



THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS

Ref No: MS20-002459

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


Dear Chair

I write to advise that, for the purpose of regulations made under Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), I am satisfied that Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan Province meet the legal threshold for listing as a terrorist organisation under Division 102.

The listings will ensure that the offence provisions under Division 102 of the Criminal Code will apply to conduct in relation to Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan Province.

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

Following careful consideration of information provided by the Department of Home Affairs (the Department) in consultation with national security agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan 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 Islamic State Khorasan Province, the regulations re-listing this organisation will commence on the day that the previous regulations are due to expire.

As the regulations listing Jama'at Nusrat al-Islam wal-Muslimin for the first time will include al-Murabitun as an alias of the organisation, these regulations will commence on the day that the previous regulations listing al-Murabitun will expire.

As such, the regulations listing Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan Province will commence on 3 November 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 Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan Province. The states and territories did not object to the listing 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 Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan Province, and invited him to contact my office if he wished to receive a further briefing.

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

To assist the Committee, I attach a copy of the Criminal Code Regulations and Explanatory Statements. Attached to the Explanatory Statements are the Statements of Reasons prepared by the Department with respect to Jama'at Nusrat al-Islam wal-Muslimin and Islamic State Khorasan Province. The Statements of Reasons provide information on the history, ideology, leadership and activities of both organisations, and are the basis upon which I came to the view that these organisations meet the legal threshold for listing as terrorist 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 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

03 NOV 2020



Criminal Code (Terrorist Organisation— Jama'at Nusrat al-Islam wal-Muslimin) 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 29 October 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—Jama’at Nusrat al-Islam wal-Muslimin) 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	3 November 2020.	3 November 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—Jama’at Nusrat al-Islam wal-Muslimin

- (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 Jama’at Nusrat al-Islam wal-Muslimin is specified.
- (2) Jama’at Nusrat al-Islam wal-Muslimin is also known by the following names:
- (a) al-Moulathamoun Battalion;
 - (b) al-Mulathamun Battalion;
 - (c) al-Murabitoun;
 - (d) al-Murabitun;
 - (e) Ansar al-Din;
 - (f) Ansar Dine;
 - (g) Force de Libération du Macina;
 - (h) Group for the Support of Islam and Muslims;

Section 5

- (i) JNIM;
- (j) Katibat Macina;
- (k) Macina Liberation Front;
- (l) Nusrat al-Islam;
- (m) Sahara Emirate;
- (n) the Sentinels.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Islamic State Khorasan 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 29 October 2020

David Hurley
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<i>Regulations 2017</i>		3

Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State Khorasan 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		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	3 November 2020.	3 November 2020

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

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

3 Authority

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

4 Schedules

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

5 Terrorist organisation—Islamic State Khorasan 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 Khorasan Province is specified.
- (2) Islamic State Khorasan Province is also known by the following names:
- (a) Daesh Khorasan;
 - (b) Daesh-Khorasan;
 - (c) IS-Khorasan;
 - (d) Islamic State in the Khorasan Province;
 - (e) Islamic State Khorasan;
 - (f) Islamic State-Khorasan;
 - (g) Islamic State of Iraq and al-Sham-Khorasan;
 - (h) Islamic State of Iraq and Syria-Khorasan;

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- (i) Islamic State of Iraq and the Levant-Khorasan;
- (j) Wilayat Khorasan.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2017

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin)
Regulations 2020*

The purpose of the *Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2020* (the Regulations) is to specify Jama’at Nusrat al-Islam wal-Muslimin for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Jama’at Nusrat al-Islam wal-Muslimin is also known by the name of al-Murabitun. Al-Murabitun is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—al-Murabitun) 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 Jama’at Nusrat al-Islam wal-Muslimin is engaged in, preparing, planning, assisting in or fostering 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 Department of Home Affairs ([Attachment C](#)).

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

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

Effect of the instrument

Division 102 of 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* apply to conduct relating to Jama'at Nusrat al-Islam wal-Muslimin.

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

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

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

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

Consultation

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

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 Jama’at Nusrat al-Islam wal-Muslimin 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—Jama’at Nusrat al-Islam wal-Muslimin) 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—Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2020* (the Regulations) specify Jama’at Nusrat al-Islam wal-Muslimin 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 Jama’at Nusrat al-Islam wal-Muslimin 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 Jama’at Nusrat al-Islam wal-Muslimin.

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 Jama’at Nusrat al-Islam wal-Muslimin as a listed terrorist organisation.

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

Human rights implications

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

- the inherent right to life in Article 6.

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

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

The inherent right to life in Article 6

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

The right to freedom of expression in Article 19

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

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 Jama’at Nusrat al-Islam wal-Muslimin, 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—Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2020

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin) 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 3 November 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—Al-Murabitun) Regulations 2017*.

Section 5 – Terrorist organisation—Jama’at Nusrat al-Islam wal-Muslimin

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 Jama’at Nusrat al-Islam wal-Muslimin is specified.

10. The effect of specifying Jama'at Nusrat al-Islam wal-Muslimin 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 Jama'at Nusrat al-Islam wal-Muslimin.
11. Subsection 5(2) would provide a list of names that Jama'at Nusrat al-Islam wal-Muslimin is also known as:
 - (a) al-Moulathamoun Battalion (paragraph (a))
 - (b) al-Mulathamun Battalion (paragraph (b))
 - (c) al-Murabitoun (paragraph (c))
 - (d) al-Murabitun (paragraph (d))
 - (e) Ansar al-Din (paragraph (e))
 - (f) Ansar Dine (paragraph (f))
 - (g) Force de Libération du Macina (paragraph (g))
 - (h) Group for the Support of Islam and Muslims (paragraph (h))
 - (i) JNIM (paragraph (i))
 - (j) Katibat Macina (paragraph (j))
 - (k) Macina Liberation Front (paragraph (k))
 - (l) Nusrat al-Islam (paragraph (l))
 - (m) Sahara Emirate (paragraph (m)), and
 - (n) the Sentinels (paragraph (n)).

Schedule 1 – Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017* (the al-Murabitun Regulations).
13. The al-Murabitun Regulations specify al-Murabitun 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 3 November 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 would ensure there is no duplication where the Regulations are made before the al-Murabitun Regulations cease to have effect.

ATTACHMENT C

STATEMENT OF REASONS FOR JAMA'AT NUSRAT AL-ISLAM WAL-MUSLIMIN	
Also known as: JNIM; Group for the Support of Islam and Muslims; Nusrat al-Islam; Ansar al-Din; Ansar Dine; al-Murabitun; al-Murabitoun; al-Mulathamun Battalion; al-Moulathamoun Battalion; the Sentinels; Sahara Emirate; Macina Liberation Front; Katibat Macina; Force de Libération du Macina.	
This statement is based on publicly available information about Jama'at Nusrat al-Islam wal-Muslimin (JNIM). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.	
1.	<p>Basis for listing a terrorist organisation</p> <p>Division 102 of the <i>Criminal Code Act 1995</i> provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:</p> <ul style="list-style-type: none"> a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or b) advocates the doing of a terrorist act. <p>For the purposes of listing a terrorist organisation under the <i>Criminal Code</i>, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
2.	<p>Background to this listing</p> <p>JNIM has not previously been listed as a terrorist organisation by the Australian Government. Al-Murabitun (since merged into JNIM) was listed on 5 November 2014 and re-listed on 3 November 2017.</p>
3.	<p>Terrorist activity of the organisation</p> <p><u>Objectives</u></p> <p>JNIM is a Sunni Islamist extremist organisation based in Mali and active in West Africa. Its declared aims are to incite Muslims to oppose oppression and expel foreign and non-Muslim occupying powers – including through violence – and implement Islamic governance. The group's leader has declared JNIM's ultimate enemy to be 'the enemy of the Muslims from among the Jews and the Christians', and identified France and Western countries assisting France as more immediate adversaries.</p> <p>JNIM 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 acts</u></p> <p>JNIM has engaged in terrorist acts in Mali and neighbouring countries. Significant attacks for which JNIM has claimed responsibility, and is assessed to have undertaken, include:</p>

	<ul style="list-style-type: none"> • 6 April 2020: JNIM attacked a Malian military base in Bamba, Mali, killing over 20 soldiers. • 20 January 2019: JNIM attacked a United Nations base in Aguelhok, Mali, killing ten peacekeepers and wounding around 25 others. • 29 June 2018: JNIM conducted a suicide car bomb, rocket and armed attack against the Malian headquarters of Sahel G5 Joint Force in Sevare, Mali, killing two soldiers. • 18 June 2017: JNIM gunmen attacked a resort popular with foreigners near Bamako, Mali, killing five people.
4.	<p>Details of the organisation</p> <p>JNIM was created on 2 March 2017, when three al-Qa’ida-aligned groups – Ansar al-Din, al-Murabitun and the Sahara Emirate subgroup of al-Qa’ida in the Lands of the Islamic Maghreb (AQIM) – announced they had merged into one entity under one emir, formalising the longstanding alliance between the member groups. The merger also included the Macina Liberation Front, an affiliate of Ansar al-Din at that time. During the announcement, the leader of JNIM, Iyad ag Ghali, renewed the groups’ pledges of allegiance to the emir of AQIM, the emir of al-Qa’ida, and to the leader of the Taliban.</p> <p><u>Leadership</u></p> <p>Iyad ag Ghali has led JNIM since its formation in 2017. In accordance with its pledge of allegiance, JNIM is under the command of AQIM and al-Qa’ida core. However, it retains some operational autonomy, as do its subgroups, which have their own commanders and operate in different regions of northern and central Mali and neighbouring regions.</p> <p><u>Membership</u></p> <p>JNIM’s total membership is estimated at 1,000 to 2,000 fighters.</p> <p><u>Recruitment and funding</u></p> <p>JNIM exploits poor governance, economic and social conditions in northern and central Mali and neighbouring regions to attract members. It uses issues such as ethnic and social divisions, insecurity, and dissatisfaction with government oppression, corruption and inability to provide services as avenues for recruitment. JNIM funds itself through kidnap-for-ransom operations, extortion and taxation of locals, smugglers and traffickers.</p> <p><u>Links to other terrorist organisations</u></p> <p>JNIM is affiliated with, and under the command of, al-Qa’ida and AQIM. JNIM has also cooperated with Islamic State affiliate Islamic State of the Greater Sahara, which separated from al-Murabitun in 2015.</p> <p><u>Threats to Australian interests</u></p> <p>JNIM has not made statements specifically threatening Australians or Australian interests, but it has issued statements threatening Westerners and Western interests in general, and has attacked</p>

	<p>locations known to be frequented by Westerners. JNIM is unlikely to differentiate Australians from the citizens of other Western countries.</p> <p><u>Listed by the United Nations or like-minded countries</u></p> <p>The United Nations Security Council includes JNIM in the ISIL (Da'esh) and al-Qa'ida Sanctions List. JNIM was designated as a foreign terrorist organisation by the United States in 2018, and was listed as a proscribed terrorist organisation by the United Kingdom in 2019.</p> <p><u>Engagement in peace or mediation processes</u></p> <p>JNIM is not involved in any peace or mediation processes.</p>
5.	<p>Conclusion</p> <p>On the basis of the above information, the Australian Government assesses that JNIM is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, involving threats to human life and serious damage to property.</p> <p>In the course of pursuing its objectives, JNIM is known to have committed actions that:</p> <ul style="list-style-type: none">• cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;• are intended to have those effects;• are done with the intention of advancing a political, religious or ideological cause; and• are done with the intention of:<ul style="list-style-type: none">○ coercing, or influencing through intimidation, the government of one or more countries; or○ intimidating the public or a section 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 Khorasan Province) Regulations 2020

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

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

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

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act or advocates the doing of a terrorist act.

The Minister for Home Affairs is satisfied on reasonable grounds that Islamic State Khorasan Province is engaged in, preparing, planning, assisting in or fostering 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 Department of Home Affairs (Attachment C).

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

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

Effect of the instrument

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

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

The Regulations ensure that the offences in Division 102 of the *Criminal Code* continue to apply to conduct relating to Islamic State Khorasan Province. Regulations specifying Islamic State Khorasan Province as a terrorist organisation have been in effect since 2017.

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

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

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

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

Consultation

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

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

Terrorist organisations, including Islamic State Khorasan 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

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

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Islamic State Khorasan 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 Khorasan 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 Khorasan 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 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 Khorasan 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 Khorasan 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 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 3 November 2020.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of the proposed Regulations as originally made, and will not be amended to deal with any subsequent amendments to the instrument.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

Section 3 – Authority

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

Section 4 – Schedules

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

Section 5 – Terrorist organisation—Islamic State Khorasan Province

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 Khorasan Province is specified.

10. The effect of specifying Islamic State Khorasan 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 Khorasan Province.
11. Subsection 5(2) would provide a list of names that Islamic State Khorasan Province is also known as:
 - (a) Daesh Khorasan (paragraph (a))
 - (b) Daesh-Khorasan (paragraph (b))
 - (c) IS-Khorasan (paragraph (c))
 - (d) Islamic State in the Khorasan Province (paragraph (d))
 - (e) Islamic State Khorasan (paragraph (e))
 - (f) Islamic State-Khorasan (paragraph (f))
 - (g) Islamic State of Iraq and al-Sham-Khorasan (paragraph (g))
 - (h) Islamic State of Iraq and Syria-Khorasan (paragraph (h))
 - (i) Islamic State of Iraq and the Levant-Khorasan (paragraph (i)), and
 - (j) Wilayat Khorasan (paragraph (j)).

Schedule 1 – Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic Khorasan Province) Regulations 2017* (the Current Regulations).
13. The Current Regulations specify Islamic State Khorasan Province 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 3 November 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 would ensure there is no duplication where the Regulations are made before the Current Regulations cease to have effect.

ATTACHMENT C

STATEMENT OF REASONS FOR ISLAMIC STATE KHORASAN PROVINCE	
Also known as: Islamic State in the Khorasan Province; Islamic State Khorasan; Islamic State-Khorasan; IS-Khorasan; Islamic State of Iraq and the Levant-Khorasan; Islamic State of Iraq and Syria-Khorasan; Islamic State of Iraq and al-Sham-Khorasan; Wilayat Khorasan; Daesh Khorasan, Daesh-Khorasan.	
This statement is based on publicly available information about Islamic State Khorasan Province (IS-KP). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.	
1.	<p>Basis for listing a terrorist organisation</p> <p>Division 102 of the <i>Criminal Code Act 1995</i> provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:</p> <ul style="list-style-type: none"> a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or b) advocates the doing of a terrorist act. <p>For the purposes of listing a terrorist organisation under the <i>Criminal Code</i>, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
2.	<p>Background to this listing</p> <p>The Australian Government previously listed IS-KP as a terrorist organisation under the <i>Criminal Code</i> on 3 November 2017.</p>
3.	<p>Terrorist activity of the organisation</p> <p><u>Objectives</u></p> <p>IS-KP is an officially-recognised Islamic State (IS) affiliate that adheres to IS' global jihadist ideology and 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 its interpretations. The objective of IS-KP is to establish the <i>wilayat</i> (province) of Khorasan as part of the global caliphate of IS. Khorasan is a historical name for the region encompassing present day Afghanistan, Pakistan and Central Asia.</p> <p>IS-KP 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 acts</u></p> <p>IS-KP directly engages in terrorist attacks in and outside of Afghanistan, including assassinations, attacks using remote detonated improvised explosive devices (IEDs), and suicide IED attacks. Significant attacks for which IS-KP has claimed responsibility, and is assessed to have undertaken,</p>

	<p>since the group was last proscribed (in November 2017) include:</p> <ul style="list-style-type: none"> • 2 August 2020: a shooting attack at the Jalalabad Prison Complex in Eastern Afghanistan, killing at least 29 people and wounding over 50 others. This attack resulted in the escape of up to 400 prisoners, which included IS-KP and Taliban loyalists; • 12 May 2020: a suicide bombing attack against a funeral in Kuz Kunar District, Nangarhar Province, Afghanistan, which killed 32 people and injured 133; • 25 March 2020: a shooting attack against a Sikh temple in Kabul, killing at least 25 people and wounding eight; • 6 March 2020: a shooting attack against a ceremony in Kabul commemorating the death of prominent Hazara Shia leader, Abdul Ali Mazari, which killed at least 32 people and injured 58; • 26 February 2020: the detonation of two IEDs attached to motorcycles in Kabul, Afghanistan, injuring at least nine people; • 17 August 2019: a suicide bombing attack against a Shia wedding in Kabul, which killed at least 63 people and injured 180; • 20 April 2019: a combined bombing and shooting attack against the Ministry of Telecommunications and Information Technology in Kabul, which killed at least seven people, including four civilians and three security personnel; • 7 March 2019: a mortar attack on a Shia memorial service in Kabul attended by politicians and officials, which killed at least 11 people; • 13 July 2018: a suicide bombing at a political rally in Mastung, Baluchistan Province, Pakistan, which killed at least 149 people and injured 189; • 26 June 2018: a suicide bombing attack against a local police camp in Kunar Province which killed 13 people and injured five; • 22 April 2018: a suicide bombing attack against a voter registration centre in Kabul, which killed 69 people and injured 120; and • 31 March 2018: a suicide bombing attack that killed Kunar Provincial Council member Shah Wali Himmat and a religious scholar.
<p>4.</p>	<p>Details of the organisation</p> <p>In October 2014, six former senior Tehrik-e-Taliban Pakistan (TTP) members pledged allegiance to IS leader Abu Bakr al-Baghdadi. In January 2015, then-IS spokesman Abu Mohammad al-Adnani accepted the pledge of allegiance and announced the creation of IS-KP.</p> <p><u>Leadership</u></p> <p>IS-KP has suffered military defeats and territorial losses since 2017, resulting in fluid leadership, infighting among IS-KP members and an organisational restructure. As at July 2019, IS-KP's leader was Malawi Abdullah, also known as Mawlawi Aslam Farooqi. On 5 April 2020, Afghan security forces announced Farooqi's arrest.</p> <p>IS-KP has strong ties to IS. Important personnel appointments are discussed with IS, and when</p>

required, IS provides direction to IS-KP.

Membership

Given IS-KP's recent military and territorial losses, the surrender of IS-KP members and Afghanistan's complex and dynamic security environment, it is difficult to accurately identify IS-KP's current strength. A recent United Nations report has put the residual numerical strength of IS-KP at around 2,200 fighters clustered in small cells in and around Kunar, Nuristan and adjoining areas.

Recruitment and funding

IS-KP recruits primarily from disaffected former Taliban members, Pakistan, Afghanistan-based Salafists, and foreign sympathisers. Following territorial losses, IS-KP is increasingly shifting its recruitment to focus on disaffected, urban, non-Pashtun youth. IS-KP receives funding from overseas sympathisers via *hawala* networks, through its own criminal enterprises, and through direct subsidy from IS.

Since the February 2020 agreement between the United States and the Taliban, IS-KP is projecting itself as the only defiant jihadist group committed to jihad in the hope of attracting hardline factions of the Taliban and al-Qa'ida opposed to the peace agreement.

Links to other terrorist organisations

IS-KP remains affiliated to and ideologically aligned with IS, and continues to receive support and guidance from IS senior leadership.

Links to Australia

Australian security and law enforcement agencies are aware of some Australian citizens who have possibly provided support for IS-KP, which in some instances has included an intention to travel overseas in support of IS-KP.

Threats to Australian interests

No Australian citizens have been killed or injured in IS-KP attacks, nor has IS-KP specifically mentioned Australia or Australian interests as a target. However, IS-KP is formally aligned with IS, which has specifically called for attacks against Australia and Australian interests. IS-KP has called for attacks against Westerners and Western interests more generally, both in Khorasan and in Western countries. IS-KP maintains the capability to conduct mass-casualty attacks in Kabul, where Australians are most likely to be located in Afghanistan.

Listed by the United Nations or like-minded countries

The United Nations Security Council includes IS-KP in the ISIL (Da'esh) and al-Qa'ida Sanctions List. The United States designated IS-KP as a foreign terrorist organisation under the name Islamic State in Iraq and the Levant-Khorasan (ISIL-K) in 2015.

Engagement in peace or mediation processes

	IS-KP is not involved in any peace or mediation processes.
5.	<p>Conclusion</p> <p>On the basis of the above information, the Australian Government assesses that IS-KP continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, involving threats to human life and serious damage to property.</p> <p>In the course of pursuing its objectives, IS-KP is known to have committed actions that:</p> <ul style="list-style-type: none">• cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;• are intended to have those effects;• are done with the intention of advancing a political, religious or ideological cause; and• are done with the intention of:<ul style="list-style-type: none">○ coercing, or influencing through intimidation, the government of one or more countries; or○ intimidating the public or a section of the public.

OFFICIAL

Process for the 2020 listing of Jama'at Nusrat al-Islam wal-Muslimin and re-listing of Islamic State Khorasan Province as terrorist organisations under the Criminal Code

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

This includes coordinating whole-of-Government input to a written Statement of Reasons that assesses the organisation, and seeking the advice of the Australian Government Solicitor (AGS) in relation to this 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 Jama'at Nusrat al-Islam wal-Muslimin (JNIM) and re-listing Islamic State Khorasan Province (ISKP) as terrorist organisations:

1. The Department coordinated whole-of-Government input to Statements of Reasons outlining the case for listing JNIM and re-listing ISKP, and provided the Statements of Reasons to AGS on 27 August 2020.
2. On 8 and 22 September 2020, AGS provided written advice to the Department in relation to these organisations and the Criminal Code requirements.
3. On 1 October 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 JNIM and re-listing ISKP as terrorist organisations under the Criminal Code were satisfied.
4. On 1 October 2020, the Department sought the Minister for Home Affairs' approval of the Regulations and associated Federal Executive Council (ExCo) documentation, for consideration by the Governor-General at a meeting of ExCo.
5. On 1 October 2020, the Department emailed state and territory officials advising them of the Minister's consideration for listing JNIM and re-listing ISKP as terrorist organisations, and provided copies of the Statements of Reasons.
6. On 9 October 2020, having considered the information provided in the Department's submission, including the Statements of Reasons, the Minister for Home Affairs was satisfied that the organisations met the threshold for listing.
7. On 9 October 2020, the Minister for Home Affairs approved the Regulations and associated ExCo documentation.
8. On 9 October 2020, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of his satisfaction that JNIM and ISKP met the threshold for listing, and attaching copies of the Statements of Reasons. The letters requested that a response be provided by 28 October 2020, advising whether the First Minister approved of, or objected to, the proposed listings.

OFFICIAL

9. On 9 October 2020, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of his satisfaction that JNIM and ISKP met the threshold for listing, attaching the Statements of Reasons and offering a briefing in relation to these organisations.
10. On 21 October 2020, the Leader of the Opposition was briefed on the listing of JNIM and re-listing of ISKP as terrorist organisations.
11. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
 - Tasmania – responded 19 October 2020
 - Northern Territory – responded 21 October 2020
 - South Australia – responded 22 October 2020
 - New South Wales – responded 26 October 2020
 - Western Australia – responded 30 October 2020
 - Victoria – responded 2 November 2020

No objections were made to the listing of JNIM and re-listing of ISKP as terrorist organisations.

No response was received from the Chief Minister of the Australian Capital Territory and the Premier of Queensland, as both governments were in caretaker during the consultation period. On 26 October 2020 the Director-General of the Queensland Department of the Premier and Cabinet (DPC) wrote to the Minister, advising that Queensland DPC and the Queensland Police Service support the proposed listings.

12. On 29 October 2020, the Governor-General made the Regulations.
13. On 30 October 2020, the *Criminal Code (Terrorist Organisation—Jama'at Nusrat al-Islam wal-Muslimin) Regulations 2020* and the *Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2020* were registered on the Federal Register of Legislation (FRL). These Regulations came into effect on 3 November 2020.
14. On 3 November 2020, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the listing of JNIM and re-listing of ISKP as terrorist organisations, and attaching the Regulations, Explanatory Statements and Statements of Reasons.