly killed in the engagement. HaD conducted a second attack on Tanjarah on 10 June 2020, temporarily seizing control of the town.

Advocates the doing of a terrorist act

HaD advocates terrorism through its media foundation, Sham al-Ribat Media, including attacks against Western interests. Recent examples include:

- In October 2021, HaD issued a statement addressing the United States and all ‘enemies of Islam’, stating “*we will wage jihad and not surrender and not go back.*” In this context, ‘jihad’ likely refers to undertaking terrorist acts.
- On 16 May 2021, HaD encouraged attacks on Israeli interests in response to recent events in Israel, stating “*These events have proven that there is no way to liberate al-Aqsa Mosque and the holy sites and countries of the Muslims except through advocacy, reparation and jihad.*”
- On 7 March 2020, HaD leader al-Suri encouraged the group’s fighters to attack Syrian Government forces, saying “*So horrify them by infiltrating, and terrorise them with raids, and intensify upon them attack after attack, and raid after raid. Stifle their breath with commandos and martyrdom-seekers, and booby-trap the earth from under them, and place traps in the trees and rocks, and turn their night into day and their day into fire.*”

Other considerations

Links to Australia and threats to Australian interests

No Australians are known to be involved with HaD.

Although HaD has not specifically threatened attacks against Australian interests, the group adheres to al-Qa’ida’s violent anti-Western ideology and poses an ongoing threat to Western, including Australian, interests.

Listings by likeminded countries or the United Nations

The United States specifies HaD as Specially Designated Global Terrorists.

Engagement in peace or mediation processes

HaD has not engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as Hurras al-Din is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.



Criminal Code (Terrorist Organisation— Jemaah Islamiyah) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022*.

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	9 April 2022.	9 April 2022

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—Jemaah Islamiyah

- (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 Jemaah Islamiyah is specified.
- (2) Jemaah Islamiyah is also known by the following names:
- (a) Al-Jama'ah Al-Islamiyah;
 - (b) Islamic Congregation;
 - (c) Jemaah Islamiah;
 - (d) Jema'a Islamiyya;
 - (e) Jemaa Islamiyyah.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2019

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022* (the Regulations) is to specify the organisation known as Jemaah Islamiyah for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation Jemaah Islamiyah 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 provided by the Department of Home Affairs (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

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.

- 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 Jemaah Islamiyah.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2019*, which would otherwise cease to have effect on 9 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures the organisation Jemaah Islamiyah 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 9 April 2022. 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* (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.

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 Jemaah Islamiyah meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

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—Jemaah Islamiyah) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022* (the Regulations) specify Jemaah Islamiyah 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 specify Jemaah Islamiyah 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 Jemaah Islamiyah.

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. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Jemaah Islamiyah as a listed terrorist organisation.

Terrorist organisations, including Jemaah Islamiyah, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of ***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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 Jemaah Islamiyah. 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 Jemaah Islamiyah.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Jemaah Islamiyah, 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Jemaah Islamiyah) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2019*.

Section 5 – Terrorist organisation—Jemaah Islamiyah

9. Subsection 5(1) provides 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 Jemaah Islamiyah is specified.

10. The effect of specifying Jemaah Islamiyah as a terrorist organisation is 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 Jemaah Islamiyah.
11. Subsection 5(2) provides a list of names by which the organisation Jemaah Islamiyah is also known, at paragraphs 5(2)(a) to (e):
 - Al-Jama'ah Al-Islamiyah;
 - Islamic Congregation;
 - Jemaah Islamiah;
 - Jema'a Islamiyya;
 - Jemaa Islamiyyah.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Jemaah Islamiyah for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 9 April 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Jemaah Islamiyah as a terrorist organisation under the *Criminal Code Act 1995*

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

Name of the organisation

Jemaah Islamiyah (JI)

Known aliases

- Al-Jama'ah al-Islamiyah
- Islamic Congregation
- Jama'ah Islamiya
- Jema'a Islamiyya
- Jemaa Islamiyyah
- Jemaah Islamiah

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 AFP Minister (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

Jemaah Islamiyah was first listed as a terrorist organisation by the Australian Government on 27 October 2002. The organisation was re-listed on 1 September 2004, 26 August 2006, 9 August 2008, 22 July 2010, 12 July 2013, 28 June 2016 and 9 April 2019.

Details of the organisation

Jemaah Islamiyah (JI) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group, which is inspired by the anti-Western jihadist ideology of al-Qa'ida and supports the use of terrorism to advance its political objectives. JI seeks to revive a pure form of Islam, governed by the tenets of Sharia, and represents an evolutionary development of the Indonesian Islamist movement Darul Islam, which fought an insurgency to establish an Islamist state in Indonesia in the 1950s and 1960s.

JI's charter and operating manual, the *General Guide for the Struggle of the al-Jama'ah al-Islamiyah* (PUPJI) outlines the religious principles and administrative aspects underlying JI's primary objectives. These entail establishing a support base of followers and then, through armed struggle, creating an Islamist state in Indonesia and eventually a regional caliphate incorporating Malaysia, Singapore and the southern Philippines. The PUPJI has been complemented by a new doctrine (known as TAS-TOS) and strategy (*Tamkin*), which encourage JI members to engage in politics and institutional change in support of JI's strategic agenda, and outlines processes to maintain secrecy and avoid detection by authorities. While JI is willing to engage in politics as long as it aligns with its long-term strategy, the group continues to pursue the violent overthrow of the Indonesian Government and in line with the principles set out in PUPJI likely intends to return to large-scale attack planning in the future.

Leadership

The most recent emir of JI, Para Wijayanto, was arrested by Indonesian authorities in June 2019 and sentenced to 7 years' imprisonment in July 2020. Although the group's leadership has been significantly degraded by law enforcement activities over the past decade, JI remains a distinct organisation with a highly compartmentalised structure.

Membership

JI is estimated to have approximately 6,000 members – primarily in Indonesia, with a small number in Malaysia and the Philippines. Since 2002, hundreds of members have been arrested by Indonesian and Philippine authorities. The arrests of three influential ideologues in November 2021 for suspected involvement with JI indicates that the group may be actively positioning undeclared members within Indonesian politics and mainstream Islamic organisations.

JI also maintains a network of affiliated extremist religious schools (*pesantren*). These schools, many of which were founded by JI members, continue to inculcate young Indonesians with the group's extremist interpretation of Islam and legitimisation of violence, and are used by JI as a source of militant recruits for future terrorist activities.

Links to other groups

JI has historical links to other RMVE groups in Indonesia, including Jamaah Anshurat Tauhid, Majelis Mujahidin Indonesia, and the Crisis Action Committee (KOMPAK). Indonesian extremists, including members of JI, have travelled to Syria and cultivated relationships with Hay'at Tahrir al-Sham and other regional militant groups. JI also has links to the Philippines-based Abu Sayyaf Group.

Terrorist activity

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

JI has historically engaged in large-scale terrorist attacks in South East Asia, including attacks against regional governments, Christian communities, and Western interests. JI attacks have resulted in hundreds of deaths and have targeted hotels, bars, diplomatic premises, transport and military infrastructure, and churches.

Although JI has not been linked to a successful terrorist attack since 2009 and has recently prioritised political activities over the use of violence, available evidence supports a conclusion that the group continues to clandestinely prepare, plan and foster the doing of terrorist acts. The group's compartmentalised structure makes its activities difficult to detect, and JI could return to violence with limited warning.

- Despite JI's recent shift to building political and institutional influence, some JI cells have independently continued to engage in attack planning. Although these activities were likely not directed by JI's core leadership, they are in accordance with the group's doctrine as set out in PUPJI and were likely undertaken on behalf of the wider organisation.
 - In February and March 2021, Indonesian law enforcement arrested 22 suspected JI members in East Java. The cell, which was led by Usman bin Sef (also known as Fahim), allegedly trained and stockpiled weapons in preparation for an attack against police.
 - From April to August 2020, Indonesian law enforcement arrested 17 suspected JI members in Banten. The cell had stockpiled firearms and was allegedly planning attacks against Chinese-owned shops in Serang, Tasikmalaya and Surabaya.
- JI maintains paramilitary training capabilities, and conducted training as recently as 2020 across at least a dozen locations in Indonesia – including a villa in Semarang, Central Java, where members were trained in martial arts, use of firearms and bladed weapons, urban warfare tactics and bomb-making. Some training programs likely remain active. Given the group's continued support for the use of terrorism in pursuit of its long-term objectives, this training is likely intended to facilitate members engaging in future terrorist attacks.

- Between 2014 and 2018, JI sent foreign fighters to Syria to acquire combat experience alongside regional militant groups, including listed terrorist organisation Jabhat al-Nusra and its successor Hay'at Tahrir al-Sham. JI trained 96 foreign fighters across 12 training camps in Java – of which more than 60 travelled to Syria and some of which continue to fight in support of terrorist organisations in the region. JI likely plans to send further members to fight in the Syrian conflict, and returning foreign fighters have ongoing potential to increase JI's capability to engage in terrorism.
- In 2010, JI revived its 'military wing' to secretly promote and build up its capability to engage in terrorism – including through the acquisition of firearms and explosives for use in future attacks. JI maintains the capability to acquire and stockpile weapons and explosives should it choose to return to large-scale attack planning.
 - In November 2021, Indonesian law enforcement arrested a number of suspected JI members in Sulawesi and East Java, seizing firearms and detonators. The group was suspected to be storing weapons on behalf of JI, and participating in paramilitary training activities.
 - Between November 2020 and March 2021, Indonesian law enforcement arrested over a dozen suspected JI members, including fugitive bomb-maker Upik Lawanga. The group had constructed a bunker where they assembled and stored weapons and bomb-making components.

Other considerations

Links to Australia and threats to Australian interests

JI's first successful anti-Western attack was the Bali bombings of 12 October 2002, which killed 202 people, including 88 Australians. This was followed by the bombing of the Australian embassy in Jakarta in 2004, and a further bombing in Bali in 2005, which killed four Australians. Three Australians were killed in simultaneous bombings against the JW Marriott Hotel and Ritz-Carlton Hotel in Jakarta in 2009.

Although JI has refrained from large-scale attack planning since 2009, the group has specifically identified Western countries as enemies and could return to violence, including against Australian interests, with limited warning.

No Australians are known to currently be involved with JI. JI has historically had a presence in Australia through its Mantiqi Four subgroup. Individuals associated with Mantiqi Four had previously considered undertaking an attack against Jewish interests in Australia, which did not eventuate.

Listings by likeminded countries or the United Nations

The United Nations Security Council ISIL (Da'esh) and al-Qa'ida Sanctions Committee designates JI for targeted financial sanctions. JI is proscribed as a terrorist organisation by the United States, United Kingdom, Canada and New Zealand, and is a proscribed organisation in Indonesia.

Engagement in peace or mediation processes

JI is not engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as Jemaah Islamiyah is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.



Criminal Code (Terrorist Organisation— National Socialist Order) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022*.

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	The day after this instrument is registered.	18 February 2022

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 Terrorist organisation—National Socialist Order

- (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 National Socialist Order is specified.
- (2) National Socialist Order is also known by the name Atomwaffen Division.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022* (the Regulations) is to specify the organisation known as National Socialist Order for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation known as National Socialist Order is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (the Statement of Reasons at [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 National Socialist Order.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislation. Subsection 102.1(3) of the *Criminal Code* provides that the Regulations will 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* (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.

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 National Socialist Order meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022* (the Regulations) specify the organisation known as National Socialist Order 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 specify National Socialist Order as a terrorist organisation under Australian law, and to 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 National Socialist Order.

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. In particular, the offence of associating with a **terrorist organisation** in section 102.8 of the *Criminal Code* applies in relation to associating with National Socialist Order as a listed **terrorist organisation**.

Terrorist organisations, including National Socialist Order, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Detering 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 National Socialist Order. 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 National Socialist Order.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 National Socialist Order, 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—National Socialist Order) Regulations 2022*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on the day after the Regulations are registered on the Federal Register of Legislation.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. Information in this column is intended to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation □ National Socialist Order

7. Subsection 4(1) provides 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 National Socialist Order is specified.

8. The effect of specifying National Socialist Order as a terrorist organisation is to ensure that offences under Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate in relation to conduct in connection with National Socialist Order. In particular, the offences under section 102.8 (associating with terrorist organisations) apply only in relation to organisations that have been specified by regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*.
9. Subsection 4(2) provides that the organisation National Socialist Order is also known by the name Atomwaffen Division.

Statement of Reasons

Listing of National Socialist Order as a terrorist organisation under the *Criminal Code Act 1995*

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

Name of the organisation

National Socialist Order (NSO)

Known aliases

Atomwaffen Division (AWD; 'Nuclear Weapons Division')

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

National Socialist Order has not previously been listed under the *Criminal Code*.

Details of the organisation

National Socialist Order (NSO), formerly known as Atomwaffen Division (AWD), is a nationalist and racist violent extremist (NRVE) group founded in 2015 in the United States (US) by Brandon Russell. NSO traces its origins to Iron March, a now-defunct internet forum for white supremacists and national socialists, and adopted a decentralised operating model with multiple cells across the US. NSO promotes a national socialist and accelerationist ideology. The organisation advocates the use of violence to initiate a 'race war' to accelerate the collapse of western society and establish a 'white ethno-state'.

NSO is inspired by *Siege*, a compilation of newsletters, interviews and speeches written by prominent national socialist James Mason. In *Siege*, Mason calls for destruction of the 'System' (the perceived Jewish-controlled state) through violence and subsequent installation of a national socialist regime. Mason proposes strategies and tactics to achieve this,

predominantly leaderless resistance involving lone-actor terrorist attacks. Mason has had close contact with members of NSO (then AWD) and described himself as an ‘advisor’ to the group. In February 2021, Mason was proscribed as a terrorist entity by the Government of Canada.

In March 2020, AWD publicly claimed its disbandment, following the arrests of multiple leadership figures by US law enforcement. In July 2020, a national socialist website announced the creation of NSO, which described itself as ‘*an organisation founded and led by the remaining leadership of AWD.*’ A video uploaded to the group’s Odysee account in May 2021 stated that NSO had learned from mistakes that AWD made, and that NSO has a strong executive leadership and a clear national socialist worldview with the goal to ‘*build an Aryan, national socialist world by any means necessary.*’

NSO is assessed to be a direct continuation of AWD, likely rebranded with the intention of avoiding law enforcement attention. NSO was announced four months after AWD publicly disbanded due to law enforcement activity, claims to maintain the same leadership as AWD, and has explicitly declared an intent to pursue the same objectives.

Leadership

The organisation was founded as AWD in 2015 by US citizen Brandon Russell. In September 2017, Russell was arrested and pled guilty to unlawful possession and storage of explosives. In January 2018, Russell was sentenced to five years’ imprisonment. After Russell’s arrest and imprisonment, John Denton, known online as ‘Vincent Snyder’ and ‘Rape’, replaced Russell as leader. Under Denton’s leadership, the group’s ideology incorporated occult influences from the Satanic ‘Order of Nine Angles’ movement. Denton was arrested in February 2020 in connection with a conspiracy to intimidate ideological opponents through ‘swatting’ (making false threats to provoke a law enforcement response).

Following the arrests of multiple leadership figures in early 2020 and reorganisation into NSO in July 2020, the group is reportedly being co-led by four members, each of whom has responsibility for a region of the US.

Membership

Current membership numbers for NSO are unclear following the arrests of several members by US law enforcement in 2020, and are difficult to determine due to the dispersed and decentralised nature of the group. In 2018 the organisation had approximately 80 members across the US – with the largest cells reportedly located in Texas, Washington and Virginia.

NSO primarily recruits through online channels, including Telegram, Discord and Gab. Before 2020, the group actively sought to recruit from the US military in order to gain members with military experience and potential access to military equipment. Following its rebranding from AWD to NSO, the group has reportedly strengthened its vetting procedures, including requiring in-person meetings for new recruits.

Links to other groups

NSO has significant links to other NRVE groups, in particular having shared a number of members with ideologically-aligned US group The Base. The Base is proscribed as a terrorist organisation by the Governments of Australia, Canada and the United Kingdom (UK).

NSO has inspired the formation of a significant number of likeminded groups. This includes the UK-based Sonnenkrieg Division, Estonia-based Feuerkrieg Division, Canada-based Northern Order, Italy-based Nuovo Ordine Sociale, Germany-based AWD Deutschland and Russia-based AWD Russland. Although these groups are likely not controlled by NSO's leadership, they share NSO's ideological aspirations and reportedly have online links to NSO members. Since 2019, members and associates of these groups have planned, prepared, threatened or encouraged terrorist attacks against ideological opponents.

Terrorist activity

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

Consistent with NSO's strategy of 'leaderless resistance' and advocacy of lone-actor terrorism, members of the group have prepared for and made credible threats of violence against ideological opponents. Senior members of NSO (then AWD) have been arrested for illegally stockpiling firearms and explosives, with a likely intention of increasing the group's capability to engage in violence in pursuit of its ideological causes.

Although there is limited information as to the group's activities since its rebranding from AWD to NSO, its current leadership have declared an intent to pursue the same objectives. Given the group's threats of and clandestine preparations for terrorism prior to its claimed disbandment in March 2020, and its continuing encouragement and promotion of terrorism, available information supports a conclusion that NSO likely continues to prepare its members to engage in violence in pursuit of its ideological causes.

- In February 2020, NSO (then AWD) cell leader Kaleb Cole and three other members, Johnny Garza, Cameron Shea, and Taylor Parker-Dipeppe, were charged with a conspiracy to threaten and intimidate journalists and activists. The group delivered posters to journalists and Jewish activists, with the stated intent of constituting a 'show of force'. The posters included national socialist symbols, masked figures with firearms and Molotov cocktails and threatening language including *'Your actions have consequences, our patience has its limits... You have been visited by your local Nazis'* and *'We know where you live.'* These statements are assessed to have constituted a threat of targeted violence against AWD's ideological opponents.
 - In December 2020, Garza was sentenced to one year and four months' imprisonment. In August 2021, Shea was sentenced to three years' imprisonment. In January 2022, Cole was sentenced to seven years' imprisonment.
- In November 2019, NSO (then AWD) cell leader Kaleb Cole and member Aiden Bruce-Umbaugh were arrested in Texas for firearms offences following a traffic stop by law enforcement where officers found a substantial quantity of firearms and ammunition. An FBI official stated that *'the amount of weapons and ammunition*

seized... could have caused serious harm.’ In April 2020, Bruce-Umbaugh was sentenced to two years’ and six months’ imprisonment.

- In October 2019, Seattle law enforcement seized a large number of unregistered firearms – as well as parts to assemble untraceable home-made firearms – from Cole’s residence. Authorities filed and were granted an Extreme Risk Protection Order against Cole, which prohibited Cole from possessing firearms for one year. According to law enforcement, *‘his words, actions and behaviour suggest he has taken additional steps towards a plan with his ideologically motivated violence’* suggesting *‘an imminent risk to public safety’*.
- In July 2019, Cole was deported from Canada and banned from the country for life over concerns by Canadian authorities that he was a member of ‘an organisation that may engage in terrorism’.
- In August 2019, NSO (then AWD) member Conor Climo was charged with possession of unregistered bomb-making material. Between May and July 2019, Climo had discussed using incendiaries to attack a synagogue in Las Vegas, Nevada, and had also conducted surveillance of a Las Vegas bar catering to the LGBTQI community in preparation for a potential terrorist attack. Climo was sentenced to two years’ imprisonment in November 2020.
- In September 2017, NSO (then AWD) leader Brandon Russell was arrested and charged with possessing an unregistered destructive device and unlawful storage of explosive material. Russell had been stockpiling the high-explosive substance HMDT at his Florida apartment alongside homemade fuses and explosive precursors. The materials were discovered after an AWD member murdered two other members in the apartment. Federal prosecutors argued that Russell planned to use the explosives in a terrorist attack, potentially against nuclear facilities or synagogues.
 - Russell was sentenced to five years’ imprisonment in January 2018, and was released in August 2021. He will remain on supervised release for three years.
- In September 2017, NSO (then AWD) held its first ‘hate camp’ in Illinois. Subsequent camps were held in Nevada, Texas and Washington State over 2017 and 2018. The ‘hate camps’ were intended to train AWD members in firearms, close-quarters combat, bomb-making and survival skills in preparation for a perceived impending ‘race war’. Given the group’s accelerationist ideology it is likely that the camps were also intended to build the group’s capability to engage in violence against ethnic minorities and ideological opponents to initiate the ‘race war’.

Advocates the doing of a terrorist act

Despite the arrests of multiple members and the claimed disbanding of the group in March 2020, the organisation has continued to advocate the doing of terrorist acts following its rebranding as NSO. In 2021, NSO uploaded a number of videos containing violent extremist rhetoric to video-sharing website Odysee.

- A video uploaded on 12 September 2021 shows footage of police being assaulted in riots, including in the attack on the US Capitol building on 6 January 2021. It also

includes graphic dashboard camera footage of US police officers being killed by firearms in traffic stops while the lyrics *'kill the police, kill the whole force, smash the system, destroy the courts'*, are played. The footage of acts of violence against law enforcement combined with inflammatory lyrics implicitly encourages violence in support of NSO's ideology.

- A video uploaded on 30 May 2021, titled 'NSO's Three Step Guide', tells viewers to 'educate' themselves on national socialist literature, to identify enemies and to take violent action against them. The video includes imagery which implies that these actions would involve arson against critical infrastructure, murder using firearms, and sexual violence.
- A video uploaded on 27 May 2021 shows members distributing NSO posters in California. One poster displays racist caricatures of ethnic minorities with *'exterminate'* written under them, while another states *'mow down Antifa'* and displays an armed NSO member. The video ends with the statement *'Join your local Nazis'*.
- A video uploaded on 21 May 2021 titled 'NSO Program' – while perhaps not explicitly promoting terrorist acts – includes statements such as *'Our priority is to seize territorial power by any means necessary'*; *'the earth should be solely populated by the Aryan race'*; *'we require all members to be armed and ready at a moment's notice'*; and *'racial holy war now'*.

Other considerations

Links to Australia and threats to Australian interests

NSO has significant reach within the global white supremacist landscape. As AWD, it had links to the defunct Australia-based extremist group Antipodean Resistance – which similarly originated on the Iron March forum and adhered to the same accelerationist ideology.

A successful terrorist attack directed or inspired by NSO or an associated group could result in harm to Australians, and the group's activities and propaganda have ongoing potential to inspire Australian violent extremists and contribute to the radicalisation of others.

Listings by likeminded countries or the United Nations

NSO is proscribed as a terrorist organisation by the Governments of Canada and the UK.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as National Socialist Order (formerly Atomwaffen Division) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.



Criminal Code (Terrorist Organisation— Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022

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 17 February 2022

David Hurley
Governor-General

By His Excellency’s Command

Karen Andrews
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022*.

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	9 April 2022.	9 April 2022

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—Al-Qa’ida in the Lands of the Islamic Maghreb

- (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 Al-Qa’ida in the Lands of the Islamic Maghreb is specified.
- (2) Al-Qa’ida in the Lands of the Islamic Maghreb is also known by the following names:
- Al Qaida au Maghreb Islamique;
 - Al-Qa’ida in the Islamic Maghreb;
 - Al Qa’ida Organisation in the Lands of the Islamic Maghreb;
 - Le Groupe Salafiste Pour La Predication et Le Combat;
 - Salafist Group for Call and Combat;
 - Salafist Group for Preaching and Combat;
 - Tanzim al-Qaida fi bilad al-Maghreb al-Islamiya.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb)
Regulations 2022*

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022* (the Regulations) is to specify the organisation known as Al-Qa’ida in the Lands of the Islamic Maghreb for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, 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 **AFP Minister** (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 the organisation Al-Qa’ida in the Lands of the Islamic Maghreb is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (the Statement of Reasons at [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 Al-Qa'ida in the Lands of the Islamic Maghreb.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulations 2019*, which would otherwise cease to have effect on 10 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation Al-Qa'ida in the Lands of the Islamic Maghreb 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 9 April 2022. 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* (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.

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 Al-Qa'ida in the Lands of the Islamic Maghreb meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at [Attachment C](#).

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—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022* (the Regulations) specify Al-Qa’ida in the Lands of the Islamic Maghreb 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 specify Al-Qa’ida in the Lands of the Islamic Maghreb 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 Al-Qa’ida in the Lands of the Islamic Maghreb.

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. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Al-Qa’ida in the Lands of the Islamic Maghreb as a listed terrorist organisation.

Terrorist organisations, including Al-Qa’ida in the Lands of the Islamic Maghreb, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)

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

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, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Detering 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 Al-Qa'ida in the Lands of the Islamic Maghreb. 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 Al-Qa'ida in the Lands of the Islamic Maghreb.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Al-Qa'ida in the Lands of the Islamic Maghreb, 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) 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 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019*.

Section 5 – Terrorist organisation – Al-Qa’ida in the Lands of the Islamic Maghreb

9. Subsection 5(1) provides 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 Al-Qa’ida in the Lands of the Islamic Maghreb is specified.

10. The effect of specifying Al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation is 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 Al-Qa'ida in the Lands of the Islamic Maghreb.
11. Subsection 5(2) provides a list of names by which the organisation Al-Qa'ida in the Lands of the Islamic Maghreb is also known, at paragraphs 5(2)(a) to (g):
 - Al-Qaida au Maghreb Islamique;
 - Al-Qa'ida in the Islamic Maghreb;
 - Al Qa'ida Organisation in the Lands of the Islamic Maghreb;
 - Le Groupe Salafiste Pour La Predication et Le Combat;
 - Salafist Group for Call and Combat;
 - Salafist Group for Preaching and Combat;
 - Tanzim al-Qaida fi bilad al-Maghreb al-Islamiya.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Al-Qa'ida in the Lands of the Islamic Maghreb for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 10 April 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida in the Lands of the Islamic Maghreb. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM)

Known aliases

- Al Qaida au Maghreb Islamique
- Al-Qa'ida in the Islamic Maghreb
- Al-Qa'ida Organisation in the Lands of the Islamic Maghreb
- Le Groupe Salafiste pour la Predication et la Combat (GSPC)
- Salafist Group for Call and Combat
- Salafist Group for Preaching and Combat
- Tanzim al-Qa'ida fi bilad al-Maghreb al-Islamiya

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 AFP Minister (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 listed this organisation under its former name, the Salafist Group for Preaching and Combat (GSPC), on 14 November 2002 and re-listed it under that name on 5 November 2004 and 3 November 2006. The organisation was listed as al-Qa'ida

in the Lands of the Islamic Maghreb (AQIM) on 9 August 2008, and re-listed on 22 July 2010, 12 July 2013, 28 June 2016, and 10 April 2019.

Details of the organisation

Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) is an affiliate of al-Qa'ida and shares its Sunni Islamist religiously-motivated violent extremist (RMVE) ideology, seeking to create an Islamist state in North and West Africa ruled by Sharia law. To this end, AQIM has declared war against foreigners and foreign interests through North and West Africa and Europe, and used violence to bring about its objectives.

AQIM espouses an anti-Western ideology and has called on Muslims across North Africa to target Western interests. As GSPC, the group's primary objective was to overthrow the Algerian Government and replace it with an Islamist government. Since becoming allied with al-Qa'ida in late 2006 and changing its name from to AQIM in early 2007, the group has followed al-Qa'ida's ideological tenets. Although AQIM has pledged allegiance to al-Qa'ida leader Ayman al-Zawahiri, it maintains a significant degree of autonomy from al-Qa'ida's senior leadership.

AQIM has called for the expulsion of Spanish and French influence from North African Maghreb countries- Algeria, Libya, Mauritania, Morocco and Tunisia – as well as the restoration of former Islamic regions in southern Spain (termed *as-Andalus*). AQIM has declared its support for religiously motivated violent extremist (RMVE) activities in Afghanistan, Pakistan, Iraq, Yemen, Somalia, Chechnya and Palestine.

Leadership

Since November 2020, AQIM has been led by Abu Ubaidah Youssef al-Annabi. His predecessor, Abdelmalek Droukdal, was killed in June 2020 during French military operations. Although al-Annabi reportedly commands AQIM from Algeria, subordinate 'battalion' commanders also exercise some operational autonomy.

Membership

AQIM's membership is estimated at approximately 1,000 fighters across Algeria, northern Mali, southwest Libya, and Niger. AQIM members are predominantly from Algeria, Mali and Mauritania – although the group recruits from several other North and West African countries. Since 2000, individuals believed to be AQIM/GSPC members have been arrested in France, Spain, Italy, the Netherlands, the United Kingdom, and Pakistan.

Links to other groups

AQIM is an affiliate of, and is ideologically aligned with, al-Qa'ida- from which it receives strategic guidance. However, AQIM maintains a largely autonomous command structure and determines its own targeting strategy across North and West Africa.

Mali-based terrorist organisation Jama'at Nusrat al-Islam wal-Muslimin (JNIM) has pledged allegiance to AQIM. JNIM was formed in 2017 from a merger of Ansar al-Din, al-Murabitun and the Sahara Emirate sub-group of AQIM. JNIM is listed separately under the Criminal Code.

Terrorist activity

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

AQIM continues to engage in terrorist attacks and kidnappings against a wide range of targets in North and West Africa in order to further the group's objectives. Recent attacks which can be attributed to AQIM include:

- On 27 June 2020, two Algerian Army personnel were killed by an improvised explosive device (IED) in Ain Dalia, northern Algeria. An al-Qa'ida-aligned media agency claimed that AQIM was responsible for the attack.
- On 20 June 2020, militants ambushed an Algerian Army detachment in Ain Defla, northern Algeria, killing one soldier. An al-Qa'ida-aligned media agency claimed that AQIM was responsible for the attack.
- On 26 April 2019, a Tunisian Army soldier was killed and three were injured in an IED attack in Chaambi Mountains National Park, north-western Tunisia. AQIM claimed the attack was undertaken by militants from its Uqba bin Nafi Battalion.

Advocates the doing of a terrorist act

AQIM leaders have publicly advocated terrorism in order to further the group's objectives. Recent examples include:

- On 12 May 2021, AQIM released a statement urging Palestinians to attack Jewish people to “*cause pain and exhaustion to the Jews.*”
- On 3 November 2020, AQIM released a statement which instructed Muslims to kill any person who insults the Prophet Mohammed. The statement also praised a lone-actor attack in Conflans Sainte-Honorine, France, on 16 October 2020 for perceived insults the victim had made against the Prophet Mohammed. There is a substantial risk that the glorification of the 16 October 2020 attack could inspire others to undertake similar attacks.
- On 7 February 2020, AQIM released a statement advising Muslims to support existing ‘jihad operations’ and target US interests as a means of ending US support to Israel. In this context, ‘jihad’ likely refers to undertaking terrorist acts.
- On 5 May 2019, AQIM released a statement urging Palestinians to undertake ‘jihad and martyrdom operations’ targeting Jewish people. In this context, ‘jihad’ likely refers to undertaking terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

AQIM has not made statements specifically threatening Australians or Australian interests. However, AQIM adheres to al-Qa'ida's anti-Western ideology, and Australians may be harmed in attacks carried out by AQIM.

Listings by likeminded countries or the United Nations

The United Nations Security Council ISIL (Da'esh) and al-Qa'ida Sanctions Committee designates AQIM for targeted financial sanctions. AQIM is proscribed as a terrorist organisation by the United States, Canada and New Zealand, and is proscribed by the United Kingdom under the name Salafist Group for Call and Combat (GSPC).

Engagement in peace or mediation processes

AQIM is not engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as al-Qa'ida in the Lands of the Islamic Maghreb is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.