



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

Ref No: MS21-000024

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

*James,*  
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 Jaish-e-Mohammad meets the legal threshold for listing as a terrorist organization 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 Jaish-e-Mohammad.

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 terrorist act.

Following careful consideration of information provided by the Department of Home Affairs in consultation with national security agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that Jaish-e-Mohammad meets that legal threshold.

Subsection 102.1(3) of the *Criminal Code* provides that a regulation listing a terrorist organisation ceases to have effect on the third anniversary of the day on which it takes effect. To ensure there is no gap in the coverage of the terrorist organisation offences in relation to Jaish-e-Mohammad, the regulations re-listing this organisation will commence on the day that the previous regulations are due to expire. As such, the regulations listing Jaish-e-Mohammad will commence on 3 March 2021.

Before the regulations were made, I wrote on behalf of the Commonwealth to all state and territory First Ministers advising them of the proposed listings, and provided them with copies of the Statement of Reasons with respect to Jaish-e-Mohammad. 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 a copy of the Statement of Reasons with respect to Jaish-e-Mohammad, and invited him to contact my office if he wished to receive a further briefing.

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

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

I also attach a document outlining the process for listing this organisation. 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



## **Criminal Code (Terrorist Organisation— Jaish-e-Mohammad) Regulations 2021**

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

Dated *18 February* 2021



David Hurley  
Governor-General

By His Excellency's Command



Peter Dutton  
Minister for Home Affairs

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## Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules .....	1
5	Terrorist organisation—Jaish-e-Mohammad .....	1
	<b>Schedule 1—Repeals</b>	<b>3</b>
	<i>Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2018</i>	<i>3</i>

Section 1

**1 Name**

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

**2 Commencement**

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

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

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

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

**3 Authority**

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

**4 Schedules**

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

**5 Terrorist organisation—Jaish-e-Mohammad**

- (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 Jaish-e-Mohammad is specified.
- (2) Jaish-e-Mohammad is also known by the following names:
- (a) Afzal Guru Squad;
  - (b) Army of Mohammed;
  - (c) Army of the Prophet;
  - (d) Jaish-e-Mohammad Mujahideen E-Tanzeem;
  - (e) Jaish-e-Mohammed;
  - (f) Jaish-e-Muhammad;
  - (g) Jaish-e-Muhammed;
  - (h) Jaish-i-Mohammad;

Section 5

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- (i) Jaish-i-Mohammed;
- (j) Jaish-i-Muhammad;
- (k) Jaish-i-Muhammed;
- (l) Jamaat ul-Furqan;
- (m) Jeish-e-Mahammed;
- (n) Jesh-e-Mohammadi;
- (o) JuF;
- (p) Khudamul Islam;
- (q) Khuddam ul-Islam;
- (r) Kuddam e Islami;
- (s) KuI;
- (t) Mohammed's Army;
- (u) National Movement for the Restoration of Pakistani Sovereignty and Army of the Prophet;
- (v) Tehrik ul-Furqan.

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## Schedule 1—Repeals

### *Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2018*

#### 1 The whole of the instrument

Repeal the instrument.

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2021*

The purpose of the *Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2021* (the Regulations) is to specify Jaish-e-Mohammad for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup> Jaish-e-Mohammad is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2018*, 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 Jaish-e-Mohammad 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](#)).

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<sup>1</sup> 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 Jaish-e-Mohammad. Regulations specifying Jaish-e-Mohammad as a terrorist organisation have been in effect since 2018.

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

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

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

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

### *Consultation*

The Department of Home Affairs sought 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 Jaish-e-Mohammad 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—Jaish-e-Mohammad) Regulations 2021***

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

#### ***Overview***

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

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 Jaish-e-Mohammad as a listed terrorist organisation.

Terrorist organisations, including Jaish-e-Mohammad, 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 Jaish-e-Mohammad. 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 Jaish-e-Mohammad.

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 Jaish-e-Mohammad, 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—Jaish-e-Mohammad) Regulations 2021***

#### **Section 1 – Name**

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2021*.

#### **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 March 2021.
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—Jaish-e-Mohammad) Regulations 2018*.

#### **Section 5 – Terrorist organisation—Jaish-e-Mohammad**

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 Jaish-e-Mohammad is specified.

10. The effect of specifying Jaish-e-Mohammad 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 Jaish-e-Mohammad.
11. Subsection 5(2) would provide a list of names that Jaish-e-Mohammad is also known as:
- (a) Afzal Guru Squad (paragraph (a));
  - (b) Army of Mohammed (paragraph (b));
  - (c) Army of the Prophet (paragraph (c));
  - (d) Jaish-e-Mohammad Mujahideen E-Tanzeem (paragraph (d));
  - (e) Jaish-e-Mohammed (paragraph (e));
  - (f) Jaish-e-Muhammad (paragraph (f));
  - (g) Jaish-e-Muhammed (paragraph (g));
  - (h) Jaish-i-Mohammad (paragraph (h));
  - (i) Jaish-i-Mohammed (paragraph (i));
  - (j) Jaish-i-Muhammad (paragraph (j));
  - (k) Jaish-i-Muhammed (paragraph (k));
  - (l) Jamaat ul-Furqan (paragraph (l));
  - (m) Jeish-e-Mahammed (paragraph (m));
  - (n) Jesh-e-Mohammadi (paragraph (n));
  - (o) JuF (paragraph (o));
  - (p) Khudamul Islam (paragraph (p));
  - (q) Khuddam ul-Islam (paragraph (q));
  - (r) Kuddam e Islami (paragraph (r));
  - (s) KuI (paragraph (s));
  - (t) Mohammed's Army (paragraph (t));
  - (u) National Movement for the Restoration of Pakistani Sovereignty and Army of the Prophet (paragraph (u));
  - (v) Tehrik ul-Furqan (paragraph (v)).

#### Schedule 1 – Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2018* (the Current Regulations).
13. The Current Regulations specify Jaish-e-Mohammad 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 March 2018. 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**

#### **Listing of Jaish-e-Mohammad as a terrorist organisation under the *Criminal Code Act 1995***

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

#### **Name of the organisation**

Jaish-e-Mohammad (JeM)

#### **Known aliases**

- Afzal Guru Squad
- Army of Mohammed
- Army of the Prophet
- Jaish-e-Mohammed
- Jaish-e-Muhammed
- Jaish-i-Mohammed
- Jaish-i-Mohammad
- Jaish-i-Muhammad
- Jaish-i-Muhammed
- Jaish-e-Mohammad Mujahideen E-Tanzeem
- Jamaat ul-Furqan (JuF)
- Jeish-e-Mahammed
- Jesh-e-Mohammadi
- Khudamul Islam
- Khuddam ul-Islam (KuI)
- Kuddam e Islami
- Mohammed's Army
- National Movement for the Restoration of Pakistani Sovereignty and Army of the Prophet, and
- Tehrik ul-Furqan.

## **Legislative basis for listing a terrorist organisation**

Division 102 of the *Criminal Code Act 1995* (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister (Minister for Home Affairs) 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; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation under the *Criminal Code*, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

## **Background to this listing**

JeM was first proscribed as a terrorist organisation under the *Criminal Code* on 11 April 2003. It was subsequently relisted on:

- 11 April 2005
- 31 March 2007
- 14 March 2009
- 9 March 2012
- 3 March 2015, and
- 3 March 2018.

## **Details of the organisation**

### ***Organisational overview and objectives***

JeM is a Pakistan-based Sunni Islamist extremist organisation which primarily conducts terrorist attacks in the Indian-administered region of Jammu and Kashmir. JeM continues to call for the use of violence in pursuit of its stated objective of forcing the withdrawal of Indian security forces from Indian-administered Kashmir with the goal of placing Jammu and Kashmir under the control of Pakistan.

### ***Leadership***

JeM was founded in 2000 by Maulana Masood Azhar, a radical Islamist scholar and jihadist leader, following his release from an Indian jail on 31 December 1999 in exchange for 155 hostages hijacked aboard an Indian Airlines aircraft. Azhar reportedly formed JeM with the support of the Afghan Taliban, Osama bin Laden and several Sunni extremist organisations in Pakistan.

JeM has a decentralised, cellular structure led by regional commanders who report to Azhar. In 2019, it was reported Azhar was suffering from health issues and Azhar's brother and JeM second in command Asghar Abdul Rauf Asghar had taken over as de facto emir of JeM. However, Masood Azhar remains the official leader of JeM.

### ***Membership***

The figures on membership numbers for JeM are variable. Media reporting from mid-2019 states there were approximately 56 active JeM members in Jammu and Kashmir. UN reporting from May 2020 indicates, however, that JeM has approximately 230 armed fighters co-located with Taliban forces in Afghanistan.

### ***Funding***

JeM derives income from both legitimate business interests and Islamic charitable foundations. The Al-Rehmat Trust is the principal source of income for JeM and continues to operate despite being sanctioned by several countries. In June 2019, two JeM supporters were found guilty by a Pakistani antiterrorism court of raising funds for JeM during a religious congregation in Manghopir.

The Al-Rehmat Trust and Al-Furqan Trust were banned by the Pakistani government in May 2019 for their ties to JeM.

JeM supports over 300 Islamic institutions in Pakistan and gathers donations from attendees at these institutions. Publicly, the donations are stated to provide “cash and medicine to students of servants of religious schools and centres; orphans, widows and those afflicted with disaster; and migrants on the path to God.”

The United States’ Bureau of Counterterrorism’s Country Reports on Terrorism 2019 notes that JeM has withdrawn funds from bank accounts and invested in legal businesses, such as commodity trading, real estate, and the production of consumer goods.

### ***Links to other terrorist organisations***

JeM has links to extremist groups, including Lashkar-e-Jhangvi and Sipah-e-Sahaba, with which its membership probably overlaps. It maintains operational links with other groups operating in Jammu and Kashmir and Pakistan, particularly Lashkar-e-Tayyiba, and has ties to al-Qa’ida and the Taliban.

### ***Terrorist activity***

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

JeM is directly engaged in preparing, planning and undertaking terrorist acts. JeM has not engaged in large-scale attacks since February 2019; however, continued arrests and clashes with Indian security forces indicate the group is still active in Jammu and Kashmir.

- On 14 February 2019, JeM claimed responsibility for and is assessed to have undertaken a suicide attack (Vehicle Borne Improvised Explosive Device) on a convoy of vehicles carrying security personnel on the Jammu Srinagar National Highway, in Pulwama district. The attack resulted in the deaths of 40 Central Reserve Police Force personnel. This incident resulted in widespread protests, significant international media attention and a tense military standoff between Pakistan and India.

### ***Advocating the doing of terrorist acts***

JeM's leadership has publicly advocated terrorist attacks online, and through rallies and religious sermons in Kashmir.

- On **22 March 2019**, JeM leader Chief Masood Azhar appeared in a video declaring those who denied jihad as infidels, promoting violent jihad against India and supporting martyrdom and violence as part of jihad. In this video, Azhar referenced 'a battle for India', and the 'mujahideen' engaging in 'murderfight' and achieving 'martyrdom' by going 'out into the battlefields to sacrifice their lives'.

### **Other considerations**

#### ***Links to Australia***

There are no known direct links between JeM and Australia.

#### ***Threats to Australian interests***

There are no known direct links between JeM and Australia. JeM has not made statements specifically threatening Australians or Australian interests. However, it would consider Westerners, including Australians, to be legitimate targets for attack. JeM leaders have reportedly called for jihad against the US, along with Israel and India during rallies in Kashmir.

JeM has historically conducted attacks indiscriminately to achieve its objectives, including targeting foreigners.

#### ***Listings by likeminded countries or the United Nations***

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

The United Nations designated Maulana Masood Azhar as a global terrorist in May 2019.

#### ***Engagement in peace or mediation processes***

JeM is not engaged in any peace or mediation process.

### **Conclusion**

On the basis of the above information, the Australian Government assesses that JeM continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.

**OFFICIAL**

**Process for the 2021 re-listing of Jaish-e-Mohammad as a terrorist organisation under the *Criminal Code***

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

This includes 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 re-listing Jaish-e-Mohammad (JeM) as a terrorist organisation.

1. The Department coordinated whole-of-Government input to a Statement of Reasons outlining the case for re-listing JeM.
2. The Department provided the Statement of Reasons to AGS on 16 December 2020.
3. On 8 January 2021, AGS provided written advice to the Department.
4. On 25 January 2021, the Department provided a submission to the Minister for Home Affairs advising him that he could be satisfied on reasonable grounds that the legislative criteria for re-listing JeM as a terrorist organisation under the Criminal Code were satisfied.
5. On 25 January 2021, the Department sought the Minister for Home Affairs' approval of Regulations re-listing JeM as a terrorist organisation and associated Federal Executive Council (ExCo) documentation, for consideration by the Governor-General at a meeting of ExCo.
6. On 28 January 2021, having considered the information provided in the Department's submission, including the Statement of Reasons, the Minister for Home Affairs was satisfied that JeM met the threshold for listing.
7. On 28 January 2021, the Minister for Home Affairs approved the Regulations and associated ExCo documentation.
8. On 28 January 2021, the Minister for Home Affairs wrote to First Ministers on behalf of the Prime Minister, advising of his satisfaction that JeM met the legislative threshold for listing. The letters requested that a response be provided by 17 February 2021, advising whether the First Minister approved of, or objected to, the proposed listing.
9. On 28 January 2021, the Minister for Home Affairs wrote to the Leader of the Opposition, advising of his satisfaction that JeM met the threshold for listing, attaching the Statement of Reasons and offering a briefing in relation to this organisation.
10. The Department received the following responses to the Minister for Home Affairs' correspondence to First Ministers:
  - South Australia – responded 12 February 2021
  - Victoria – responded 14 February 2021

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- Northern Territory – responded 15 February 2021
- Tasmania – responded 16 February 2021
- Australian Capital Territory – responded 19 February 2021
- New South Wales – responded 3 March 2021

No objections were made to the re-listing of JeM as a terrorist organisation.

No response was received from the Premier of Western Australia, as the government was in caretaker during the consultation period. On 18 February 2021 the Director-General of the Western Australia Department of the Premier and Cabinet wrote to the Minister, advising that Western Australia had no objection to the proposed listing.

No response had been received from the Premier of Queensland at the time of writing.

11. On 18 February 2021, the Governor-General made the Regulations.
12. On 22 February 2021, the *Criminal Code (Terrorist Organisation—Jaish-e-Mohammad) Regulations 2021* were registered on the Federal Register of Legislation. These Regulations came into effect on 3 March 2021.
13. On 5 March 2021, the Minister for Home Affairs wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listing of JeM as a terrorist organisation, and attaching the Regulations, the Explanatory Statements and the Statement of Reasons.