



THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS

Ref No: MS20-000925

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

06 JUL 2020

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 Boko Haram, Islamic State and Islamic State West Africa Province meet the legal threshold for listing as terrorist organisations under Division 102.

The respective listings will ensure that the offence provisions under Division 102 of the Criminal Code will apply to conduct in relation to Boko Haram, Islamic State and Islamic State West Africa Province.

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 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 Boko Haram, Islamic State and Islamic State West Africa Province meet 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 Boko Haram and Islamic State, the regulations listing these organisations will commence on the day that the previous regulations are due to expire.

In accordance with the Parliamentary Joint Committee on Intelligence and Security (PJCIS)' previous recommendations, I have given consideration to delaying the commencement of the regulations listing Islamic State West Africa Province until after the end of the applicable disallowance period. However, I have decided that the close nexus between Islamic State West Africa Province and Boko Haram necessitates that the regulations commence simultaneously with the regulations re-listing Boko Haram.

Accordingly, the three regulations will commence on 1 July 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 listings, and provided them with copies of the Statements of Reasons with respect to each organisation. The states and territories did not object to the respective listings of these organisations.

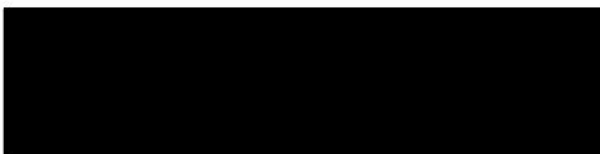
As required under subsection 102.1(2A) of the Criminal Code, I also wrote to the Leader of the Opposition advising him of the proposed listings. I provided the Leader of the Opposition with copies of the Statements of Reasons with respect to each organisation and invited him to contact my office if he wished to receive a further briefing.

Section 102.1A of the Criminal Code provides that the PJCIS 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 copies of the Criminal Code Regulations and Explanatory Statements. Attached to the Explanatory Statements are the Statements of Reasons prepared by ASIO with respect to each organisation. The Statements of Reasons provide information on the history, ideology, leadership and activities of these organisations, and are the basis upon which I made my decision to list these organisations under Division 102 of the Criminal Code.

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

Yours sincerely



PETER DUTTON

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Process for the 2020 listing of Islamic State West Africa Province and re-listing of Boko Haram and Islamic State 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 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 listing Islamic State West Africa Province (ISWAP) and re-listing Boko Haram (BH) and Islamic State (IS) as terrorist organisations:

1. Unclassified Statements of Reasons outlining the case for listing ISWAP and re-listing BH and IS were provided to the Department by ASIO.
2. On 18 March 2020, the Statements of Reasons were considered by the Department and then provided to AGS.
3. On 14 April, 24 April, 14 May and 15 May 2020, AGS provided written advice to the Department in relation to these organisations and the Criminal Code requirements.
4. On 25 May 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 listing ISWAP and re-listing BH and IS as terrorist organisations under the Criminal Code were satisfied.
5. On 25 May 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. Between 26 May and 2 June 2020, the Department emailed state and territory officials advising them of the Minister's consideration of ISWAP for listing and BH and IS for re-listing as terrorist organisations, and provided copies of the Statements of Reasons.
7. On 3 June 2020, having considered the information provided in the Department's submission, including grounds to list ISWAP and re-list BH and IS, the Minister for Home Affairs was satisfied that the organisations met the threshold for listing.
8. On 3 June 2020, the Minister for Home Affairs approved the Regulations and associated ExCo documentation.
9. On 3 June 2020, the Minister for Home Affairs wrote to the Prime Minister, advising of his satisfaction that ISWAP, BH and IS 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 listing and re-listings.
10. On 3 June 2020, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of his satisfaction that ISWAP, BH and IS met the threshold for listing,

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attaching the Statements of Reasons and offering a briefing in relation to these organisations.

11. On 3 June 2020, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of his satisfaction that ISWAP, BH and IS met the threshold for listing, and attaching copies of the Statements of Reasons. The letters requested that a response be provided by 23 June 2020, advising whether the First Minister approved of, or objected to, the listing and re-listings.
12. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
 - South Australia – responded 16 June 2020
 - Australian Capital Territory – responded 18 June 2020
 - Northern Territory – responded 18 June 2020
 - New South Wales – responded 22 June 2020
 - Western Australia – responded 23 June 2020
 - Tasmania – responded 25 June 2020
 - Victoria – responded 25 June 2020

No objections were made to the listing of ISWAP and re-listing of BH and IS as terrorist organisations.

No response was received from the Premier of Queensland.

13. On 25 June 2020, the Governor-General made the Regulations.
14. On 26 June 2020, the *Criminal Code (Terrorist Organisation—Islamic State West Africa Province) Regulations 2020*, the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020*, and the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020* were registered on the Federal Register of Legislation (FRL). These Regulations came into effect on 1 July 2020.
15. On 6 July 2020, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the listing of ISWAP and re-listing of BH and IS as terrorist organisations, and attaching the Regulations, Explanatory Statements and Statements of Reasons.



Criminal Code (Terrorist Organisation—Boko Haram) 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 25 June 2020

David Hurley
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Home Affairs

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| <i>Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2017</i> | | <i>3</i> |

Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Boko Haram) 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 | 1 July 2020. | 1 July 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—Boko Haram

- (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 Boko Haram is specified.
- (2) Boko Haram is also known by the following names:
- (a) Group of the Followers of the Prophet for Propagation and Holy Struggle;
 - (b) Jama'at Ahl al-Sunnah lil-Da'awa wal-Jihad;
 - (c) Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad;
 - (d) Nigerian Mujahideen;
 - (e) Nigerian Taliban;
 - (f) People Committed to the Propagation of the Prophet's Teachings and Jihad;
 - (g) Western Education is Forbidden;
 - (h) Yusuffiya Movement;

Section 5

(i) Yusuffiya Sect.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2017

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Islamic State) 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 25 June 2020

David Hurley
Governor-General

By His Excellency's Command

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| <i>Criminal Code (Terrorist Organisation—Islamic State) Regulations 2017</i> | | 3 |

Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State) 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 | | |
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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—Islamic State

- (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 is specified.
- (2) Islamic State is also known by the following names:
- (a) Al-Qa'ida in Iraq;
 - (b) Al-Qa'ida in Iraq – Zarqawi;
 - (c) Al-Qa'ida of Jihad in the Land of the Two Rivers;
 - (d) Al-Qa'ida of Jihad Organization in the Land of the Two Rivers;
 - (e) Al-Tawhid;
 - (f) Al-Tawhid and al-Jihad;
 - (g) Brigades of Tawhid;
 - (h) Dawla al-Islamiya;

Section 5

- (i) Dawla al-Islamiya fi al-Iraq wa as-Sham;
- (j) Islamic State of Iraq;
- (k) Islamic State of Iraq and al-Sham;
- (l) Jama'at al-Tawhid wa'al-Jihad;
- (m) Kateab al-Tawhid;
- (n) Mujahidin Shura Council;
- (o) Qaida of the Jihad in the Land of the Two Rivers;
- (p) Tanzeem Qa'idat al Jihad Bilad al Raafidaini;
- (q) Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn;
- (r) The al-Zarqawi network;
- (s) The Islamic Caliphate;
- (t) The Islamic Caliphate State;
- (u) The Islamic State of Iraq and al-Sham;
- (v) The Islamic State of Iraq and Greater Syria;
- (w) The Islamic State of Iraq and Syria;
- (x) The Islamic State of Iraq and the Levant;
- (y) The Monotheism and Jihad Group;
- (z) The Organisation Base of Jihad Country of the Two Rivers;
- (za) The Organisation Base of Jihad Mesopotamia;
- (zb) The Organisation of Jihad's Base in the Country of the Two Rivers;
- (zc) Unity and Holy Struggle;
- (zd) Unity and Holy War;
- (ze) Unity and Jihad Group.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Islamic State) Regulations 2017

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Islamic State West Africa Province) 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 25 June 2020

David Hurley
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Home Affairs

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State West Africa Province) 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 | | |
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| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | 1 July 2020. | 1 July 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 Terrorist organisation—Islamic State West Africa Province

- (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 West Africa Province is specified.
- (2) Islamic State West Africa Province is also known by the following names:
- (a) Islamic State in West Africa;
 - (b) Islamic State of Iraq and Syria – West Africa;
 - (c) Islamic State of Iraq and the Levant – West Africa;
 - (d) Wilayat Gharb Afriqiyah.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020

The purpose of the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020* (the Regulations) is to specify Boko Haram for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Boko Haram is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Boko Haram) 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 Boko Haram 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 Boko Haram. Regulations specifying Boko Haram as a terrorist organisation have been in effect since 2014.

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

The Regulations commence on 1 July 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 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 Boko Haram 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—Boko Haram) 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—Boko Haram) Regulations 2020* (the Regulations) specify Boko Haram 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 Boko Haram 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 Boko Haram.

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 Boko Haram as a listed terrorist organisation.

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

Human rights implications

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

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

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

The right to freedom of expression in Article 19

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

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 Boko Haram, 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) 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—Boko Haram) Regulations 2020

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Boko Haram) 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 1 July 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—Boko Haram) Regulations 2017*.

Section 5 – Terrorist organisation—Boko Haram

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 Boko Haram is specified.

10. The effect of specifying Boko Haram 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 Boko Haram.
11. Subsection 5(2) would provide a list of names that Boko Haram is also known as:
 - a) Group of the Followers of the Prophet for Propagation and Holy Struggle (paragraph (a))
 - b) Jama'at Ahl al-Sunna lil-Da'awa wal-Jihad; (paragraph b)
 - c) Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad (paragraph (c))
 - d) Nigerian Mujahideen (paragraph (d))
 - e) Nigerian Taliban (paragraph (e))
 - f) People Committed to the Propagation of the Prophet's Teachings and Jihad (paragraph (f))
 - g) Western Education is Forbidden (paragraph (g))
 - h) Yusuffiya Movement (paragraph (h)), and
 - i) Yusuffiya Sect (paragraph (i)).

Schedule 1 — Repeals

12. Clause 1 of Schedule 1 repeals the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2017* (the Current Regulations).
13. The Repealed Regulations specify Boko Haram 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 1 July 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 BOKO HARAM | |
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| <p>Also known as: Group of the Followers of the Prophet for Propagation and Holy Struggle; Jama'at Ahl al-Sunnah lil-Da'awa wal-Jihad; Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad; Nigerian Mujahideen; Nigerian Taliban; People Committed to the Propagation of the Prophet's Teachings and Jihad; Western Education is Forbidden; Yusuffiya Movement; Yusuffiya Sect</p> | |
| <p>This statement is based on publicly available information about Boko Haram. 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 (whether or not a terrorist act has occurred or will occur); or b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur). |
| 2. | <p>Background to this listing</p> <p>The Australian Government first proscribed Boko Haram as a terrorist organisation under the <i>Criminal Code</i> on 1 July 2014. It was relisted on 1 July 2017.</p> <p>Boko Haram pledged allegiance to, and was accepted as a branch of, Islamic State in March 2015 and renamed itself as Islamic State West Africa Province (ISWAP). A dispute over the leadership of ISWAP in August 2016 resulted in the emergence of two factions of the group. One faction continued to operate as ISWAP and another faction reverted to the use of Boko Haram's formal name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad. Although Boko Haram has not officially split from ISWAP, the groups are assessed to operate independently.</p> |
| 3. | <p>Terrorist activity of the organisation (legislative requirements for listing)</p> <p>Boko Haram, formally named Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad, follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets as infidels and apostates those who do not agree with this interpretation. Boko Haram rejects existing national borders and opposes elected governments, seeking to remove them through violence if necessary.</p> <p><u>Objectives</u></p> <p>Boko Haram's primary objective is the establishment of an Islamic state under Shariah law in Nigeria. Its secondary objective is the wider imposition of Islamic rule beyond Nigeria.</p> <p>Boko Haram has undertaken the following to advance its ideology and achieve its objectives:</p> <p><u>Directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist</u></p> |

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| | <p><u>acts</u></p> <p>Boko Haram has engaged in terrorist attacks and kidnappings against a wide range of targets in Nigeria and neighbouring countries. Recent attacks for which Boko Haram can be reliably held responsible include:</p> <ul style="list-style-type: none"> • 9 February 2020: Boko Haram killed at least 30 people in an armed attack in Auno. • 16 June 2019: Boko Haram killed at least 30 people in three suicide bombings in Konduga. • 14 January 2019: Boko Haram killed 14 people in an armed attack in Rann. • 1 May 2018: Boko Haram killed at least 86 people in two suicide bombings in Mubi. <p><u>Advocating the doing of terrorist acts</u></p> <p>Boko Haram has publicly advocated the doing of terrorist attacks in order to further its objectives. Public statements in which Boko Haram has advocated terrorist attacks include:</p> <ul style="list-style-type: none"> • 4 July 2019: Abubakar Shekau extolled jihad and martyrdom as earning rewards for Muslims, and commanded supporters to punish those who do not comply with Islam, a likely reference to carrying out violent terrorist attacks on behalf of the group. • 28 December 2018: Abubakar Shekau called for all Muslims to wage jihad and fight until death to re-establish an Islamic caliphate and until Islam was the only religion, a reference to violent terrorist attacks on behalf of the group. |
| 4. | <p>Details of the organisation</p> <p>Boko Haram was initially formed as a non-violent religious movement in 1995. It was made up of small bands of mainly young, middle-class Nigerians in the northern, Muslim-dominated states of Nigeria. Boko Haram began its violent activities in December 2003, initiating unrest in northern Nigeria that prompted an extensive security force response. Since July 2010, Boko Haram adopted a much more active and violent approach to advance its goals, undertaking frequent attacks against civilian and military targets. Although territory held by Boko Haram has varied over time due to regional military operations, it has strongholds in the Sambisa Forest in Nigeria, and the Mandara mountains on the Nigeria-Cameroon border.</p> <p><u>Leadership</u></p> <p>Abubakar Shekau assumed leadership of Boko Haram in July 2010 and declared allegiance to Islamic State in March 2015, changing the group's formal name from Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad to Islamic State in West Africa. However, Islamic State leadership nominated Abu Musab al-Barnawi as Boko Haram's leader in August 2016 following apparent internal dissatisfaction with Shekau's leadership. Shekau disputed this decision and rejected al-Barnawi as the new leader, resulting in the development of two factions. Shekau reverted to using the group name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad, and continues to command a faction of loyalists operating separately to those remaining in Islamic State in West Africa.</p> <p><u>Membership</u></p> <p>Boko Haram's total membership is estimated at around 1500, with members originating chiefly from north eastern Nigeria and neighbouring regions.</p> <p><u>Recruitment and funding</u></p> <p>Boko Haram exploits poor economic and social conditions in north eastern Nigeria and</p> |

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| | <p>neighbouring regions to attract members. Recruits are drawn by its ability to provide economic prospects for its members and to avoid persecution by the group. Recruits also join Boko Haram through coercion by the group or pressure from associates and family members. The group also bolsters its numbers through kidnappings, forcing captives to serve the group. Some captives, including women and children, are forced to conduct attacks, including suicide bombings.</p> <p>Boko Haram funds itself primarily through criminal activities such as arms and human trafficking, extortion, taxation, looting and kidnap-for-ransom operations. The current state of financial ties with Islamic State or other terrorist groups is unclear.</p> <p><u>Links to other terrorist organisations</u></p> <p>The current state of Boko Haram's links with Islamic State is uncertain. Although Shekau did not rescind his pledge of allegiance following Islamic State's appointment of al-Barnawi as the leader of Islamic State in West Africa in August 2016, he did not renew its pledge upon the appointment of a new Islamic State leader after the death of Baghdadi in October 2019.</p> <p>Boko Haram had historical ties with al-Qa'ida in the Lands of the Islamic Maghreb and al-Shabaab but these are no longer current due to Boko Haram's more recent alignment with Islamic State.</p> <p><u>Links to Australia</u></p> <p>There are no known links between Boko Haram and Australia.</p> <p><u>Threats to Australian interests</u></p> <p>Boko Haram has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general.</p> <p><u>Listed by the United Nations or like-minded countries</u></p> <p>Nigeria proscribed Boko Haram as a terrorist organisation under Nigerian law in May 2013. This was followed by the United Kingdom in July 2013, the United States in November 2013, Canada in December 2013 and New Zealand in March 2014. The ISIL (Da'esh) and Al-Qaida United Nations Security Council Committee listed Boko Haram as an entity subject to sanctions in the ISIL (Da'esh) and Al-Qaida Sanctions List on 22 May 2014.</p> <p><u>Engagement in peace or mediation processes</u></p> <p>Since it was last listed, Boko Haram has not participated in peace or mediation processes with the Governments of Nigeria, Niger, Cameroon or Chad.</p> |
| <p>5. Conclusion</p> | <p>On the basis of the above information, ASIO assesses that Boko Haram 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.</p> <p>In the course of pursuing its objectives, Boko Haram is known to have committed or threatened actions that:</p> <ul style="list-style-type: none"> a) cause, or could cause, death, serious harm to persons, serious damage to property, endangered 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; |

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| | <ul style="list-style-type: none">b) are intended to have those effects;c) are done with the intention of advancing political, religious or ideological causes;d) are done with the intention of intimidating the government of one or more foreign countries; ande) are done with the intention of intimidating the public or sections of the public. |
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EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020

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

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

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

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

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

The Regulations ensure that the offences in Division 102 of the *Criminal Code* continue to apply to conduct relating to Islamic State. Regulations specifying Islamic State as a terrorist organisation, including under previous names, have been in effect since 2005.

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

The Regulations commence on 1 July 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 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 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) 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) Regulations 2020* (the Regulations) specify Islamic State 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 that Islamic State is a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the *Criminal Code* in relation to Islamic State.

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 as a listed terrorist organisation.

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

Human rights implications

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

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

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

The right to freedom of expression in Article 19

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

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

Section 3 – Authority

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

Section 4 – Schedules

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

Section 5 – Terrorist organisation—Islamic State

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 is specified.

10. The effect of specifying Islamic State as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State.
11. Subsection 5(2) provides a list of 31 names that Islamic State is also known as:
- (a) Al-Qa'ida in Iraq (paragraph (a))
 - (b) Al-Qa'ida in Iraq – Zarqawi (paragraph (b))
 - (c) Al-Qa'ida of Jihad in the Land of the Two Rivers (paragraph (c))
 - (d) Al-Qa'ida of Jihad Organization in the Land of the Two Rivers (paragraph (d))
 - (e) Al-Tawhid (paragraph (e))
 - (f) Al-Tawhid and al-Jihad (paragraph (f))
 - (g) Brigades of Tawhid (paragraph (g))
 - (h) Islamic State of Iraq (paragraph (h))
 - (i) Dawla al-Islamiya (paragraph (i))
 - (j) Dawla al-Islamiya fi al-Iraq wa as-Sham (paragraph (j))
 - (k) Islamic State of Iraq and al-Sham (paragraph (k))
 - (l) Jama'at al-Tawhid wa'al-Jihad (paragraph (l))
 - (m) Kateab al-Tawhid (paragraph (m))
 - (n) Mujahidin Shura Council (paragraph (n))
 - (o) Qaida of the Jihad in the Land of the Two Rivers (paragraph (o))
 - (p) Tanzeem Qa'idat al Jihad Bilad al Raafidaini (paragraph (p))
 - (q) Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (paragraph (q))
 - (r) The al-Zarqawi network (paragraph (r))
 - (s) The Islamic State of Iraq and the Levant (paragraph (s))
 - (t) The Islamic State of Iraq and al-Sham (paragraph (t))
 - (u) The Islamic State of Iraq and Syria (paragraph (u))
 - (v) The Islamic Caliphate (paragraph (v))
 - (w) The Islamic Caliphate State (paragraph (w))
 - (x) The Islamic State of Iraq and Greater Syria (paragraph (x))
 - (y) The Monotheism and Jihad Group (paragraph (y))
 - (z) The Organisation Base of Jihad Country of the Two Rivers (paragraph (z))
 - (za) The Organisation Base of Jihad Mesopotamia (paragraph (za))
 - (zb) The Organisation of Jihad's Base in the Country of the Two Rivers (paragraph (zb))
 - (zc) Unity and Holy Struggle (paragraph (zc))
 - (zd) Unity and Holy War (paragraph (zb)), and
 - (ze) Unity and Jihad Group (paragraph (ze)).

Schedule 1— Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2017* (the Current Regulations).

13. The Current Regulations specify Islamic State 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 1 July 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 proposed Regulations are made before the Current Regulations cease to have effect.

ATTACHMENT C

| STATEMENT OF REASONS FOR ISLAMIC STATE | |
|---|--|
| <p>Also known as: Al-Qa'ida in Iraq; Al-Qa'ida in Iraq – Zarqawi; Al-Qa'ida of Jihad in the Land of the Two Rivers; Al-Qa'ida of Jihad Organization in the Land of the Two Rivers; Al-Tawhid; Al-Tawhid and al-Jihad; Brigades of Tawhid; Islamic State of Iraq; Dawla al-Islamiya; Dawla al-Islamiya fi al-Iraq wa as-Sham; Islamic State of Iraq and al-Sham; Jama'at al-Tawhid wa'al-Jihad; Kateab al-Tawhid; Mujahidin Shura Council; Qaida of the Jihad in the Land of the Two Rivers; Tanzeem Qa'idat al Jihad Bilad al Raafidaini; Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn; The al-Zarqawi network; The Islamic State of Iraq and the Levant; The Islamic State of Iraq and al-Sham; The Islamic State of Iraq and Syria; The Islamic Caliphate; The Islamic Caliphate State; The Islamic State of Iraq and Greater Syria; The Monotheism and Jihad Group; The Organisation Base of Jihad Country of the Two Rivers; The Organisation Base of Jihad Mesopotamia; The Organisation of Jihad's Base in the Country of the Two Rivers; Unity and Holy Struggle; Unity and Holy War; Unity and Jihad Group.</p> | |
| <p>This statement is based on publicly available information about Islamic State. 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</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 (whether or not a terrorist act has occurred or will occur); or b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur). |
| 2. | <p>Background to this listing</p> <p>The first listing of this group for proscription purposes was under the Arabic name it formerly used, <i>Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn</i>, in 2005. The group was re-listed under this name on 17 February 2007.</p> <p>The group was formerly listed as al-Qa'ida in Iraq on 1 November 2008; and re-listed on 29 October 2010 and 12 July 2013.</p> <p>The group was formerly listed as Islamic State of Iraq and the Levant (ISIL) on 14 December 2013.</p> <p>On 11 July 2014, the group was listed as Islamic State to reflect the expansion of its operating area and its announcement of an Islamic caliphate on 29 June 2014. The group was relisted as Islamic State on 1 July 2017. This statement has been prepared to support its continued listing.</p> |
| 3. | <p>Terrorist activity of the organisation</p> <p><u>Objectives</u></p> <p>Islamic State is an Iraq and Syria-based Sunni extremist group and former al-Qa'ida affiliate that adheres to a global jihadist ideology. Islamic State follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those that do not agree with its interpretations as infidels and apostates. Islamic State's announcement of a caliphate claimed the</p> |

land from Aleppo in Syria to Diyala in Iraq, the Sunni-dominated areas of both countries. It aims to establish a Salafist-orientated Islamist state spanning Iraq, Syria and other parts of the Levant. Islamic State has also accepted pledges of allegiance from a number of like-minded groups elsewhere in the world to further its influence globally.

Since the group's formation, Islamic State focussed on capturing and consolidating its control over areas of Iraq and Syria by stoking sectarian tensions between, and within, Sunni and Shia—capitalising on Sunni disenfranchisement. By late 2015, Islamic State had captured significant territory in Iraq and Syria. In Iraq, the group controlled Fallujah in Anbar Province and most of Ninewa Province, including Mosul, Iraq's second largest city. In Syria, Islamic State controlled the cities of Raqqah, Dayr az-Zawr, and Palmyra.

Since its loss of territory in Iraq and Syria in March 2019, Islamic State has reverted to a clandestine insurgency in these countries and retains the allegiance of like-minded groups elsewhere in the world.

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

Despite no longer controlling territory in Iraq and Syria, Islamic State remains one of the world's deadliest and most active terrorist organisations, conducting regular attacks on security forces and civilians. Islamic State also inspires, encourages, enables and directs attacks internationally; ranging from low-capability attacks with knives, vehicles or small arms through to complex, coordinated mixed-mode attacks with firearms and explosives. Its attacks often aim to maximise casualties and publicity by targeting crowds and gatherings at festivals and religious events; choosing targets such as churches, nightclubs, music venues and national commemorations for symbolic value. Islamic State also targets police and military personnel, both within and outside Iraq and Syria. Furthermore, the group incites and conducts violence against Muslims and non-Muslim religious minorities within the region and globally.

Islamic State's operations in Iraq and Syria consist of terrorist attacks including arson, bombings, suicide bombings, suicide car bombs, armed attacks including sniper attacks and hit and run attacks using bombs and firearms.

In Iraq, attacks are mostly in the provinces to the north and west. Attacks in the Kurdish-majority northern provinces and the Shia-majority provinces in the south are less common but do occur. Islamic State's primary targets in Iraq are security forces, Shia civilians in public areas, including cafes, mosques and markets, political figures, community and tribal leaders and anti-Islamic State militias. By attacking these targets, the group hopes to undermine security force efforts to contain the group, destroy public confidence in the security forces and provoke a widespread revolt against the government.

In Syria, attacks are predominately against the Syrian regime of Bashar al-Assad and the Kurdish Syrian Democratic Forces, but Islamic State also attacks some other Syrian armed opposition groups, which it considers apostates and infidels as well as on occasion directly targeting civilians. Islamic State has targeted Turkish forces, Turkish, Kurdish and Shia militants in northern Syria, Syrian refugees and Kurdish organisations in Turkey. The group has also targeted US forces present

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| | <p>in Syria. In the Middle East, Islamic State has conducted a range of attacks in Egypt, Lebanon, Jordan and Saudi Arabia and also threatened attacks against the Governments of Turkey and Saudi Arabia.</p> <p>Significant attacks for which Islamic State has claimed responsibility and is assessed to have undertaken since the group was last proscribed (in July 2017) include:</p> <ul style="list-style-type: none"> • In a video message released by Islamic State’s media arm al-Furqan on 29 April 2019, Islamic State’s now deceased leader, Abu Bakr al-Baghdadi, praised the Easter bombings in Sri Lanka and labelled them as revenge for operations against the Islamic State in Baghouz. • Islamic State claimed responsibility for a Roman Catholic church bombing in the Philippines on 27 January 2019 that killed at least 20 people. • Islamic State claimed responsibility for the shooting and stabbing attack at the Strasbourg Christmas market on 11 December 2018 that killed five people and injured at least 11 others. Media reporting indicated the perpetrator had recorded a video pledging allegiance to ISIL. • Islamic State claimed responsibility for a knife attack in Paris on 12 May 2018 that killed one person and injured a dozen more. Islamic State later published a video reportedly showing the perpetrator pledging allegiance to ISIL. <p><u>Advocating the doing of terrorist acts</u></p> <p>Since the group was last proscribed, several media statements have been issued by the group’s official media arm, al-Furqan, that advocate the doing of terrorist acts, including:</p> <ul style="list-style-type: none"> • On 27 January 2020, in an audio message, Islamic State spokesman Abu Hamza al-Qurayshi stated the group was expanding its war across the globe and instructed sympathisers to attack Jewish communities, particularly in Israel and Palestine. • On 29 April 2019, in a video message, Islamic State leader, Abu Bakr al-Baghdadi encouraged sympathisers to intensify attacks globally. • On 17 September 2019, in an audio message Abu Bakr al-Baghdadi stated Islamic State continued to conduct daily operations and urged supporters to free Islamic State members held in prisons and internally displaced person camps in Syria by ‘destroy[ing] the gates that imprison them’, insinuating a call to conduct violent attacks to free Islamic State fighters who are likely to re-engage in terrorist acts of behalf of the group if released. • On 31 October 2019, Islamic State, urged followers to conduct revenge attacks in retaliation for the death of its leader. • On 9 November 2018, via its Amaq news agency, Islamic State praised a knife attack in Melbourne in which two men died (including the perpetrator) and two were wounded, and claimed the attack was carried out by one of its fighters. |
| 4. | <p>Details of the organisation</p> <p>Islamic State is an Iraq and Syria-based Sunni extremist group and former al-Qa’ida affiliate that adheres to a global jihadist ideology. Islamic State follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those that do not agree with its</p> |

interpretations as infidels and apostates.

The group became an al-Qa'ida affiliate in October 2004 when its former leader, Abu Musab al-Zarqawi, pledged allegiance to Usama bin Laden. In late 2011, the group established operations in Syria through its former subordinate organisation, Jabhat al-Nusra (now known as Jabhat Fatah al-Sham). In April 2013, then Islamic State leader, Abu Bakr al-Baghdadi, announced the creation of ISIL to subsume the then-Jabhat al-Nusra and consolidate operations across Iraq and Syria.

The then-Jabhat al-Nusra (and now Jabhat Fatah al-Sham) leader Abu-Muhammad al-Jawlani attempted to annul the announcement by pledging allegiance to al-Qa'ida leader Ayman al-Zawahiri. In June 2013, al-Zawahiri ruled that the then Jabhat al-Nusra was the only al-Qa'ida affiliate in Syria and annulled the creation of ISIL. However, al-Baghdadi refused to follow this ruling and confirmed the creation of ISIL, later announcing the formation of Islamic State with himself as the Caliph in June 2014.

Despite now not controlling territory in Iraq or Syria, the group continues to operate in parts of both countries as a terrorist group, and retains the allegiance of like-minded groups elsewhere in the world, including IS-Libya, IS-Sinai, IS-Khorasan Province, IS-East Asia, ISIL-Somalia, Boko Haram and the Abu Sayyaf Group, which are all listed terrorist organisations in Australia under the Criminal Code.

Leadership

Islamic State's current leader and Caliph is Abu Ibrahim al-Hashimi al-Qurayshi. While Islamic State has kept the identity of al-Qurayshi hidden, many believe al-Qurayshi may be a kunya for Hajji Abdullah, whom al-Baghdadi named as his successor in August 2019. Al-Qurayshi became leader following the death of former Islamic State leader and self-proclaimed Caliph Abu Bakr al-Baghdadi in a US military operation on 27 October 2019.

The official spokesman of Islamic State, Abu Hamzah al-Qurayshi, assumed this role following the death of Abu al-Hassan al-Muhajir, who was killed in a near simultaneous US military operation that killed al-Baghdadi. Abu Hamzah al-Qurayshi's first speech as Islamic State spokesman was released on 31 October 2019; an audio message acknowledging the death of al-Baghdadi and al-Muhajir and announcing that Abu Ibrahim al-Hashimi al-Qurayshi had been appointed as the new Caliph.

Islamic State's hierarchical structure was decentralised following the group's loss of territory, to allow the group to preserve its leadership cadre and more effectively transition to an insurgency. However, Islamic State's core leadership still retained general strategic direction for the group. Furthermore, while Islamic State's global affiliates adhered to its jihadist ideology, they were able to act semi-autonomously from the organisation's leadership in Iraq and Syria.

Membership

At the height of its powers, Islamic State's membership was believed to have reached over 65 000, including approximately 40 000 foreign fighters from over 120 countries. Following ISIL's complete loss of territory in 2019, membership numbers are difficult to determine, but are estimated to

range between 14000 and 18000 across Syria and Iraq, including foreign fighters. There are also around 1200 Islamic State fighters detained in prisons across Iraq and Syria.

Recruitment and funding

Since its establishment, Islamic State has used a combination of threats, incentives and ideology to recruit new members, including through a sophisticated social media campaign in several languages. It has mostly targeted young Sunni men worldwide, exploiting anger at the perceived mistreatment of Sunni Muslims and encouraging them to join in restoring an Islamic caliphate. Islamic State also targets young women and children. However, since 2017, the Islamic State's media and propaganda capabilities have suffered significantly, limiting its global reach for recruitment. Islamic State forcefully recruited from areas under its control and is known to have run schools to indoctrinate children into its extremist ideology at a young age. It also aims to recruit Iraqi security force members to gather intelligence and undermine the performance of those who oppose the group.

Islamic State attracted a large number of foreign fighters, including Westerners, following the announcement of the caliphate in June 2014. Foreign fighter numbers joining Islamic State in Iraq and Syria decreased significantly from 2016 due to the group's territorial losses and the increasing difficulty in travelling to the region. During this period, the group began encouraging potential recruits to go directly to other Islamic State outposts, or stay in their home countries to launch attacks as part of its global campaign.

Following the appointment of Islamic State's new leader, Abu Ibrahim al-Hashimi al-Qurayshi, the group requested members re-pledge allegiance to the new caliph—with many responding to the request globally. These pledges can be made from any location, publicly or privately, and demonstrate support for Islamic State's ideology and acceptance of its brand of violence without the need to travel to Syria and Iraq. Pledging allegiance also demonstrates an intent by the individual to join Islamic State.

Islamic State initially relied on funds donated for operations in Syria to also fund its activities in Iraq and transfers weapons, fighters and resources between the two countries. As Islamic State expanded, it began seizing assets from areas under its control, particularly oil refineries and banks. While oil was a major source of revenue, Islamic State also taxed and extorted those living in areas under its control. Since its loss of territory, Islamic State's ability to raise revenue has been reduced; however, the group was likely able to move cash reserves out of Iraq and Syria prior to their territorial defeat to ensure it had sufficient funds to maintain an insurgency. Islamic State has also been able to diversify its funding through criminal activity, including but not limited to extortion, kidnapping for ransom and theft. Furthermore, the group has significant funds invested in legitimate businesses globally. As operating costs for an insurgency is considerably less than running a caliphate, Islamic State are likely to have sufficient funds to continue attacks in Iraq and Syria.

Links to other terrorist organisations

Islamic State's success in Iraq, particularly in 2014, attracted the support of other terrorist groups around the world with a number of Islamist militant organisations declaring allegiance or support to Islamic State; particularly from the Middle East, West Africa, Central Asia and Southeast Asia.

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| | <p>While some of these groups were created as a response to Islamic State’s call for Muslim support, others were already in existence. Islamic State has accepted a number of pledges of allegiance; however, this does not always indicate a working relationship or operational ties. Islamic State continues to have contentious relationships with various Syrian opposition groups which have included cooperation where tactically useful.</p> <p>Seven groups currently listed as terrorist organisations under the Criminal Code are either official Islamic State affiliates or have publicly pledged support for the group. They include the Abu Sayyaf Group, Boko Haram, Islamic State–Libya, Islamic State–Sinai, Islamic State–East Asia, Islamic State–Khorasan, and Islamic State–Somalia.</p> <p><u>Links to Australia</u></p> <p>Islamic State’s coordinated and effective propaganda campaign exposed susceptible Australians to an extremist ideology and influenced some toward radicalisation. Around 80 Australians and former Australians are currently in Syria/Iraq and have fought with, or were otherwise associated with Islamist extremist groups—the majority with Islamic State. Australians fighting with Islamic State have been involved in acts of violence including suicide bombings and holding the decapitated head of a Syrian soldier following Islamic State beheadings, incidents subsequently used in Islamic State’s propaganda campaign.</p> <p>In addition to those who have travelled, Australia-based individuals can pledge allegiance to Islamic State, affirming their support for the group without the need to travel to Iraq or Syria, and their intent to be a member of the group.</p> <p><u>Threats to Australian interests</u></p> <p>Islamic State has openly called for attacks against Australia and its interests, both because of Australia’s support to military operations against Islamic State in Iraq and Syria, and because of the group’s anti-Western ideology. Islamic State promotes its opposition to Australia through propaganda material, foreign fighter videos and speeches by senior leadership.</p> <p>Islamic State has promoted terrorist attacks in Australia and has openly praised terrorist incidents in Australia, including:</p> <ul style="list-style-type: none"> • the 9 February 2018 stabbing of a man in Melbourne, Victoria; and • the 9 November 2018 mixed mode attack in Melbourne, Victoria using a vehicle that contained gas bottles and a knife resulting in two deaths, including the perpetrator. <p><u>Listed by the United Nations or like-minded countries</u></p> <p>Islamic State is listed as Islamic State of Iraq and the Levant under the United Nations Security Council Resolution 2253 (2015) which expands on the United Nations Security Council resolution 1267 (1999) Sanctions Committee’s consolidated list. It is also listed as a proscribed terrorist organisation by the United States, Canada, United Kingdom and New Zealand.</p> <p><u>Engagement in peace or mediation processes</u></p> <p>Islamic State is not engaged in any peace or mediation process.</p> |
| 5. | Conclusion |

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

In the course of pursuing its objectives, Islamic State 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 the Islamic State's political, religious or ideological causes;
- d) are done with the intention of intimidating the government of one or more foreign countries; and
- e) are done with the intention of intimidating the public or sections of the public.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Islamic State West Africa Province)
Regulations 2020*

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State West Africa Province) Regulations 2020* (the Regulations) is to specify Islamic State West Africa Province 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 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 West Africa Province 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](#)).

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

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

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

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

The Regulations ensure that the offences in Division 102 of the *Criminal Code* apply to conduct relating to Islamic State West Africa Province.

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

The Regulations commence on 1 July 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 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 West Africa Province 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 West Africa Province) 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 West Africa Province) Regulations 2020* (the Regulations) specify Islamic State West Africa Province 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 that Islamic State West Africa Province is a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the *Criminal Code* in relation to Islamic State West Africa Province.

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 West Africa Province as a listed terrorist organisation.

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

Human rights implications

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

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

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

The right to freedom of expression in Article 19

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

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 West Africa Province, 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) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which it takes 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 West Africa Province) 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 West Africa Province) 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 instrument, 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 on 1 July 2020.
4. The note to subsection 2(1) clarifies that the table only relates to the provisions of this instrument as originally made, and will not be amended to deal with any subsequent amendments to the proposed Regulations.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

Section 3 – Authority

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

Section 4 – Terrorist organisation—Islamic State West Africa Province

7. Subsection 4(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 West Africa Province is specified.
8. The effect of specifying Islamic State West Africa Province 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 West Africa Province.
9. Subsection 4(2) would provide a list of names that Islamic State West Africa Province is also known as, namely:
 - (a) Islamic State in West Africa (paragraph (a));
 - (b) Islamic State of Iraq and Syria – West Africa (paragraph (b));
 - (c) Islamic State of Iraq and the Levant – West Africa (paragraph (c));
 - (d) Wilayat Gharb Afriqiyah (paragraph (d)).

ATTACHMENT C

| STATEMENT OF REASONS FOR ISLAMIC STATE WEST AFRICA PROVINCE (ISWAP) | |
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| Also known as: Islamic State in West Africa; Islamic State of Iraq and the Levant - West Africa; Islamic State of Iraq and Syria - West Africa; Wilayat Gharb Afriqiyah | |
| This statement is based on publicly available information about Islamic State West Africa Province (ISWAP). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information. | |
| 1. | Basis for listing a terrorist organisation 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: a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur). |
| 2. | Background to this listing The first listing of ISWAP for proscription purposes was on 1 July 2017 as Islamic State in West Africa, an alias of listed terrorist group Boko Haram. Boko Haram pledged allegiance to, and was accepted as a branch of, Islamic State in March 2015 and renamed itself as ISWAP. A dispute over the leadership of ISWAP in August 2016 resulted in the emergence of two factions of the group. One faction continued to operate as ISWAP and another faction reverted to the use of Boko Haram's formal name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad. Although Boko Haram has not officially split from ISWAP, the groups are assessed to operate independently. |
| 3. | Terrorist activity of the organisation (legislative requirements for listing) ISWAP follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets as infidels and apostates those who do not agree with this interpretation. ISWAP rejects existing national borders and opposes elected governments, seeking to remove them through violence if necessary. <u>Objectives</u> ISWAP's primary objective is the establishment of an Islamic state under Shariah law in Nigeria. Its secondary objective is the wider imposition of Islamic rule beyond Nigeria. ISWAP is a recognised branch of listed terrorist group Islamic State and its objectives are consistent with those of Islamic State. ISWAP has undertaken the following to advance its ideology and achieve its objectives: <u>Directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts</u> |

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| | <p>ISWAP has engaged in terrorist attacks and kidnappings against a wide range of targets in Nigeria and neighbouring countries. Attacks for which ISWAP can be reliably held responsible include:</p> <ul style="list-style-type: none"> • 26 December 2019: ISWAP kidnapped and executed 11 Christians in retaliation for the killing of senior Islamic State figures. • 13 December 2019: ISWAP executed four Nigerian humanitarian workers kidnapped in July 2019. • 18 November 2018: ISWAP attacked a military base in Metele, Nigeria, killing over 40 Nigerian soldiers. • 30 August 2018: ISWAP killed around 30 Nigerian soldiers in an attack against a military base in Zari, Nigeria. <p><u>Advocating the doing of terrorist acts</u></p> <p>ISWAP has publicly advocated the doing of terrorist attacks in order to further its objectives. Public statements in which ISWAP has advocated terrorist attacks include:</p> <ul style="list-style-type: none"> • 15 January 2019: ISWAP issued a video showing fighters calling for Muslims to migrate and conduct jihad in its self-proclaimed state, a likely reference to violent terrorist attacks on behalf of the group given ISWAP conducts regular terrorist attacks and kidnappings against a wide range of targets in Nigeria and neighbouring countries. |
| <p>4. Details of the organisation</p> | <p>ISWAP developed as a faction of listed terrorist organisation Boko Haram, formally named Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad. In March 2015, Boko Haram leader Abubakar Shekau's pledge of allegiance to Islamic State was accepted and the group commenced operations under the name ISWAP. In August 2016, Islamic State leadership replaced Shekau with Abu Musab al-Barnawi as ISWAP's leader following apparent internal dissatisfaction with Shekau's leadership. Shekau disputed this decision and rejected al-Barnawi as the new leader, resulting in the development of two factions, one under al-Barnawi and one under Shekau. The faction loyal to al-Barnawi continues to operate under the name ISWAP and remains closely allied to Islamic State. The faction under Shekau reverted to operating under the name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and is also known as Boko Haram. ISWAP is active in north eastern Nigeria, the Lake Chad region and border regions of Niger and Cameroon.</p> <p><u>Leadership</u></p> <p>The leadership of ISWAP has been subject to change and the identity of any incumbent leader is uncertain. Abubakar Shekau was the first leader when ISWAP commenced operations under that name in March 2015. In August 2016, Islamic State leadership publicly replaced Shekau with Abu Musab al-Barnawi. According to media reporting, Abdullah Ibn Umar al-Barnawi assumed the leadership in March 2019, followed by Ba Lawan in February 2020.</p> <p><u>Membership</u></p> <p>ISWAP's total membership is estimated to be between 3500 and 5000, with members originating chiefly from north eastern Nigeria and neighbouring regions.</p> <p><u>Recruitment and funding</u></p> <p>ISWAP exploits poor economic and social conditions in north eastern Nigeria and neighbouring</p> |

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| | <p>regions to attract members. ISWAP provides protection from attacks by Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and some relief from counter-terrorism measures implemented by Nigerian authorities. Recruits are also drawn by ISWAP's proselytisation, its ability to provide social services, and the economic prospects for its members.</p> <p>ISWAP funds itself through activities such as taxation and extortion of locals, raids, and kidnap-for-ransom operations. The current state of financial ties with Islamic State or other terrorist groups is unclear.</p> <p><u>Links to other terrorist organisations</u></p> <p>ISWAP is an officially recognised affiliate of, and ideologically aligned with, Islamic State.</p> <p><u>Links to Australia</u></p> <p>There are no known links between ISWAP and Australia.</p> <p><u>Threats to Australian interests</u></p> <p>ISWAP has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general.</p> <p><u>Listed by the United Nations or like-minded countries</u></p> <p>The United States designated ISWAP as a foreign terrorist organisation in February 2018. As of November 2018, Canada referenced ISWAP as a faction of listed terrorist group Boko Haram. The United Nations Security Council ISIL (Da'esh) and Al-Qaida Committee listed ISWAP as an entity subject to sanctions in the ISIL (Da'esh) and Al-Qaida Sanctions List in February 2020. New Zealand designated ISWAP as a terrorist organisation in February 2020.</p> <p><u>Engagement in peace or mediation processes</u></p> <p>Since it was last listed as an alias of terrorist group Boko Haram, ISWAP has not participated in peace or mediation processes with the Governments of Nigeria, Niger, Cameroon or Chad.</p> |
| 5. | <p>Conclusion</p> <p>On the basis of the above information, ASIO assesses that ISWAP 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.</p> <p>In the course of pursuing its objectives, ISWAP is known to have committed or threatened actions that:</p> <ul style="list-style-type: none"> a) cause, or could cause, death, serious harm to persons, serious damage to property, endangered 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 political, religious or ideological causes; d) are done with the intention of intimidating the government of one or more foreign countries; and e) are done with the intention of intimidating the public or sections of the public. |