



**THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS**

Ref No: MS20-001374

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

10 SEP 2020

Dear Chair *Andrew,*

I write to advise that, for the purpose of regulations made under Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), I am satisfied that Islamic State East Asia meets the legal threshold for re-listing as a terrorist organisation under Division 102.

The re-listing will ensure that the offence provisions under Division 102 of the Criminal Code will apply to conduct in relation to Islamic State East Asia.

Under subsection 102.1(2) of the Criminal Code, before an organisation is listed as a terrorist organisation, I must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act.

Following careful consideration of information provided by the Australian Security Intelligence Organisation (ASIO) in consultation with national security agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that Islamic State East Asia meets that legal threshold.

Subsection 102.1(3) of the Criminal Code provides that a regulation listing a terrorist organisation ceases to have effect on the third anniversary of the day on which it takes effect. To ensure there is no gap in the coverage of the terrorist organisation offences in relation to Islamic State East Asia, the regulations re-listing this organisation will commence on the day that the previous regulations are due to expire. As such, the regulations listing Islamic State East Asia will commence on 12 September 2020.

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-listing, and provided them with a copy of the Statement of Reasons with respect to Islamic State East Asia. The states and territories did not object to the re-listing of this organisation.

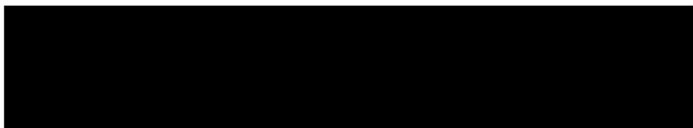
As required under subsection 102.1(2A) of the Criminal Code, I also wrote to the Leader of the Opposition advising him of the proposed re-listing. I provided the Leader of the Opposition with a copy of the Statement of Reasons with respect to Islamic State East Asia and invited him to contact my office if he wished to receive a further briefing.

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

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

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

Yours sincerely



PETER DUTTON



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

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 03 September 2020

David Hurley
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Home Affairs

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1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	12 September 2020.	12 September 2020

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

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

3 Authority

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

4 Schedules

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

5 Terrorist organisation—Islamic State East Asia

- (1) For the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State East Asia is specified.
- (2) Islamic State East Asia is also known by the following names:
- Ansharul Khilafah Philippines;
 - Bangsamoro Islamic Freedom Fighters-Abubakar;
 - Bangsamoro Islamic Freedom Fighters-Bungos;
 - Dawlah Islamiyah-Lanao;
 - Dawlah Islamiyah-Maguindanao;
 - Dawlah Islamiyah-Torayfie Group;
 - Dawlatul Islamiyah Waliyatul Masrik;
 - Islamic State Lanao;

Section 5

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

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2017

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—Islamic State East Asia) Regulations 2020

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020* (the Regulations) is to specify Islamic State East Asia for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Islamic State East Asia is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2017*, which are repealed by the Regulations.

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*, which prescribes offences against humanity and related offences, and dangers to the community and national infrastructure.

Paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code* provides that regulations can specify organisations for the purposes of the definition of ‘terrorist organisation’.

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1), the Minister 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 Islamic State East Asia is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration unclassified information (Statement of Reasons) provided by the Australian Security Intelligence Organisation ([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 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 the *Criminal Code* continue to apply to conduct relating to Islamic State East Asia. Regulations specifying Islamic State East Asia as a terrorist organisation have been in effect since 2017.

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

The Regulations commence on 12 September 2020. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

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

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

Consultation

The Department of Home Affairs sought the advice of the Australian Government Solicitor (AGS) in relation to the unclassified information (Statement of Reasons) provided by the Australian Security Intelligence Organisation.

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 he was satisfied that Islamic State East Asia met the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the states and territories prior to making regulations specifying an organisation for the purposes of 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—Islamic State East Asia) Regulations 2020

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—Islamic State East Asia) Regulations 2020* (the Regulations) specify Islamic State East Asia for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

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

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

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

Human rights implications

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

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

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 Islamic State East Asia. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance Islamic State East Asia.

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

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

General safeguards and accountability mechanisms

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

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

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

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

Conclusion

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

The Hon. Peter Dutton MP
Minister for Home Affairs

ATTACHMENT B

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

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020*.

Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) would provide that each provision in the proposed Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the proposed Regulations commence in their entirety on 12 September 2020.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of the proposed Regulations as originally made, and will not be amended to deal with any subsequent amendments to the instrument.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

Section 3 – Authority

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

Section 4 – Schedules

7. This section would provide that each instrument that is specified in a Schedule to the proposed Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule would have effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2017*.

Section 5 – Terrorist organisation—Islamic State East Asia

9. Subsection 5(1) would provide that, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State East Asia is specified.

10. The effect of specifying Islamic State East Asia as a terrorist organisation would be to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State East Asia.
11. Subsection 5(2) would provide a list of names that Islamic State East Asia is also known as:
 - (a) Ansharul Khilafah Philippines (paragraph (a))
 - (b) Bangsamoro Islamic Freedom Fighters-Abubakar; (paragraph b)
 - (c) Bangsamoro Islamic Freedom Fighters-Bungos (paragraph (c))
 - (d) Dawlah Islamiyah-Lanao (paragraph (d))
 - (e) Dawlah Islamiyah-Maguindanao (paragraph (e))
 - (f) Dawlah Islamiyah-Torayfie Group (paragraph (f))
 - (g) Dawlatul Islamiyah Waliyatul Masrik (paragraph (g))
 - (h) Islamic State Lanao (paragraph (h))
 - (i) Islamic State-Philippines (paragraph (i))
 - (j) Islamic State Ranao (paragraph (j))
 - (k) Jama'atu al-Muhajirin wal Ansar fil Filibin (paragraph (k))
 - (l) Marawi Front (paragraph (l))
 - (m) Maute Group (paragraph (m)),
 - (n) Syuful Khalifah Fi Luzon (n)), and
 - (o) Wilayah East Asia (paragraph (o)).

Schedule 1 — Repeals

12. Clause 1 of Schedule 1 repeals the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2017* (the Current Regulations).
13. The Current Regulations specify Islamic State East Asia as a terrorist organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, commencing on 12 September 2017. Pursuant to subsection 102.1(3) of the *Criminal Code*, regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which they take effect. Clause 1 of Schedule 1 ensures there is no duplication where the Regulations are made before the Current Regulations cease to have effect.

ATTACHMENT C

STATEMENT OF REASONS FOR ISLAMIC STATE EAST ASIA	
<p>Also known as: Islamic State-Philippines, Dawlah Islamiyah-Maguindanao, Marawi Front, Ansharul Khilafah Philippines, Bangsamoro Islamic Freedom Fighters-Bungos, Bangsamoro Islamic Freedom Fighters-Abubakar, Jama'atu al-Muhajirin wal Ansar fil Filibin, Dawlah Islamiyah-Torayfie Group, Dawlah Islamiyah-Lanao, Islamic State Lanao, Islamic State Ranao, Maute Group, Dawlatul Islamiyah Waliyatul Masrik, Wilayah East Asia and Syuful Khalifah Fi Luzon.</p>	
<p>This statement is based on publicly available information about Islamic State East Asia (ISEA). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.</p>	
1.	<p>Basis for listing a terrorist organisation</p> <p>Division 102 of the <i>Criminal Code Act 1995</i> provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:</p> <ul style="list-style-type: none"> a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or b) advocates the doing of a terrorist act. <p>For the purposes of listing a terrorist organisation under the <i>Criminal Code</i>, 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.</p>
2.	<p>Background to this listing</p> <p>This is the second time ISEA has been proscribed by the Australian Government as a terrorist organisation. The Australian Government previously proscribed ISEA as a terrorist organisation under the Criminal Code on 12 September 2017.</p>
3.	<p>Terrorist activity of the organisation</p> <p><u>Objectives</u> ISEA's primary objective is the establishment of an Islamic State under Shariah law in the Philippines. Its secondary objective is the wider imposition of Islamic rule beyond the Philippines. ISEA publically pledged its <i>bay'ah</i> (allegiance) to the proscribed terrorist organisation Islamic State in December 2015 and its aims are consistent with those of Islamic State. Its members are referred to as 'soldiers of the khilafah (caliphate)', in Islamic State propaganda.</p> <p><u>Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts</u> To achieve its objectives, ISEA continues to conduct terrorist attacks against military and civilian targets in the Philippines. Tactics employed include armed assaults, murders and bombings, including suicide bombings.</p> <p>Attacks that ISEA has claimed responsibility for and is assessed to have undertaken since the group was listed in 2017 include:</p>

	<ul style="list-style-type: none"> • 31 July 2018: ISEA conducted a vehicle-borne suicide bombing at a vehicle security checkpoint in Lamitan, Basilan Province, killing ten and injuring seven; • 28 August 2018: ISEA conducted a bombing at a night market in Isulan, Sultan Kudarat province, killing three and injuring 36; • 31 December 2018: ISEA conducted a bombing outside the South Seas Mall in Cotabato City, Maguindanao Province, killing two and injuring 36; • 27 January 2019: ISEA conducted twin suicide bombings of the Cathedral of our Lady of Mount Carmel, Jolo, Sulu Province, killing 20 and injuring 102; • 28 June 2019: ISEA conducted two suicide bombings against a military base in Indanan, Sulu Province. The attacks killed eight and injured 24; • 13 July 2019: Philippine National Police (PNP) arrested two ISEA members in Manila in possession of grenades and blasting caps. The ISEA members were likely planning to conduct an attack in Manila under ISEA leader Hatib Hajan Sawadjaan’s direction. • 8 September 2019: ISEA conducted a suicide attack at a checkpoint in Indanan, Sulu Province, killing the attacker. • 5 November 2019: three ISEA fighters, including an Egyptian foreign fighter, were killed in an encounter near a checkpoint in Indanan, Sulu Province. Two suicide vests were recovered from the fighters. The ISEA fighters were probably transferring the vests between locations, and were likely in the final stages of preparations for a suicide attack. • 1 January 2020: PNP arrested ISEA member Omar Palty in Quezon City, Manila, after he attempted to sell a police officer a pistol, which he likely believed would be used in a terrorist attack. Palty was linked to Esmael Abdulmalik, a senior ISEA leader in Maguindanao, and was reportedly tasked to coordinate other ISEA operatives from Sulu and Basilan provinces in preparation for ISEA terrorist attacks. <p><u>Advocating the doing of terrorist acts</u> ISEA has, directly or indirectly, advocated the doing of terrorist acts to further the group’s objectives, including:</p> <ul style="list-style-type: none"> • 15 October 2017: ISEA distributed an English language message via online channels and chat groups calling on Muslims in Australia and East Asia to travel to Marawi, southern Philippines, to fight with the group, or to stay home and conduct domestic terrorist attacks. • 6 June 2018: Philippines-based ISEA member Eyadzhemar Abdusalam was arrested for encouraging a UK national to conduct a vehicle-borne attack in the United Kingdom before their earlier arrest by British authorities on 1 May 2018, and for soliciting cash payments on behalf of the group.
<p>4. Details of the organisation</p>	<p>ISEA is affiliated with Islamic State and follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those it labels as infidels and crusaders, and who do not agree with its interpretation of Islam. It opposes elected governments, seeking to remove them through violence.</p>

ISEA is comprised of a number of violent extremist factions who have pledged allegiance to Islamic State and merged under the ISEA banner. These factions are comprised of members of extremist organisations including the Maute Group, a faction of the Bangsamoro Islamic Freedom Fighters under Esmail Abubakar (AKA Commander Bungos), Ansharul Khilafah Philippines, Dawlatul Islamiyah-Maguindanao and Dawlatul Islamiyah Waliyatul Masrik and Jama'atu al-Muhajirin wal Ansar fil Filibin (AKA Dawlatul Islamiyah-Torayfe Group). All of these groups adhere to a violent jihadist ideology which predated Islamic State's existence. These groups publicly pledged allegiance together to Islamic State in December 2015, and again in 2019, and have since undertaken terrorist acts that Islamic State claimed responsibility for.

Since the conclusion of the Marawi Conflict in October 2017, and after reconstituting following their losses, the group has conducted increasingly frequent and violent attacks against Philippines government and local sectarian targets. This has included the introduction of suicide bombings into their ongoing operations, welcoming foreign fighters into their ranks, allowing women to play operational roles, and attempts to expand their presence into Manila to conduct attacks.

Leadership

The leader of ISEA is Hatib Hajan Sawadjaan (AKA Abu Abdallah). Individual faction leaders who follow Sawadjaan's direction include Salahuddin Hassan, Furuji Indama, Jeffrey Nilong, Abu Zacaria, Esmael Abdulmalik and Ismael Abubakar. This has resulted in a centralised leadership structure, which retains its allegiance to Islamic State and shares its ideology and objectives.

Membership

ISEA total membership is uncertain, but is estimated to be upwards of 300 individuals. While most members are native to Western Mindanao and Sulu Archipelago, there are also members from other parts of the Philippines, Indonesia and possibly Malaysia. The group has welcomed small numbers of extra-regional fighters into its ranks, including individuals from Morocco, Egypt and Spain. These individuals travelled to the Philippines for the express purpose of joining ISEA.

Recruitment and funding

ISEA exploits poor economic and social conditions in the Philippines, particularly Mindanao and neighbouring regions to attract members. Local and regional recruits are drawn by ISEA's ability to provide economic prospects for its members and to avoid persecution by the group. Some individuals have also joined due to their ideological support for the organisation's objectives, including violently establishing an Islamic State under Shariah law. Groups under ISEA are known to recruit children whose parents have been killed fighting against government forces, which is also a motivating factor for some young people to join.

Islamic State has provided money to ISEA to fund its terrorist activities. ISEA groups in the Philippines also undertake kidnap for ransom and local extortion ventures to generate funding.

Links to other terrorist organisations

ISEA is affiliated with Islamic State.

ISEA is comprised of members who were previously aligned with other Islamist extremist groups, including the Abu Sayyaf Group (ASG), Dawlah Islamiyah-Maguindanao, Maute Group, Bangsamoro

Islamic Freedom Fighters, Ansharul Khilafah Philippines, Dawlatul Islamiyah Waliyatul Masrik and Jama'atu al-Muhajirin wal Ansar fil Filibin. Elements of ISEA share close familial and ethnic links to the ASG, though each group has well-structured leadership organisations.

Links to Australia

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

Threats to Australian interests

ISEA has not made statements specifically threatening Australians or Australian interests; however, the group has referenced Australia as the United States' 'regional guard dog' in official propaganda. It is probable Australians could be harmed in the group's future attacks, due to the considerable Australian business interests and the number of Australian travellers in the Philippines.

Listed by the United Nations or like-minded countries

ISEA was listed under the name ISIS Philippines by the United States on 28 February 2018, and the Maute Group, listed by Australia as an alias of ISEA, was listed by New Zealand on 21 March 2018.

Engagement in peace or mediation processes

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

5. Conclusion

On the basis of the above information, ASIO assesses that ISEA is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, ISEA is known to have committed or threatened actions that:

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

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**Process for the 2020 re-listing of Islamic State East Asia as a terrorist organisation
under the Criminal Code**

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

This includes obtaining a written Statement of Reasons from the Australian Security Intelligence Organisation (ASIO) that assesses the organisation, and seeking the advice of the Australian Government Solicitor (AGS) in relation to ASIO's assessment. This information and advice is included in a submission to the Minister for Home Affairs to assist in deciding whether an organisation meets the threshold for listing or re-listing under the Criminal Code.

The following processes were undertaken for the purpose of re-listing Islamic State East Asia (ISEA) as a terrorist organisation:

1. An unclassified Statement of Reasons outlining the case for re-listing ISEA was provided to the Department by ASIO.
2. On 25 June 2020, the Statement of Reasons was considered by the Department and then provided to AGS.
3. On 9 and 27 July 2020, AGS provided written advice to the Department in relation to this organisation and the Criminal Code requirements.
4. On 3 August 2020, the Department provided a submission to the Minister for Home Affairs advising him that he could be satisfied on reasonable grounds that the legislative criteria for re-listing ISEA as a terrorist organisation under the Criminal Code was satisfied.
5. On 3 August 2020, the Department sought approval from the Minister for Home Affairs of the Regulations and associated Federal Executive Council (ExCo) documentation, for consideration by the Governor-General at a meeting of ExCo.
6. On 13 August 2020, the Department emailed state and territory officials advising them of the Minister's consideration of ISEA for re-listing as a terrorist organisation, and provided copies of the Statement of Reasons.
7. On 24 August 2020, having considered the information provided in the Department's submission, including grounds to re-list ISEA, the Minister for Home Affairs was satisfied that the organisation met the threshold for listing.
8. On 24 August 2020, the Minister for Home Affairs approved the Regulations and associated ExCo documentation.
9. On 24 August 2020, the Minister for Home Affairs wrote to the Prime Minister, advising of his satisfaction that ISEA met the threshold for listing. The Minister for Home Affairs notified the Prime Minister that he had written, on the Prime Minister's behalf, to the First Ministers of each state and territory regarding the proposed re-listing.
10. On 24 August 2020, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of his satisfaction that ISEA met the threshold for listing, attaching the Statement of Reasons and offering a briefing in relation to this organisation.

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11. On 24 August 2020, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of his satisfaction that ISEA met the threshold for listing, and attaching copies of the Statement of Reasons. The letters requested that a response be provided by 31 August 2020, advising whether the First Minister approved of, or objected to, the re-listing.
12. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
 - South Australia – responded 31 August 2020
 - Tasmania – responded 31 August 2020
 - Western Australia – responded 1 September 2020
 - Victoria – responded 2 September 2020No objections were made to the re-listing of ISEA as a terrorist organisation.
No response was received from the Chief Minister of the Australian Capital Territory, the Chief Minister of the Northern Territory, the Premier of New South Wales, and the Premier of Queensland.
13. On 3 September 2020, the Governor-General made the Regulations.
14. On 4 September 2020, the *Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020* were registered on the Federal Register of Legislation (FRL). These Regulations will come into effect on 12 September 2020.
15. On 10 September 2020, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listing of ISEA as a terrorist organisation, and attaching the Regulations, Explanatory Statement and Statement of Reasons.