



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

Ref No: MS21-001381

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 rule-maker for the purpose of regulations made under Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), I am satisfied that al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, the Kurdistan Workers' Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ) meet the legal threshold for re-listing as terrorist organisations under Division 102. These re-listings will ensure that the offence provisions under Division 102 of the Criminal Code apply to conduct in relation to these five 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 five organisations meet the legal threshold to be re-listed as terrorist organisations.

I note the Committee's 2018 review of the re-listing of these five organisation recommended Australian Government agencies engage with Kurdish communities with regard to the PKK listing. In its July 2020 response to the Committee's report, the Government accepted this recommendation.

In response to this recommendation, the Department of Home Affairs' community liaison officers in Sydney and Melbourne have continued to conduct outreach to a number of Kurdish community groups. These consultations have provided Kurdish community groups with the opportunity to discuss their concerns around the PKK listing.

Please note that to ensure there is no gap in the coverage of the terrorist organisation offences in relation to these five organisations, the regulations re-listing al-Shabaab, the Hamas' Izz al-Din al-Qassam Brigades, the PKK, LeT and PIJ will commence on the day that the previous regulations are due to expire. Accordingly, the regulations re-listing these five organisations will commence on 4 August 2021.

Before the regulations were made, I wrote on behalf of the Commonwealth to all state and territory First Ministers advising them of the proposed re-listings, and provided them with copies of the Statements of Reasons with respect to these five organisations. The states and territories did not object to the re-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 re-listings. I provided the Leader of the Opposition with a copy of the Statements of Reasons with respect to these five 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 five 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 re-listing as a terrorist organisation under Division 102 of the Criminal Code.

I also attach documents outlining the process for re-listing each organisation, as well as a chronology of the Department's outreach to Kurdish community groups since 2018. I understand that these documents may be considered as the Department's submission should the Committee decide to conduct a review into the re-listings, and I consent to their publication for that purpose.

Yours sincerely



KAREN ANDREWS



Criminal Code (Terrorist Organisation— Al-Shabaab) Regulations 2021

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

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2021*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	4 August 2021.	4 August 2021

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

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

3 Authority

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

4 Schedules

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

5 Terrorist organisation—Al-Shabaab

- (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-Shabaab is specified.
- (2) Al-Shabaab is also known by the following names:
- (a) Al-Shabaab al-Islaam;
 - (b) Al-Shabaab al-Islamiya;
 - (c) Al-Shabaab al-Jihaad;
 - (d) Al-Shabab;
 - (e) Ash-Shabaab;
 - (f) Harakat al-Shabaab al-Mujahideen;
 - (g) Harakat Shabab al-Mujahidin;
 - (h) Harakatul Shabaab al-Mujaahidiin;

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- (i) Hisb'ul Shabaab;
- (j) Hizbul Shabaab;
- (k) Mujaahidiin Youth Movement;
- (l) Mujahideen Youth Movement;
- (m) Mujahidin al-Shabaab Movement;
- (n) Mujahidin Youth Movement;
- (o) Shabaab;
- (p) The Popular Resistance Movement in the Land of the Two Migrations;
- (q) The Unity of Islamic Youth;
- (r) The Youth;
- (s) Ugus;
- (t) Young Mujahideen Movement;
- (u) Young Mujahideen Movement in Somalia;
- (v) Youth Wing.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2018

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Hamas' Izz al-Din al-Qassam Brigades) Regulations 2021

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

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation— Hamas’ Izz al-Din al-Qassam Brigades) Regulations 2021*.

2 Commencement

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

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3 Authority

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

4 Schedules

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5 Terrorist organisation—Hamas’ Izz al-Din al-Qassam Brigades

- (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 Hamas’ Izz al-Din al-Qassam Brigades is specified.
- (2) Hamas’ Izz al-Din al-Qassam Brigades is also known by the following names:
- (a) Ezzedeen Al-Qassam Brigades;
 - (b) Izz al-Din Al-Qassem Brigades.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—~~Hamas’ Izz al-Din al-Qassam Brigades~~) Regulations 2018

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Kurdistan Workers’ Party) Regulations 2021

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

Dated 2021

David Hurley
Governor-General

By His Excellency’s Command

Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021*.

2 Commencement

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

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3 Authority

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4 Schedules

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5 Terrorist organisation—Kurdistan Workers’ Party

- (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 Kurdistan Workers’ Party is specified.
- (2) Kurdistan Workers’ Party is also known by the following names:
- (a) Freedom and Democratic Congress of Kurdistan;
 - (b) Hezan Parastina Gel;
 - (c) HPG;
 - (d) KADEK;
 - (e) Kongra Azadi u Demokrasiya Kurdistan;
 - (f) Kongra Gel;
 - (g) Kongra Gele Kurdistan;
 - (h) Kurdish Freedom Falcons;

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- (i) Kurdish Liberation Hawks;
- (j) Kurdistan Freedom and Democracy Congress;
- (k) Kurdistan Freedom Brigade;
- (l) Kurdistan Freedom Hawks;
- (m) Kurdistan Halk Kongresi;
- (n) Kurdistan Labor Party;
- (o) Kurdistan Ozgurluk Sahinleri;
- (p) Kurdistan People's Congress;
- (q) New PKK;
- (r) Partiya Karkeren Kurdistan;
- (s) People's Congress of Kurdistan;
- (t) People's Defence Force;
- (u) PKK;
- (v) TAK;
- (w) Teyrbazên Azadiya Kurdistan.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Lashkar-e-Tayyiba) Regulations 2021

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

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021*.

2 Commencement

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

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3 Authority

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

4 Schedules

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5 Terrorist organisation—Lashkar-e-Tayyiba

- (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 Lashkar-e-Tayyiba is specified.
- (2) Lashkar-e-Tayyiba is also known by the following names:
- (a) Al Mansoorien;
 - (b) Al Mansoorian;
 - (c) Army of Medina;
 - (d) Army of the Pure;
 - (e) Army of the Pure and Righteous;
 - (f) Army of the Righteous;
 - (g) Falah-e-Insaniyat Foundation;
 - (h) Idara Khidmat-e-Khalq;

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- (i) Jama'at al-Dawa;
- (j) Jama'at-i-Dawat;
- (k) Jamaati-ud-Dawa;
- (l) Jamaat ud-Daawa;
- (m) Jama'at-ud-Da'awa;
- (n) Jama'at-ud-Da'awah;
- (o) Jamaat-ud-Dawa;
- (p) Jama'at ul-Da'awa;
- (q) Jamaat-ul-Dawa;
- (r) Jamaat ul-Dawah;
- (s) Jamaat-ud-Dawa;
- (t) JuD;
- (u) JUD;
- (v) Lashkar-e-Taiba;
- (w) Lashkar-e-Tayyaba;
- (x) Lashkar-e-Toiba;
- (y) Lashkar-i-Tayyaba;
- (z) Lashkar-i-Toiba;
- (za) Lashkar-Tayyiba;
- (zb) LeT;
- (zc) LT;
- (zd) Milli Muslim League;
- (ze) Paasban-e-Ahle-Hadis;
- (zf) Paasban-e-Kashmir;
- (zg) Paasban-i-Ahle-Hadith;
- (zh) Party of Preachers;
- (zi) Party of the Calling;
- (zj) Pasban-e-Ahle-Hadith;
- (zk) Pasban-e-Kashmir;
- (zl) Soldiers of the Pure;
- (zm) Tehreek;
- (zn) Tehreek-e-Tahafuz Qibla Awal;
- (zo) The Resistance Front;
- (zp) TRF.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2018

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Palestinian Islamic Jihad) Regulations 2021

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

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021*.

2 Commencement

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

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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—Palestinian Islamic Jihad

- (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 Palestinian Islamic Jihad is specified.
- (2) Palestinian Islamic Jihad is also known by the following names:
- (a) Al-Quds Brigades;
 - (b) Harakat al-Jihad al-Islami fi Filistin;
 - (c) Islamic Jihad;
 - (d) Islamic Jihad Palestine;
 - (e) Islamic Jihad–Palestine Faction and Islamic Holy War;
 - (f) PIJ;
 - (g) Saraya al-Quds;
 - (h) The Jerusalem Brigades.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2018

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-Shabaab) Regulations 2021

The purpose of the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2021* (the Regulations) is to specify the organisation known as al-Shabaab 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 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-Shabaab 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 (the Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of Part 5.3 of the *Criminal Code* apply to conduct relating to al-Shabaab.

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

The Regulations commence on 4 August 2021. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment A.

Further details of the Regulations are set out in Attachment B.

Consultation

The Department of Home Affairs sought advice from the Australian Government Solicitor (AGS) in relation to the unclassified information (the Statement of Reasons) at Attachment C.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that al-Shabaab meets the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Minister.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2021* (the Regulations) specify al-Shabaab 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-Shabaab 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-Shabaab.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with al-Shabaab as a listed terrorist organisation.

Terrorist organisations, including al-Shabaab, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

Under Article 6 of the ICCPR, countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including al-Shabaab. 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-Shabaab.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with al-Shabaab, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister’s declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister

- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

ATTACHMENT B

Details of the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2021*

Section 1 – Name

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2021*.

Section 2 – Commencement

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

Section 3 – Authority

6. This section provides that the proposed 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-Shabaab) Regulations 2018*.

Section 5 – Terrorist organisation—al-Shabaab

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-Shabaab is specified.

10. The effect of specifying al-Shabaab 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-Shabaab.
11. Subsection 5(2) provides a list of names by which the organisation al-Shabaab is also known:
 - (a) Al-Shabaab al-Islaam (paragraph (a))
 - (b) Al-Shabaab al-Islamiya (paragraph (b))
 - (c) Al-Shabaab al-Jihaad (paragraph (c))
 - (d) Al-Shabab (paragraph (d))
 - (e) Ash-Shabaab (paragraph (e))
 - (f) Harakat al-Shabaab al-Mujahideen (paragraph (f))
 - (g) Harakat Shabab al-Mujahidin (paragraph (g))
 - (h) Harakatul Shabaab al-Mujaahidiin (paragraph (h))
 - (i) Hisb'ul Shabaab (paragraph (i))
 - (j) Hizbul Shabaab (paragraph (j))
 - (k) Mujaahidiin Youth Movement (paragraph (k))
 - (l) Mujahideen Youth Movement (paragraph (l))
 - (m) Mujahidin al-Shabaab Movement (paragraph (m))
 - (n) Mujahidin Youth Movement (paragraph (n))
 - (o) Shabaab (paragraph (o))
 - (p) The Popular Resistance Movement in the Land of the Two Migrations (paragraph (p))
 - (q) The Unity of Islamic Youth (paragraph (q))
 - (r) The Youth (paragraph (r))
 - (s) Ugus (paragraph (s))
 - (t) Young Mujahideen Movement (paragraph (t))
 - (u) Young Mujahideen Movement in Somalia (paragraph (u)), and
 - (v) Youth Wing (paragraph (v)).

Schedule 1 — Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2018* (the repealed Regulations).

13. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations cease to have effect on 4 August 2021, being the third anniversary of the day on which they took effect. While the repealed Regulations cease to have effect on this date, the repeal provides clarity and ensures there is no duplication if the proposed Regulations were made before the repealed Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

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

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

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

Al-Shabaab was first listed as a terrorist organisation under the *Criminal Code* on 22 August 2009. Al-Shabaab was re-listed on 18 August 2012, 11 August 2015 and 4 August 2018.

Details of the organisation

Name of the organisation

al-Shabaab

Known aliases

- Al-Shabaab al-Islam
- Al-Shabaab al-Islamiya
- Al-Shabaab al-Jihaad
- Al-Shabab
- Ash-Shabaab
- Harakat al-Shabaab al-Mujahideen
- Harakat Shabab al-Mujahidin
- Harakatul Shabaab al-Mujaahidiin
- Hisb'ul Shabaab
- Hizbul Shabaab
- Mujaahidiin Youth Movement
- Mujahideen Youth Movement
- Mujahidin al-Shabaab Movement

- Mujahidin Youth Movement
- Shabaab
- The Popular Resistance Movement in the Land of the Two Migrations
- The Unity of Islamic Youth
- The Youth
- Ugus
- Young Mujahideen Movement
- Young Mujahideen Movement in Somalia
- Youth Wing

Organisational overview and objectives

Al-Shabaab is a religiously motivated violent extremist organisation based in Somalia. The group is an officially recognised affiliate of al-Qa'ida, adhering to al-Qa'ida's global anti-Western jihadist narrative and promotion of sectarian violence against those who do not agree with its extreme religious interpretation. Al-Shabaab's primary local objective is the establishment of an Islamist state in the Horn of Africa based on Sharia law and the elimination of secular and foreign influence, including through violent means.

Currently, al-Shabaab controls territory in southern Somalia. However, this is fluid and frequently changes depending on United Nations African Mission in Somalia (AMISOM) counter-terrorism activity and troop movements.

Organisation history

In 2006, al-Shabaab emerged as the most prominent militia group within the militant wing of the Council of Islamic Courts. The Council of Islamic Courts was a group of Sharia courts in Somalia who united to form a rival administration, but was ousted in December 2006 by the Somali Transitional Federal Government and Ethiopian forces.

Following this, al-Shabaab established itself as an oppositionist government and insurgency fighting for the overthrow of the Somali Transitional Federal Government and for Sharia law to be installed in Somalia.

Between January 2009 and 2011, al-Shabaab controlled the majority of Somalia. In 2011, al-Shabaab was forced from Mogadishu and much of southern and central Somalia through renewed military intervention by both Kenyan and Ethiopian forces.

Leadership

Al-Shabaab has a centralised command structure and is currently led by Sheikh Ahmed Umar (also known as Ahmed Diriye), who took over as leader following the September 2014 death of long-time emir, Ahmad Abdi Aw Muhammad Godane.

Membership and recruitment

Al-Shabaab members range from those focused on the domestic insurgency in Somalia to elements that support al-Qa'ida's global jihadist ideology. The number of al-Shabaab members vary from 5,000 to 14,000.

Most members are ethnic Somalis from Somalia and Kenya. However, a small number of members are from other countries, including Western nations.

Al-Shabaab recruits widely within Somali society, predominantly spreading its message through Radio al-Andalus. Al-Shabaab also recruits internationally from within the Somali diaspora using propaganda campaigns, which are often in video format. Al-Shabaab has posted increasingly

sophisticated videos online, including videos with English subtitles—most via its al-Kata'ib media platform.

Financing

Al-Shabaab derives some of its financing from taxing communities in areas it controls, and private fundraising activities outside of Somalia. Al-Shabaab also demands protection money from Somali-based businesses, and conducts its own business activities.

Links to other terrorist organisations

Al-Shabaab is an officially recognised affiliate al-Qa'ida, which is a listed terrorist organisation under Australia's *Criminal Code*.

On 9 February 2012, a publicly released video by al-Shabaab leader Mukhtar Abu al-Zubair pledged al-Shabaab's allegiance to al-Qa'ida. In the video, al-Qa'ida leader, Ayman al-Zawahiri, also announced al-Shabaab had joined al-Qa'ida. On 6 September 2014, al-Shabaab officially reiterated its allegiance to al-Qa'ida and al-Zawahiri.

While al-Shabaab largely operates independently, al-Qa'ida senior leadership has previously supported some al-Shabaab activities.

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

In the past 12 months, al-Shabaab has conducted attacks and engaged in attack planning against Western, Jewish, Somali, Kenyan, and Ethiopian interests. To our knowledge, al-Shabaab is assessed as responsible or can be reasonably assessed as responsible for conducting at least 1,630 attacks in the last 12 months and at least 3,630 attacks in the last three years. Significant examples include:

- On 10 April 2021, an al-Shabaab member conducted a suicide bombing outside a hotel in Baidoa, Somalia killing, at least three people.
- On 4 April 2021, an al-Shabaab member conducted a suicide bombing at a tea shop in Mogadishu, Somalia, killing five people.
- On 3 April 2021, al-Shabaab conducted mortar attacks on Bariire and Awdhigle military bases in Southern Somalia, killing at least nine soldiers.
- On 6 March 2021, al-Shabaab conducted a suicide vehicle bombing at a restaurant near Mogadishu, Somalia, killing at least 10 people.
- On 17 August 2020, an al-Shabaab member detonated a suicide vest on a military base in Gofgadud Burey District, Somalia, killing at least seven soldiers and officials.
- On 16 August 2020, al-Shabaab conducted a suicide vehicle bombing at the Elite Hotel in Mogadishu, Somalia, killing at least 16 people.
- On 8 August 2020, al-Shabaab conducted a vehicle bomb attack on a military base in Mogadishu, Somalia, killing nine people.
- On 5 January 2020, al-Shabaab attacked the joint United States (US)-Kenyan airbase in Lamu, Kenya, destroying six aircraft and killing one US military service member and two US contractors.
- On 28 December 2019, al-Shabaab attacked a Turkish convoy with a vehicle bomb in Mogadishu, Somalia killing 87 people, including at least two Turkish contractors.
- On 30 September 2019, al-Shabaab attacked the joint US-Somali Base at Baledogle in southern Somalia with a vehicle bomb and firearms, killing at least 12 Somali soldiers.

- On 14 July 2019, al-Shabaab attacked a meeting of government election officials at the Asasey Hotel in Kismayo, Somalia, killing 26 people, including two Americans and one British journalist.
- On 23 March 2019, al-Shabaab conducted a suicide vehicle bombing and raid on a government building in Mogadishu, Somalia, killing five people including Somalia's deputy labour minister, Saqar Ibrahim Abdala.
- On 5 February 2019, al-Shabaab conducted a vehicle bomb attack in Mogadishu, Somalia, killing at least 11 people.
- On 4 February 2019, al-Shabaab conducted an assassination of a senior manager of P&O Ports in Puntland, Somalia as well as a vehicle bombing in Mogadishu, Somalia that killed 11 people.
- On 15 January 2019, al-Shabaab attacked the DusitD2 Hotel in Nairobi, Kenya, with a suicide bomb and firearms, killing 21 people, including an American and a British-South African dual national.
- On 22 December 2018, al-Shabaab detonated a vehicle bomb at a checkpoint near the Somali presidential palace in Mogadishu, Somalia, killing 16 people, including three staff from the London-based Universal TV station.
- On 22 November 2018, al-Shabaab kidnapped an Italian non-governmental organisation aid worker in Kilifi, Kenya, and held her captive for 18 months. She was released in May 2020 after a ransom of 1.5 million Euros was reportedly paid.

On the basis of these examples, al-Shabaab is responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Advocates the doing of a terrorist act

Al-Shabaab publicly advocates terrorist attacks against Western interests, including:

- In a 30 March 2021 video released on the al-Shabaab al-Kataib official website, al-Shabaab's leader called for attacks against US and French interests in Djibouti. The video also reiterated that al-Shabaab members had the responsibility to attack all foreigners in Djibouti and Somalia.
- In a 28 January 2021 video celebrating the anniversary of the 5 January 2020 attack on the joint US-Kenya airbase in Lamu, Kenya, al-Shabaab reiterated the duty of its members to attack US and foreign forces in Africa, and elsewhere if necessary, to protect Islam and ensure that Jerusalem is not controlled by Jewish people.
- In January 2020, al-Shabaab released a statement calling on its jihadists to make US interests in Kenya their primary targets as well as tourists. The statement also said Kenya 'should never be safe again'.

On the basis of these examples, al-Shabaab advocates the doing of terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

Al-Shabaab has no known intent to conduct an attack in Australia. Al-Shabaab has not made statements specifically threatening Australians or Australian interests. However, it is possible Australians or Australian interests could be harmed in future attacks carried out by al-Shabaab.

Al-Shabaab has issued statements threatening Westerners and Western interests and has attacked locations known to be popular with Westerners, including shopping malls and cafes. Al-Shabaab spreads propaganda to inspire followers worldwide to conduct terrorist attacks, using its websites and social media accounts.

Historical examples of al-Shabaab's connections to Australia and Australians include:

- In September 2013, Australian-British dual national Ross Langdon was killed during an al-Shabaab attack on a shopping complex in Nairobi, Kenya.
- Some individuals convicted of terrorist offences in Australia have had links to al-Shabaab. On 5 June 2017, al-Shabaab-trained Australian citizen, Yacqub Khayre, shot and killed Kai Hao, a receptionist at the Buckingham International Serviced Apartments in Brighton, Victoria. He also took an escort hostage and called Channel Seven reportedly stating 'this is for ISIL' and 'this is for al-Qa'ida'. Kharye later fired on Victoria Police Special Operations Group officers—injuring three—before police responded by fatally shooting him.
- In late 2011, al-Shabaab-linked Australian citizens Wissam Fattal, Saney Edow Aweys and Nayef El Sayed were found guilty in the Victorian Supreme Court of conspiring to do acts in preparation for a terrorist act contrary to Section 11.5 and 101.6(1) of the *Criminal Code*. They were linked to Australian al-Shabaab member, Hussein Hashi Farah, who was arrested in Kenya in 2010 for his involvement in coordinating plans to attack the Holsworthy Army Base near Sydney.

Listings by likeminded countries or the United Nations

Al-Shabaab is listed in the United Nations 1267 Committee's consolidated list and is proscribed as a terrorist organisation by the governments of Canada, New Zealand, the United Kingdom and the United States.

Engagement in peace or mediation processes

Since it was last listed, al-Shabaab is not known to have participated in peace or mediation processes despite Federal Government of Somalia and AMISOM appeals to the group to disarm and join the Somali peace process.

Conclusion

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

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation— Hamas’ Izz al-Din al-Qassam Brigades)
Regulations 2021*

The purpose of the *Criminal Code (Terrorist Organisation— Hamas’ Izz al-Din al-Qassam Brigades) Regulations 2021* (the Regulations) is to specify the organisation known as Hamas’ Izz al-Din al-Qassam Brigades 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 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 Hamas’ Izz al-Din al-Qassam Brigades 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 (the Statement of Reasons) provided by the Department of Home Affairs (Attachment C).

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of Part 5.3 of the *Criminal Code* apply to conduct relating to Hamas' Izz al-Din al-Qassam Brigades.

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

The Regulations commence on 4 August 2021. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment A.

Further details of the Regulations are set out in Attachment B.

Consultation

The Department of Home Affairs sought advice from the Australian Government Solicitor (AGS) in relation to the unclassified information (the Statement of Reasons) at Attachment C.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that Hamas’ Izz al-Din al-Qassam Brigades meets the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Minister.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation— Hamas’ Izz al-Din al-Qassam Brigades) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation— Hamas’ Izz al-Din al-Qassam Brigades) Regulations 2021* (the Regulations) specify Hamas’ Izz al-Din al-Qassam Brigades 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 Hamas’ Izz al-Din al-Qassam Brigades 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 Hamas’ Izz al-Din al-Qassam Brigades.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Hamas’ Izz al-Din al-Qassam Brigades as a listed terrorist organisation.

Terrorist organisations, including Hamas’ Izz al-Din al-Qassam Brigades, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

Under Article 6 of the ICCPR, countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Hamas' Izz al-Din al-Qassam Brigades. 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 Hamas' Izz al-Din al-Qassam Brigades.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Hamas’ Izz al-Din al-Qassam Brigades, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister’s declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister

- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—*Hamas’ Izz al-Din al-Qassam Brigades*) Regulations 2021

Section 1 – Name

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—*Hamas’ Izz al-Din al-Qassam Brigades*) Regulations 2021*.

Section 2 – Commencement

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

Section 3 – Authority

6. This section provides that the proposed 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—*Hamas’ Izz al-Din al-Qassam Brigades*) Regulations 2018*.

Section 5 – Terrorist organisation—*Hamas’ Izz al-Din al-Qassam Brigades*

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 *Hamas’ Izz al-Din al-Qassam Brigades* is specified.

10. The effect of specifying Hamas' Izz al-Din al-Qassam Brigades 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 Hamas' Izz al-Din al-Qassam Brigades.
11. Subsection 5(2) provides a list of names by which the organisation Hamas' Izz al-Din al-Qassam Brigades is also known:
 - (a) Ezzedeen Al-Qassam Brigades (paragraph (a)), and
 - (b) Izz al-Din Al-Qassem Brigades (paragraph (b)).

Schedule 1 — Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Hamas' Izz al-Din al-Qassam Brigades) Regulations 2018* (the repealed Regulations).
13. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations cease to have effect on 4 August 2021, being the third anniversary of the day on which they took effect. While the repealed Regulations cease to have effect on this date, the repeal provides clarity and ensures there is no duplication if the proposed Regulations were made before the repealed Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Hamas' Izz al-Din al-Qassam Brigades as a terrorist organisation under the *Criminal Code Act 1995*

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

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 Hamas' Izz al-Din al-Qassam Brigades as a terrorist organisation under the *Criminal Code* on 9 November 2003. It was re-listed on 5 June 2005, 7 October 2005, 8 September 2007, 8 September 2009, 18 August 2012, 11 August 2015 and 4 August 2018.

Details of the organisation

Name of the organisation

Hamas' Izz al-Din al-Qassam Brigades

Known aliases

- Ezzedeen Al-Qassam Brigades
- Izz al-Din Al-Qassem Brigades

Organisational overview and objectives

The Izz al-Din al-Qassam Brigades (the Brigades) were officially established in 1991 as the paramilitary wing of Hamas, an ideologically and religiously motivated violent extremist organisation and political party, which fuses Palestinian nationalist and Sunni Islamist objectives. In recent years, Hamas has prioritised its nationalist orientation—probably due to political pragmatism where an inflexible adherence to religious principles is seen as detrimental to the group's political objectives.

Hamas' overarching goal is to 'liberate Palestine' by establishing an independent Palestinian state—comprising Gaza, the West Bank and Israel—guided by Islamic principles and destroying Israel as a political entity in the process. Islam is Hamas' 'frame of reference', the lens through which its 'principles, objectives and means' are determined. Hamas supports the strategy of armed resistance in pursuit of its goals.

The Brigades undertake military activity on behalf of Hamas and have adopted terrorist tactics in their efforts to defeat Israel, including indiscriminate rocket attacks, suicide bombings and kidnappings against Israeli military and civilian targets. Organised terrorist activities associated with Hamas can be reliably attributed to the Brigades.

The Brigades exist within the overall organisational structure of Hamas, subordinate to its political leadership, but structured as a distinct military wing. While decisions of the political leadership probably take precedence, the Brigades operate with a significant degree of independence and are unlikely to seek approval from the political leadership for operational activities. Historically, the Brigades have predominantly operated in Gaza, with limited representation in the West Bank.

The Brigades have not demonstrated intent to conduct attacks outside of Israel and the Palestinian Territories, or to target interests of countries other than Israel. The Brigades' website describe its operations as limited to within the borders of historic Palestine. However, the founder of Hamas, Sheikh Yassin, has stated the Brigades act against the Zionist enemy wherever it may be.

The Brigades maintain their own website, including an English-language version, which publicises their aims and activities. The website is used to commemorate events, condemn perceived Israeli crimes, praise anti-Israel protest and announce the death of Brigades members killed in Israeli counter-terrorism actions.

Organisation history

Hamas itself was founded in 1987 during the first intifada. It began as a branch of, and retains an ideological affinity with, the Muslim Brotherhood. Since the 2006 Palestinian legislative election, Hamas has been the governing body in Gaza, largely responsible for the administration and provision of government services, including health, education and security to Gaza's inhabitants.

Leadership

The leader of the Brigades, Mohammed Deif, has held the position since 2002. Deif has survived a number of assassination attempts by Israel and has been described by Israeli media as Israel's most wanted man. Deif's deputy, Marwan Issa, serves as the Brigades' representative in Hamas' political bureau.

Membership and recruitment

The size of the Brigades is difficult to determine. The Brigades restrict knowledge of membership numbers to their leadership; however, estimates range from several thousand to 30,000 men. The proportion of members assigned to more standard military and security duties, and those involved in planning terrorist attacks is unknown.

Financing

The amount of money allocated to the Brigades by Hamas is difficult to ascertain. While Iran is known to fund the Brigades, Hamas' funding comes from a range of official and private sources including states, corporations, individuals, and charities. As at April 2021, Hamas has continued to collect taxes within Gaza.

Links to other terrorist organisations

The Brigades have been known to engage and operate with other violent extremist organisations. This includes coordinating operations with listed terrorist organisation Palestinian Islamic Jihad (PIJ).

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

Since 2005, the majority of the Brigades' activities have consisted of small-arms, rocket and mortar fire at Israel and communities in the vicinity of Gaza. These attacks have caused property damage, as well as deaths and injuries to both Israel military personnel and civilians.

The following activities are reliably attributed to the Brigades:

- From 10-21 May 2021, Palestinian militants, including from the Brigades, launched over 4,000 rockets into Israel from Gaza. The Brigades' official spokesperson claimed its responsibility for multiple strikes against Israel during this period.
- On 29 December 2020, Palestinian militant groups, including the Brigades, launched rockets into the Mediterranean Sea off Gaza during joint military drills. According to an official Brigades statement, the exercises aimed to simulate expected threats posed by Israel and to develop the capability of Palestinian resistance fighters for conflict.
- Throughout August 2020, Palestinian militants in Gaza launched hundreds of incendiary and explosive balloons and at least 16 rockets into Israel before a ceasefire between Israel and Hamas was reached on 31 August. The Brigades probably supported some of these attacks.
- From 1-2 July 2020, the Brigades fired 24 rockets and 20 large-calibre mortars towards the sea from Gaza. An anonymous Hamas official told media that Hamas' rocket tests aim to improve its military capabilities to counter any Israeli plan to attack the Palestinian people.
- On 6 May 2019, the Brigades spokesperson posted on social media that the Brigades had 'succeeded in overcoming the so-called Iron Dome by adopting the tactic of firing dozens of missiles in one single burst' which caused 'great losses and destruction to the enemy'. The Israel Defense Forces (IDF) confirmed Hamas and PIJ had repeatedly fired at a specific location, although few rockets had penetrated the system. At least 690 projectiles were fired in total.
- On 30 May 2018, the Brigades and PIJ issued an official joint statement claiming their responsibility for 'targeting occupation settlements and military sites near Gaza Strip with tens of projectiles and mortars'.

The firing of rockets from Gaza into Israel, during the escalation of violence in April 2021, can be reasonably attributed to the Brigades as well as PIJ.

On the basis of these examples, the Brigades is assessed as responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

There are no known direct links between the Brigades and Australia. The Brigades have not made statements specifically threatening Australians or Australian interests. However, Australians could be incidentally harmed in attacks.

On 9 August 2001, an Australian-American dual national was incidentally killed in the Sbarro pizzeria suicide bombing in Jerusalem, attributed to the Brigades.

Listings by likeminded countries or the United Nations

The governments of the United Kingdom and New Zealand proscribe the Brigades as a terrorist organisation. The governments of Canada and the United States proscribe Hamas (including the Brigades) as a terrorist organisation.

Hamas is also included in the Department of Foreign Affairs and Trade's Consolidated List maintained under the *Charter of the United Nations Act 1945*, which implements Australia's obligations under United Nations Security Council Resolution 1373 in relation to countering the financing of terrorism. The European Union lists Hamas for the purposes of its anti-terrorism financing measures.

Engagement in peace or mediation processes

The Brigades agreed to a ceasefire with Israel following the May 2021 escalation in the Israeli-Palestinian conflict involving the firing of rockets from Gaza into Israel.

In 2017, Hamas engaged in reconciliation negotiations with its rivals, the Fatah-led Palestinian Authority. This included a 12 October 2017 agreement to restore Palestinian Authority control to the Gaza strip; however, it did not address the future of the Brigades which, as of June 2021, have not disarmed. Hamas has been involved in other ceasefire agreements, including in August 2020. Recently, Hamas has engaged in reconciliation negotiations with Fatah.

Conclusion

On the basis of the information above, the Australian Government assesses that the Hamas Brigades are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021

The purpose of the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021* (the Regulations) is to specify the organisation known as Kurdistan Workers’ Party 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 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 Kurdistan Workers’ Party 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 (the Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of Part 5.3 of the *Criminal Code* apply to conduct relating to Kurdistan Workers' Party.

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

The Regulations commence on 4 August 2021. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment A.

Further details of the Regulations are set out in Attachment B.

Consultation

The Department of Home Affairs sought advice from the Australian Government Solicitor (AGS) in relation to the unclassified information (the Statement of Reasons) at Attachment C.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that Kurdistan Workers’ Party meets the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Minister.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021* (the Regulations) specify Kurdistan Workers’ Party 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 Kurdistan Workers’ Party 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 Kurdistan Workers’ Party.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Kurdistan Workers’ Party as a listed terrorist organisation.

Terrorist organisations, including Kurdistan Workers’ Party, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

Under Article 6 of the ICCPR, countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Kurdistan Workers' Party. 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 Kurdistan Workers' Party.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Kurdistan Workers’ Party, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister’s declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister

- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021

Section 1 – Name

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021*.

Section 2 – Commencement

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

Section 3 – Authority

6. This section provides that the proposed 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—Kurdistan Workers’ Party) Regulations 2018*.

Section 5 – Terrorist organisation—Kurdistan Workers’ Party

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 Kurdistan Workers’ Party is specified.

10. The effect of specifying Kurdistan Workers' Party 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 Kurdistan Workers' Party.
11. Subsection 5(2) provides a list of names by which the organisation Kurdistan Workers' Party is also known:
 - (a) Freedom and Democratic Congress of Kurdistan (paragraph (a))
 - (b) Hezan Parastina Gel (paragraph (b))
 - (c) HPG (paragraph (c))
 - (d) KADEK (paragraph (d))
 - (e) Kongra Azadi u Demokrasiya Kurdistan (paragraph (e))
 - (f) Kongra Gel (paragraph (f))
 - (g) Kongra Gele Kurdistan (paragraph (g))
 - (h) Kurdish Freedom Falcons (paragraph (h))
 - (i) Kurdish Liberation Hawks (paragraph (i))
 - (j) Kurdistan Freedom and Democracy Congress (paragraph (j))
 - (k) Kurdistan Freedom Brigade (paragraph (k))
 - (l) Kurdistan Freedom Hawks (paragraph (l))
 - (m) Kurdistan Halk Kongresi (paragraph (m))
 - (n) Kurdistan Labor Party (paragraph (n))
 - (o) Kurdistan Ozgurluk Sahinleri (paragraph (o))
 - (p) Kurdistan People's Congress (paragraph (p))
 - (q) New PKK (paragraph (q))
 - (r) Partiya Karkeren Kurdistan (paragraph (r))
 - (s) People's Congress of Kurdistan (paragraph (s))
 - (t) People's Defence Force (paragraph (t))
 - (u) PKK (paragraph (u))
 - (v) TAK (paragraph (v)), and
 - (w) Teyrbazên Azadiya Kurdistan (paragraph (w)).

Schedule 1 — Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulations 2018* (the repealed Regulations).

13. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations cease to have effect on 4 August 2021, being the third anniversary of the day on which they took effect. While the repealed Regulations cease to have effect on this date, the repeal provides clarity and ensures there is no duplication if the proposed Regulations were made before the repealed Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Kurdistan Workers' Party as a terrorist organisation under the *Criminal Code Act 1995*

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

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 Kurdistan Workers' Party was first listed as a terrorist organisation under the *Criminal Code* on 17 December 2005. The Kurdistan Workers' Party was re-listed on 28 September 2007, 8 September 2009, 18 August 2012, 11 August 2015 and 4 August 2018.

Details of the organisation

Name of the organisation

Kurdistan Workers' Party

Known aliases

- Freedom Brigade
- Hezan Parastina Gel
- HPG
- KADEK
- Kongra Azadi u Demokrasiya Kurdistan
- Kongra Gel Kurdish
- Kongra Gele Kurdistan
- Kurdish Freedom Falcons
- Kurdistan Freedom and Democracy Congress
- Kurdistan Freedom Brigade
- Kurdistan Freedom Hawks

- Kurdistan Halk Kongresi
- Kurdistan Labor Party
- Kurdistan Ozgurluk Sahinleri
- Kurdistan People's Congress
- Liberation Hawks
- New PKK
- Partiya Karkeren Kurdistan
- People's Congress of Kurdistan
- People's Defence Force
- PKK
- TAK
- Teyrbazên Azadiya Kurdistan

Organisational overview and objectives

The Kurdistan Workers' Party is an ideologically motivated violent extremist organisation. The group was founded by Abdullah Ocalan in 1978 as a nationalist and revolutionary organisation, based on Marxist-Leninist ideals.

Specifically, the Kurdistan Workers' Party's nationalist ideology encompasses the rights of Kurds to maintain their Kurdish ethnic identity. Further to its nationalist objectives, the Kurdistan Workers' Party aims to monopolise Kurdish political power, including by attacking the interests of rival political parties. However, the Kurdistan Workers' Party primarily conducts attacks against the Turkish government and security forces.

Leadership

The Kurdistan Workers' Party founder and leader, Abdullah Ocalan, is currently serving life imprisonment in Turkey. Day-to-day affairs are run by Murat Karayilan.

The Kurdistan Workers' Party's operational command consists of a three person executive committee, including Murat Karayilan, Cemil Bayik and Fehman Huseyin. This executive committee manages the Kurdistan Workers' Party from its base in the Qandil Mountains in northern Iraq.

Membership, recruitment and funding

The precise strength of the Kurdistan Workers' Party is unknown. The majority of the Kurdistan Workers' Party militants are based in northern Iraq.

Most Kurdistan Workers' Party members are recruited from Kurdish areas in south-east Turkey. The group also recruits from the Kurdish population in Iraq, Syria, Iran, and the Kurdish diaspora in Europe. The group recruits both men and women for all its activities, and recent recruiting strategies have focused on youth. In urban areas and in Europe, a network of Kurdistan Workers' Party members and sympathisers reportedly manage financing, propaganda and recruitment processes.

Financing for the group has historically been obtained through fundraising among Kurds in Turkey and the European Kurdish diaspora. Additional sources of funding include criminal activity, such as narcotics smuggling and extortion.

Links to other terrorist organisations

The Kurdistan Workers' Party is not known to maintain formal links with any other listed terrorist organisations. However, the group maintains ties with other pro-Ocalan Kurdish violent extremist organisations across Turkey, Iraq, Syria and Iran.

The Turkish government makes little or no distinction between the Kurdistan Workers' Party and the Syria-based Kurdish People's Protection Units (YPG). The current level of interconnectivity between the Kurdistan Workers' Party and YPG is unclear.

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

The Kurdistan Workers' Party has claimed responsibility for a number of attacks mainly targeting Turkish authorities and infrastructure in Turkey's south-east, and can be reasonably assessed as responsible for the following terrorist attacks and actions:

- On 28 October 2020, the Kurdistan Workers' Party attacked and destroyed the Botaş oil pipeline in Turkey's Mardin province. There were no injuries or deaths reported. The Kurdistan Workers' Party claimed responsibility for the attack the next day.
- On 31 March 2020, a suicide bombing damaged a natural gas pipeline between Turkey and Iran near the city of Barzagan, Agri province, eastern Turkey. The Kurdistan Workers' Party claimed responsibility, stating it had killed at least 30 Turkish soldiers who were guarding the pipeline.
- On 12 September 2019, seven civilians were killed and 10 were injured when a roadside improvised explosive device detonated in Kulp District, Diyarbakir province, south-east Turkey. The Kurdistan Workers' Party subsequently claimed responsibility for the attack, stating they were targeting 'spies'.

On the basis of these examples, the Kurdistan Workers' Party is assessed as being responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

The Kurdistan Workers' Party does not currently pose a direct threat to Australian interests. However, Australians could be incidentally harmed in attacks targeting tourist locations in Turkey, or in Iraq and Syria.

One Australian has been charged with being a member of the Kurdistan Workers' Party. In May 2019, the NSW Supreme Court sentenced Renas Lelikan to a three-year Community Corrections Order for being a member of the Kurdistan Workers' Party. Mr Lelikan had earlier pleaded guilty to being a member of the Kurdistan Workers' Party between April 2011 and August 2013.

Listings by likeminded countries or the United Nations

The Kurdistan Workers' Party is proscribed as a terrorist organisation by the governments of Canada, New Zealand, the United Kingdom and the United States.

Engagement in peace or mediation processes

The Kurdistan Workers' Party has engaged in ceasefires and peace talks with the Turkish government at various stages throughout its history.

The Kurdistan Workers' Party's terrorist activities slowed significantly during its most recent ceasefire (2012-2015), though its members continued to conduct occasional attacks against civilian, military and other government targets in Turkey. Following the breakdown of peace talks in June 2015,

Kurdistan Workers' Party attacks increased to pre-ceasefire rates but have since dropped significantly.

Conclusion

On the basis of the information above, the Australian Government assesses that the Kurdistan Workers' Party is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021

The purpose of the *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021* (the Regulations) is to specify the organisation known as Lashkar-e-Tayyiba 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 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 Lashkar-e-Tayyiba 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 (the Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of Part 5.3 of the *Criminal Code* apply to conduct relating to Lashkar-e-Tayyiba.

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

The Regulations commence on 4 August 2021. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

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

Consultation

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

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that Lashkar-e-Tayyiba meets the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Minister.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021* (the Regulations) specify Lashkar-e-Tayyiba 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 Lashkar-e-Tayyiba 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 Lashkar-e-Tayyiba.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Lashkar-e-Tayyiba as a listed terrorist organisation.

Terrorist organisations, including Lashkar-e-Tayyiba, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

Under Article 6 of the ICCPR, countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Lashkar-e-Tayyiba. 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 Lashkar-e-Tayyiba.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Lashkar-e-Tayyiba, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister’s declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister

- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

ATTACHMENT B

Details of the *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021*

Section 1 – Name

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2021*.

Section 2 – Commencement

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

Section 3 – Authority

6. This section provides that the proposed 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—Lashkar-e-Tayyiba) Regulations 2018*.

Section 5 – Terrorist organisation—Lashkar-e-Tayyiba

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 Lashkar-e-Tayyiba is specified.

10. The effect of specifying Lashkar-e-Tayyiba 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 Lashkar-e-Tayyiba.

Subsection 5(2) provides a list of names by which the organisation Lashkar-e-Tayyiba is also known:

- (a) Al Mansooreen (paragraph (a))
- (b) Al Mansoorian (paragraph (b))
- (c) Army of Medina (paragraph (c))
- (d) Army of the Pure (paragraph (d))
- (e) Army of the Pure and Righteous (paragraph (e))
- (f) Army of the Righteous (paragraph (f))
- (g) Falah-e-Insaniyat Foundation (paragraph (g))
- (h) Idara Khidmat-e-Khalq (paragraph (h))
- (i) Jama'at al-Dawa (paragraph (i))
- (j) Jama'at-i-Dawat (paragraph (j))
- (k) Jamaati-ud-Dawa (paragraph (k))
- (l) Jamaat ud-Daawa (paragraph (l))
- (m) Jama'at-ud-Da'awa (paragraph (m))
- (n) Jama'at-ud-Da'awah (paragraph (n))
- (o) Jamaat-ud-Dawa (paragraph (o))
- (p) Jama'at ul-Da'awa (paragraph (p))
- (q) Jamaat-ul-Dawa (paragraph (q))
- (r) Jamaat ul-Dawah (paragraph (r))
- (s) Jama'at-ud-Dawa (paragraph (s))
- (t) JuD (paragraph (t))
- (u) JUD (paragraph (u))
- (v) Lashkar-e-Taiba (paragraph (v))
- (w) Lashkar-e-Tayyaba (paragraph (w))
- (x) Lashkar-e-Toiba (paragraph (x))
- (y) Lashkar-i-Tayyaba (paragraph (y))
- (z) Lashkar-i-Toiba (paragraph (z))
- (aa) Lashkar-Tayyiba (paragraph (za))
- (bb) LeT (paragraph (zb))

- (cc) LT (paragraph (zc))
- (dd) Milli Muslim League (paragraph (zd))
- (ee) Paasban-e-Ahle-Hadis (paragraph (ze))
- (ff) Paasban-e-Kashmir (paragraph (zf))
- (gg) Paasban-i-Ahle-Hadith (paragraph (zg))
- (hh) Party of Preachers (paragraph (zh))
- (ii) Party of the Calling (paragraph (zi))
- (jj) Pasban-e-Ahle-Hadith (paragraph (zj))
- (kk) Pasban-e-Kashmir (paragraph (zk))
- (ll) Soldiers of the Pure (paragraph (zl))
- (mm) Tehreek (paragraph (zm))
- (nn) Tehreek-e-Tahafuz Qibla Awal (paragraph (zn))
- (oo) The Resistance Front (paragraph (zo)), and
- (pp) TRF (paragraph (zp)).

Schedule 1 — Repeals

11. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Lashkar-e-Tayyiba) Regulations 2018* (the repealed Regulations).
12. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations cease to have effect on 4 August 2021, being the third anniversary of the day on which they took effect. While the repealed Regulations cease to have effect on this date, the repeal provides clarity and ensures there is no duplication if the proposed Regulations were made before the repealed Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Lashkar-e-Tayyiba as a terrorist organisation under the *Criminal Code Act 1995*

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

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

Lashkar-e-Tayyiba was first listed as a terrorist organisation under the *Criminal Code* on 9 November 2003. Lashkar-e-Tayyiba was re-listed on 5 June 2005, 7 October 2005, 8 September 2007, 8 September 2009, 18 August 2012, 11 August 2015 and 4 August 2018.

Details of the organisation

Name of the organisation

Lashkar-e-Tayyiba

Known aliases

- al Mansoorien
- al Mansoorian
- Army of Medina
- Army of the Pure
- Army of the Pure and Righteous
- Army of the Righteous
- Falah-e-Insaniyat Foundation
- Idara Khidmat-e-Khalq
- Jama'at ul-Da'awa
- Jama'at al-Dawa
- Jamaat ud-Daawa

- Jamaat ul-Dawah
- Jama'at-i-Dawat
- Jamaati-ud-Dawa
- Jama'at-ud-Da'awa
- Jama'at-ud-Da'awah
- Jamaat-ud-Dawa
- Jamaat-ul-Dawa
- Jamaiat-ud-Dawa
- JuD
- JUD
- Lashkar-e-Taiba
- Lashkar-e-Tayyaba
- Lashkar-e-Toiba
- Lashkar-i-Tayyaba
- Lashkar-i-Toiba
- Lashkar-Tayyiba
- LeT
- LT
- Milli Muslim League
- Paasban-e-Ahle-Hadis
- Paasban-e-Kashmir
- Paasban-i-Ahle-Hadith
- Party of Preachers
- Party of the Calling
- Pasban-e-Ahle-Hadith
- Pasban-e-Kashmir
- Soldiers of the Pure
- Tehreek
- Tehreek-e-Tahafuz Qibla Awal
- The Resistance Front
- TRF

Organisational overview and objectives

Lashkar-e-Tayyiba is a Pakistan-based Sunni violent extremist organisation that uses violence in pursuit of its stated objective of uniting Indian administered Kashmir (IaK) with Pakistan under a radical interpretation of Islamic law. Lashkar-e-Tayyiba's broader objectives include establishing an

Islamic Caliphate across the Indian subcontinent. To this end, Lashkar-e-Tayyiba intends to pursue the 'liberation' of all India's Muslim population, even in areas where they do not form a majority.

Lashkar-e-Tayyiba has declared that democracy is antithetical to Islamic law and that its jihad requires work to turn Pakistan itself into an Islamic state. The Global Terrorism Index 2020 listed Lashkar-e-Tayyiba as one of the most active groups in the Jammu and Kashmir region.

Action taken by the Pakistani Government to combat financial assistance for terrorism have put a degree of pressure on Lashkar-e-Tayyiba's operations in Pakistan. Despite this, and the arrest of senior members of Lashkar-e-Tayyiba, the organisation remains operational in Pakistan, Afghanistan, and the Jammu and Kashmir region.

Organisation history

Lashkar-e-Tayyiba was formed in 1989 as the military wing of the Pakistan-based Islamic fundamentalist movement Markaz al-Dawa was Irshad (MDI—meaning, the Centre for Religious Learning and Propagation, and also known as the Jamaat al-Dawa). Originally formed to wage militant jihad against the Soviet Union for its occupation of Afghanistan, Lashkar-e-Tayyiba shifted its focus to the insurgency in IaK in the 1990s after Soviet troops withdrew from Afghanistan.

Lashkar-e-Tayyiba has also operated under the alias Jamaat ud-Dawa (JuD), which was ostensibly created as a charitable organisation by Lashkar-e-Tayyiba founder Hafiz Muhammad Saeed immediately prior to Lashkar-e-Tayyiba being banned by the Pakistani Government in 2002. JuD functions as a front organisation for Lashkar-e-Tayyiba to mask its activities and solicit funds. Lashkar-e-Tayyiba and JuD are indistinguishable for the purpose of listing as a terrorist organisation.

Leadership

Hafiz Muhammad Saeed is the founder and Emir of Lashkar-e-Tayyiba. Saeed continues to provide leadership to Lashkar-e-Tayyiba despite his 2019 arrest by Pakistani authorities on terrorism financing charges and subsequent sentencing in 2020 to five and a half years in prison.

Zaki ur Rehman Lakhvi is Lashkar-e-Tayyiba's chief of operations. On 7 December 2009, Lakhvi was arrested, along with several other Lashkar-e-Tayyiba members, for his alleged role in the 2008 Mumbai attacks. Lakhvi is yet to stand trial for his alleged role. Lakhvi was released on bail in 2015, but was again arrested in January 2021 for his alleged involvement in terrorism financing activity.

In 2021, other seconds in command, Yahya Mujahid and Zafar Iqbal were each sentenced to a total of 15 years imprisonment on terrorism financing charges.

Membership, recruitment and funding

The exact size of Lashkar-e-Tayyiba's membership base is unknown. However, the United Nations reported Lashkar-e-Tayyiba had close to one thousand members operating in Afghanistan alone in May 2020. Lashkar-e-Tayyiba's members are mostly Afghan and Pakistani citizens.

As of April 2020, media were reporting Lashkar-e-Tayyiba operated 16 training camps, the majority of which were in Pakistan-claimed Kashmir, but also in the Khyber Pakhtunkhwa and Punjab Provinces of Pakistan.

Lashkar-e-Tayyiba receives funding from donors in the Middle East—mainly Saudi Arabia—and through charitable donations collected from sympathisers in Pakistan. Private donations from across South Asia, Gulf states and Europe also contribute to Lashkar-e-Tayyiba's finances.

As of June 2020, Pakistani Government measures have not halted Lashkar-e-Tayyiba financing. This indicates a level of sophistication in the group's funding methods and diversification of its financial interests. In September 2020, Pakistan authorities 'froze' 611 properties belonging to Lashkar-e-Tayyiba, including schools, colleges, mosques, dispensaries, hospitals, boats and

buildings. The mosques, schools and colleges in particular provide Lashkar-e-Tayyiba with broad access to the Pakistan population for recruitment purposes.

Links to other terrorist organisations

Lashkar-e-Tayyiba maintains links to a variety of violent extremist groups including the Afghan Taliban, Harkat ul Jihad al Islami, and listed terrorist organisations al-Qa'ida and Jaish-e-Mohammad. Lashkar-e-Tayyiba receives support from, and provides support to, domestic based terrorist groups and networks in India—most notably the Indian Mujahideen and the Students Islamic Movement of India—as well as militant groups in Kashmir.

Lashkar-e-Tayyiba is reportedly known to have previously collaborated with the Haqqani Network.

Lashkar-e-Tayyiba has also reportedly been involved in conflicts involving Muslims outside South Asia, including those in Bosnia, Chechnya and Kosovo.

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

Lashkar-e-Tayyiba has planned and undertaken numerous terrorist attacks against both Afghan and Indian security forces, Indian government and transport infrastructure, and civilians. Recent attacks which can be reliably attributed to Lashkar-e-Tayyiba include:

- On 14 May 2020, Afghan authorities stated Lashkar-e-Tayyiba collaborated with the Haqqani Network to conduct a truck-borne improvised explosive device attack in Gardez, Paktia Province, Afghanistan, killing five and wounding 19 people.
- On 24 April 2020, two Lashkar-e-Tayyiba militants abducted an Indian police officer from his home in IaK. A counter-terrorism operation to recover the police officer was conducted by Indian security forces, killing the two militants and injuring the police officer.
- On 13 May 2019, Indian forces arrested two Lashkar-e-Tayyiba militants in South Kashmir who were planning targeted killings in IaK to spark tensions.
- On 1 April 2019, Lashkar-e-Tayyiba militants injured four Indian security forces personnel in a gunfight in Pulwama, IaK.
- On 30 August 2018, two Lashkar-e-Tayyiba militants were killed when Indian security forces discovered them in northern Kashmir with large quantities of arms and ammunition, likely in preparation to attack Indian positions on the Line of Control (LoC).
- On 7 August 2018, Lashkar-e-Tayyiba militants killed four Indian Army soldiers as they attempted to cross into IaK from Pakistan-claimed Kashmir in Gurez, Bandipora.
- On 4 August 2018, Lashkar-e-Tayyiba militants engaged in a gun battle with the Indian Army in South Kashmir during which one civilian was killed and 12 were injured.

On the basis of these examples, Lashkar-e-Tayyiba is responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

While Lashkar-e-Tayyiba does not specifically target Australian interests, Australians could be harmed in Lashkar-e-Tayyiba attacks directed at others—particularly mass casualty attacks against soft targets such as hotels, transport infrastructure and tourist sites. This occurred, for example, in Lashkar-e-Tayyiba's 2008 Mumbai attacks, which killed two Australians.

Australians with links to Lashkar-e-Tayyiba members have also planned attacks in Australia. In 2007, a French court convicted French national Willie Brigitte, for planning terrorist attacks in Australia in 2003 in conjunction with Lashkar-e-Tayyiba suspected chief of external operations, Sajid Mir. Brigitte's Australian associate, Faheem Khalid Lodhi, was also convicted of planning acts of terrorism in June 2006. In June 2008, Lodhi lost an appeal in the High Court of Australia to have his case overturned.

Listings by likeminded countries or the United Nations

Lashkar-e-Tayyiba is listed in the United Nations 1267 Committee's consolidated list and proscribed as a terrorist organisation by the governments of Canada, the United Kingdom and the United States.

Engagement in peace or mediation processes

Lashkar-e-Tayyiba is not engaged in any peace or mediation processes with the Pakistani or Indian Governments.

Conclusion

On the basis of the information above, the Australian Government assesses that Lashkar-e-Tayyiba is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021

The purpose of the *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021* (the Regulations) is to specify the organisation known as Palestinian Islamic Jihad 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 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 Palestinian Islamic Jihad 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 (the Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

¹ A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of Part 5.3 of the *Criminal Code* apply to conduct relating to Palestinian Islamic Jihad.

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

The Regulations commence on 4 August 2021. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment A.

Further details of the Regulations are set out in Attachment B.

Consultation

The Department of Home Affairs sought advice from the Australian Government Solicitor (AGS) in relation to the unclassified information (the Statement of Reasons) at Attachment C.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that Palestinian Islamic Jihad meets the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Minister.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021* (the Regulations) specify Palestinian Islamic Jihad 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 Palestinian Islamic Jihad 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 Palestinian Islamic Jihad.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Palestinian Islamic Jihad as a listed terrorist organisation.

Terrorist organisations, including Palestinian Islamic Jihad, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

Under Article 6 of the ICCPR, countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Palestinian Islamic Jihad. 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 Palestinian Islamic Jihad.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Palestinian Islamic Jihad, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister’s declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister

- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

ATTACHMENT B

Details of the *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021*

Section 1 – Name

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2021*.

Section 2 – Commencement

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

Section 3 – Authority

6. This section provides that the proposed 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—Palestinian Islamic Jihad) Regulations 2018*.

Section 5 – Terrorist organisation—Palestinian Islamic Jihad

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 Palestinian Islamic Jihad is specified.

10. The effect of specifying Palestinian Islamic Jihad 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 Palestinian Islamic Jihad.
11. Subsection 5(2) provides a list of names by which the organisation Palestinian Islamic Jihad is also known:
 - (a) Al-Quds Brigades (paragraph (a))
 - (b) Harakat al-Jihad al-Islami fi Filistin (paragraph (b))
 - (c) Islamic Jihad (paragraph (c))
 - (d) Islamic Jihad Palestine (paragraph (d))
 - (e) Islamic Jihad—Palestine Faction and Islamic Holy War (paragraph (e))
 - (f) PIJ (paragraph (f))
 - (g) Saraya al-Quds (paragraph (g)), and
 - (h) The Jerusalem Brigades (paragraph (h)).

Schedule 1 — Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Palestinian Islamic Jihad) Regulations 2018* (the repealed Regulations).
13. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations cease to have effect on 4 August 2021, being the third anniversary of the day on which they took effect. While the repealed Regulations cease to have effect on this date, the repeal provides clarity and ensures there is no duplication if the proposed Regulations were made before the repealed Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing of Palestinian Islamic Jihad as a terrorist organisation under the *Criminal Code Act 1995*

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

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

Palestinian Islamic Jihad was first listed as a terrorist organisation under the *Criminal Code* on 3 May 2004. Palestinian Islamic Jihad was re-listed on 5 June 2005, 7 October 2005, 8 September 2007, 8 September 2009, 18 August 2012, 11 August 2015 and 4 August 2018.

Details of the organisation

Name of the organisation

Palestinian Islamic Jihad

Known aliases

- al-Quds Brigades
- Harakat al-Jihad al-Islami fi Filistin
- Islamic Jihad
- Islamic Jihad Palestine
- Islamic Jihad—Palestine Faction and Islamic Holy War
- PIJ
- Saraya al-Quds
- The Jerusalem Brigades

Organisational overview and objectives

Palestinian Islamic Jihad is a religiously and ideologically motivated violent extremist organisation. Palestinian Islamic Jihad's ideology fuses Sunni Islamic and Palestinian nationalist objectives, which are intertwined and not easily distinguishable. Ultimately, Palestinian Islamic Jihad's goal is the

establishment of a sovereign Islamic state within the historic borders of Palestine. Palestinian Islamic Jihad promotes the military destruction of Israel as the only viable means to attain this goal, and rejects a two-state solution.

Palestinian Islamic Jihad focuses almost exclusively on militant activities that further its objectives. As such, Palestinian Islamic Jihad's military wing, the al-Quds Brigades, and the organisation as a whole are indistinguishable. The al-Quds Brigades claim responsibility for attacks on behalf of Palestinian Islamic Jihad, and its statements are disseminated via the al-Quds Brigades-run website or Palestinian Islamic Jihad-affiliated media outlets.

Palestinian Islamic Jihad primarily operates in Gaza, but has offices elsewhere in the Middle East, including in Syria and Lebanon.

Leadership

Palestinian Islamic Jihad was founded in Gaza in 1981 by Dr Fathi abd al-Aziz Shaqaqi and Shayk Abd al-Aziz Awda. While both were originally members of the Muslim Brotherhood—a transnational Sunni organisation—they believed the group was too moderate and created Palestinian Islamic Jihad as a radical militant alternative focused on the liberation of Palestine.

The current Secretary-General of Palestinian Islamic Jihad is Ziyad al-Nakhleh—who took over from Dr Ramadan Abdullah Shallah in 2018 after Shallah's hospitalisation. Nakhleh oversees Palestinian Islamic Jihad's leadership council, which is responsible for directing Palestinian Islamic Jihad operations via regional commands.

Membership and recruitment

The exact size of Palestinian Islamic Jihad's membership is unclear, with estimates ranging from less than a thousand, up to 8,000 members.

Due to its secretive nature, Palestinian Islamic Jihad's current approach to recruitment is unclear; however, Palestinian Islamic Jihad has previously used targeted selection and recruitment strategies. This has included recruitment of students for protest activities; suicide bombers including women for attacks; and children to ensure ongoing support for the Palestinian resistance into the next generation.

Financing

Despite being a Sunni group, Palestinian Islamic Jihad supports, and receives the majority of its funding from Iran.

Links to other terrorist organisations

Despite being a Sunni group, Palestinian Islamic Jihad remains ideologically supportive of, and maintains close ties with Hizballah, whose External Security Organisation is a listed terrorist organisation under the *Criminal Code*.

Palestinian Islamic Jihad has engaged in operations, including shared use of tunnel networks, with Hamas' Izz al-Din Al-Qassam Brigades (Hamas' Brigades), which is a listed terrorist organisation under the *Criminal Code*.

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

Palestinian Islamic Jihad continues to conduct attacks and engage in attack planning against Israel, and is assessed as responsible or can be reasonably assessed as responsible for the following terrorist attacks and actions:

- From 10-21 May 2021, Palestinian militants, including from Palestinian Islamic Jihad, launched over 4,000 rockets into Israel from Gaza. Palestinian Islamic Jihad's al-Quds

Brigades have publicly claimed responsibility for launching rockets, mortar shells and rocket-propelled grenades against Israel during this period.

- In March 2021, Palestinian Islamic Jihad published a video showing its members preparing to fire rockets. This coincided with the launch of a rocket towards Be'er Sheva, Israel around the time Israeli Prime Minister, Benjamin Netanyahu, was scheduled to visit the area.
- On 24 August 2020, four Palestinian Islamic Jihad members were killed in an apparent bomb-making incident at an al-Quds Brigades compound in Gaza. Palestinian Islamic Jihad announced that its fighters were killed during 'preparations to remove the criminal entity from our occupied lands'. By 'criminal entity', Palestinian Islamic Jihad is almost certainly referring to the state of Israel.
- Tensions between Palestinian Islamic Jihad and Israel escalated in February 2020:
 - On 23 February 2020, the Israel Defense Forces (IDF) claimed it had fired at two Palestinian Islamic Jihad militants, killing one, as they attempted to plant an explosive device along the Gaza perimeter fence east of Khan Younis in Gaza. The IDF accused the militants of being part of a Palestinian Islamic Jihad cell that had planted at least two other explosive devices along the perimeter fence in recent months. Palestinian Islamic Jihad confirmed the deceased militant was a Palestinian Islamic Jihad member and threatened 'the blood of martyrs will not be in vain'.
 - From 23-24 February 2020, Palestinian Islamic Jihad fired a barrage of rockets and mortar rounds into Israel in response to its member's death and Israeli air strikes on its positions in Gaza and Syria. According to the IDF, Palestinian Islamic Jihad fired 80 rockets, although most were intercepted by Israeli air defence systems.
- From 3-5 May 2019, tensions between Palestinian Islamic Jihad and Israel escalated in response to the deaths of several Palestinian protestors during confrontations along the Israel-Gaza perimeter fence and the wounding of two Israeli soldiers in sniper fire from Gaza. Palestinian Islamic Jihad and the Hamas' Brigades fired over 700 rockets into Israel, killing at least four civilians and injuring dozens of others.

On the basis of these examples, Palestinian Islamic Jihad is responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Advocates the doing of a terrorist act

Palestinian Islamic Jihad encourages Palestinians to attack Israel and to celebrate violent resistance against Israel, and advocates the use of terrorist tactics in their public messaging. Palestinian Islamic Jihad maintains an Arabic website, which is used to celebrate Jihadist operations, memorialise martyrs, and promote anti-Israeli propaganda.

- On 7 February 2020, Palestinian Islamic Jihad spokesperson, Abu Hamza, publicly called on Palestinians to attack Israeli military checkpoints and settlements in response to the US 'deal of the century' Middle East peace plan. Hamza stated on Twitter: 'we call for comprehensive and direct conflict' and 'heroic operations in Jerusalem and the West Bank are a response of our people, emphasized with blood and weapons, that are against the "deal of the century" and the Judaization of the holy places'.

On the basis of these examples, Palestinian Islamic Jihad advocates the doing of a terrorist act.

Other considerations

Links to Australia and threats to Australian interests

There are no known direct links between Palestinian Islamic Jihad and Australia. Palestinian Islamic Jihad has not made statements specifically threatening Australians or Australian interests. However, Australians could be incidentally harmed in attacks.

Listings by likeminded countries or the United Nations

Palestinian Islamic Jihad is proscribed as a terrorist organisation by the governments of Canada, New Zealand, the United Kingdom and the United States.

Engagement in peace or mediation processes

Palestinian Islamic Jihad agreed to a ceasefire following the May 2021 escalation in the Israeli-Palestinian conflict involving the firing of rockets from Gaza into Israel.

However, Palestinian Islamic Jihad leadership had previously publicly committed to maintaining a ceasefire brokered with Hamas and Israel in 2014, where all parties were understood to have breached the ceasefire in the intervening period. Palestinian Islamic Jihad also engaged in ceasefire agreements in November 2019 and February 2020.

Conclusion

On the basis of the information above, the Australian Government assesses that Palestinian Islamic Jihad is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of a terrorist act.

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Process for the 2021 re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code*

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

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

The following process was undertaken for the purpose of re-listing al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations:

1. On 9 March 2021, the Department commenced coordinating whole-of-Government input to Statements of Reasons outlining the case for re-listing al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad.
2. On 12 May 2021, the Department provided the Statements of Reasons outlining the re-listing cases for al-Shabaab, Lashkar-e-Tayyiba and Palestinian Islamic Jihad to AGS.
3. On 19 May 2021, the Department provided the Statements of Reasons outlining the re-listing cases for the Kurdistan Workers' Party and Hamas' Izz al-Din al-Qassam Brigades to AGS.
4. On 21 May 2021, AGS provided written advice to the Department in relation to whether it is open to the Minister to be satisfied of the legislative requirements to re-list al-Shabaab, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations.
5. On 1 June 2021, AGS provided written advice to the Department in relation to whether it is open to the Minister to be satisfied of the legislative requirements to re-list Hamas' Izz al-Din al-Qassam Brigades and the Kurdistan Workers' Party as terrorist organisations.
6. On 25 June 2021, the Department provided a submission to the Minister for Home Affairs advising her that it was open to her to be satisfied on reasonable grounds that the legislative criteria for re-listing al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code* were satisfied.
7. On 28 June 2021, the Department sought the Minister for Home Affairs' approval of the Regulations and associated Federal Executive Council (ExCo) documents, for consideration by the Governor-General at the 22 July 2021 meeting of ExCo.
8. On 1 July 2021, having considered the information provided in the Department's submission, including the Statements of Reasons, the Minister for Home Affairs was satisfied that the five organisations met the threshold for listing.

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9. On 1 July 2021, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of her satisfaction that al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad meet the threshold for listing, and attaching a copy of the Statements of Reasons. The letters requested that a response be provided by 21 July 2021, advising whether the First Minister approved of, or objected to, the proposed listings.
10. On 12 July 2021, the Minister for Home Affairs approved the Regulations and associated ExCo documents.
11. On 12 July 2021, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of her satisfaction that al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad meet the threshold for listing, attaching the Statements of Reasons and offering a briefing in relation to the organisations.
12. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
 - Northern Territory – dated 13 July 2021
 - South Australia – dated 20 July 2021
 - Victoria – dated 20 July 2021
 - Tasmania – dated 20 July 2021
 - Western Australia – dated 21 July 2021
 - Australian Capital Territory – dated 23 July 2021
 - New South Wales – dated 26 July 2021

No objections were made to the re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba or Palestinian Islamic Jihad as terrorist organisations.

At the time of writing, no response had been received from the Premier of Queensland.

13. On 23 July 2021, the Governor-General made the Regulations.
14. On 26 July 2021, the Regulations were registered on the Federal Register of Legislation. The Regulations come into effect on 4 August 2021.
15. On 3 August 2021, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations, and attaching the Regulations, the Explanatory Statements and the Statements of Reasons.

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Update to the Government's response to the Parliamentary Joint Committee on Intelligence and Security's 2018 Review of the re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, the Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code*

The Government last re-listed al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, the Kurdistan Workers' Party, Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code* on 4 August 2018. The Parliamentary Joint Committee on Intelligence and Security (the Committee) conducted a review of the re-listings, and tabled its report in Parliament on 20 September 2018.

The Committee recommended, amongst other things, that Government agencies engage further with Kurdish communities and provide specific advice on the conduct that would fall within the ambit of criminal conduct under the *Criminal Code*. The advice should also detail the types of communications that, in accordance with the implied right of political communication, would not engage provisions of the *Criminal Code*.

In July 2020, the Government accepted this recommendation, noting that Government agencies are unable to provide legal advice and that individuals and organisations should seek independent legal advice in relation to their specific circumstances.

In response to this recommendation, the Department of Home Affairs' (the Department's) community liaison officers in Sydney and Melbourne have continued to conduct outreach to a number of Kurdish community groups, to provide them with the opportunity to discuss their concerns around the Kurdistan Workers' Party listing.

The Department's community engagement program provides a mechanism for community members to engage with Departmental officials on their priorities and concerns. During the consultations conducted to date, community members have discussed a range of issues with the Department's community liaison officers, including the impacts of the COVID-19 pandemic on the community.

Consultations with the Kurdish community since 2019 have included:

- 10 October 2019, United Kurdish of New South Wales
- 8 November 2019, Kurdish Democratic Community Centre of Victoria
- 16 April 2020, Federation of Democratic Kurdish Society-Australia
- 6 August 2020, United Kurdish of New South Wales
- 7 September 2020, Kurdish Lobby Australia
- 23 September 2020, Kurdish Democratic Centre of Victoria
- 6 October 2020, Federation of Democratic Kurdish Society-Australia and Kurdish Democratic Centre of Victoria
- 9 November 2020, Kurdish Democratic Centre of Victoria
- 25 May 2021, Federation of Democratic Kurdish Society-Australia

Australian Government agencies have also continued to conduct outreach to a number of Kurdish community groups. As part of core business, the Australian Federal Police community liaison teams have also continued to engage with Kurdish community groups on law enforcement matters of interest.

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The Australian Security Intelligence Organisation has a longstanding program of community engagement, including elements of the Australian Kurdish community. This contact has continued following the re-listing of the Kurdistan Workers' Party in 2018. This engagement is designed to collect information on threats or interference emanating from within, or directed towards, a variety of communities.

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