



Attorney-General

Reference: MS22-002160

Mr Peter Khalil, MP
Chair Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: pjcis@aph.gov.au

Dear Mr Khalil

I write to advise that Islamic State Sinai Province (IS Sinai), Islamic State in Libya (IS Libya), al-Qa'ida in the Indian Subcontinent (AQIS) and al-Qa'ida in the Arabian Peninsula (AQAP) have been re-listed as terrorist organisations under the *Criminal Code Act 1995* (the Criminal Code). These re-listings will ensure that the offence provisions under Division 102 of the Criminal Code will continue to apply to conduct in relation to the organisations.

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 relevant information and legal advice from the Australian Government Solicitor, I am satisfied that the organisations continue to meet the legal threshold.

Terrorist Organisation Regulations

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. AQAP was re-listed as a terrorist organisation with effect from 26 November 2022. IS Sinai, IS Libya and AQIS were re-listed as terrorist organisations with effect from 29 November 2022. To ensure there is no gap in the coverage of offences in relation to the organisation being re-listed, the Regulations commenced immediately and have not been delayed until after the disallowance period.

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 draft Regulations for their consideration, as required under the *Inter-Governmental Agreement on Counter Terrorism Laws*. No jurisdiction objected to the listing.

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, and invited him to contact my office if he wished to receive a further briefing.

Review by the Parliamentary Joint Committee on Intelligence on Security

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 Regulations and the Explanatory Statements. I also attach the Statements of Reasons that provides information on the history, ideology, leadership and activities of the organisations, and were the basis upon which I made my decision to list the organisations under Division 102 of the Criminal Code.

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

Yours sincerely



THE HON MARK DREYFUS KC MP

28 / 11 / 2022

Encl. *Criminal Code Regulations*— IS Sinai, IS Libya, AQIS and AQAP
Explanatory Statement— IS Sinai, IS Libya, AQIS and AQAP
Statement of Reasons— IS Sinai, IS Libya, AQIS and AQAP
Process of re-listing— IS Sinai, IS Libya, AQIS and AQAP

Cc Minister for Home Affairs, the Hon Clare O'Neil MP



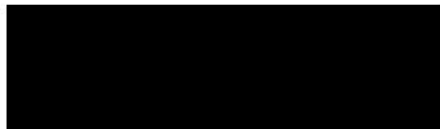
Criminal Code (Terrorist Organisation— Al-Qa’ida in the Indian Subcontinent) Regulations 2022

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 2022

David Hurley
Governor-General

By His Excellency’s Command



Mark Dreyfus KC
Attorney-General

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022*.

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	29 November 2022.	29 November 2022

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

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

3 Authority

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

4 Schedules

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

5 Terrorist organisation—Al-Qa’ida in the Indian Subcontinent

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as al-Qa’ida in the Indian Subcontinent is specified.
- (2) Al-Qa’ida in the Indian Subcontinent is also known by the name AQIS.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2019

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Al-Qa’ida in the Arabian Peninsula) Regulations 2022

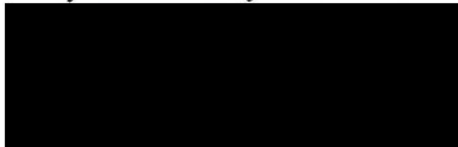
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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations 2022*.

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	26 November 2022.	26 November 2022

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

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

3 Authority

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

4 Schedules

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

5 Terrorist organisation—Al-Qa’ida in the Arabian Peninsula

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as al-Qa’ida in the Arabian Peninsula is specified.
- (2) Al-Qa’ida in the Arabian Peninsula is also known by the following names:
- (a) al-Qa’ida in Yemen;
 - (b) Ansar al-Sharia;
 - (c) AQAP;
 - (d) AQY;
 - (e) Sons of Hadramawt;
 - (f) Supporters of Sharia.

Schedule 1 Repeals

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations 2019

1 The whole of the instrument

Repeal the instrument.



Criminal Code (Terrorist Organisation— Islamic State Sinai Province) Regulations 2022

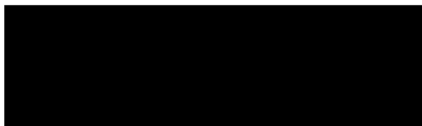
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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2022*.

2 Commencement

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

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3 Authority

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

4 Schedules

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

5 Terrorist organisation—Islamic State Sinai 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 Sinai Province is specified.
- (2) Islamic State Sinai Province is also known by the following names:
- (a) Aknaf Bayt al-Maqdis;
 - (b) Aknaf Beit al-Maqdis;
 - (c) Ansar Bayt al-Maqdes;
 - (d) Ansar Bayt al-Maqdis (ABM);
 - (e) Ansar Beit al-Maqdis;
 - (f) Ansar Jerusalem;
 - (g) ISIL-Sinai;
 - (h) ISIL Sinai Province;

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- (i) ISIS-Sinai;
- (j) ISIS-SP;
- (k) Islamic State in the Sinai;
- (l) Islamic State of Iraq and ash-Sham-Sinai;
- (m) Islamic State of Iraq and Syria Sinai Province;
- (n) Islamic State of Iraq and the Levant-Sinai;
- (o) Islamic State of Iraq and the Levant-Sinai Province;
- (p) Islamic State-Sinai Province;
- (q) IS-Sinai;
- (r) Jamaat Ansar Beit al-Maqdis;
- (s) Jamaat Ansar Beit al-Maqdis fi Sinaa;
- (t) Sinai Province;
- (u) Supporters of Jerusalem;
- (v) Supporters of the Holy Place;
- (w) The State of Sinai;
- (x) Wilayat Sinai.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019

1 The whole of the instrument

Repeal the instrument.



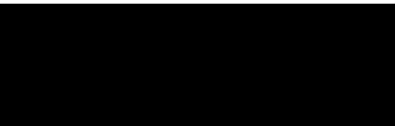
Criminal Code (Terrorist Organisation— Islamic State in Libya) Regulations 2022

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 2022

David Hurley
Governor-General

By His Excellency's Command



Mark Dreyfus KC
Attorney-General

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2022*.

2 Commencement

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

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3 Authority

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

4 Schedules

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

5 Terrorist organisation—Islamic State in Libya

- (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 in Libya is specified.
- (2) Islamic State in Libya is also known by the following names:
- (a) Islamic State-Libya;
 - (b) Islamic State of Iraq and al-Sham in Libya;
 - (c) Islamic State of Iraq and al-Sham-Libya;
 - (d) Islamic State of Iraq and Syria in Libya;
 - (e) Islamic State of Iraq and Syria-Libya;
 - (f) Islamic State of Iraq and the Levant in Libya;
 - (g) Islamic State of Iraq and the Levant-Libya;
 - (h) Wilayat al-Tarabulus;

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- (i) Wilayat Barqa;
- (j) Wilayat Barqah;
- (k) Wilayat Fezzan;
- (l) Wilayat Tarablus;
- (m) Wilayat Tripolitania.

Schedule 1—Repeals

Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2019

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations
2022*

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations 2022* (the Regulations) is to specify the organisation known as al-Qa’ida in the Arabian Peninsula for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

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

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

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1), the **AFP 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. Subsection 100.1(1) provides that, for Part 5.3 of the *Criminal Code*, the **AFP Minister** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation al-Qa’ida in the Arabian Peninsula is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at Attachment C).

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

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

Effect of the instrument

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

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

The Regulations enable the offence provisions in Division 102 of Part 5.3 of the *Criminal Code* to continue to apply in relation to conduct relating to al-Qa'ida in the Arabian Peninsula.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Arabian Peninsula) Regulations 2019*, which would otherwise cease to have effect on 26 November 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation al-Qa'ida in the Arabian Peninsula continues to be specified for the purposes of paragraph (b) of the definition of ***terrorist organisation***.

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

The Regulations commence on 26 November 2022. 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 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 this Statement is at [Attachment A](#).

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

Consultation

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

The Attorney-General 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 AFP Minister.

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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that al-Qa'ida in the Arabian Peninsula meets the legislative requirements for listing.

Advice was obtained from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation— Al-Qa’ida in the Arabian Peninsula) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation— Al-Qa’ida in the Arabian Peninsula) Regulations 2022* (the Regulations) specify al-Qa’ida in the Arabian Peninsula for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to specify al-Qa’ida in the Arabian Peninsula as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to al-Qa’ida in the Arabian Peninsula.

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

Terrorist organisations, including al-Qa’ida in the Arabian Peninsula, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)

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

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, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Detering the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security.

The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including al-Qa'ida in the Arabian Peninsula. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests, and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

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

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

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

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with al-Qa'ida in the Arabian Peninsula, 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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the AFP Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the AFP Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the AFP Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the AFP Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Honourable Mark Dreyfus KC MP
Attorney-General

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence in their entirety on 26 November 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulations 2019*.

Section 5 – Terrorist organisation – Al-Qa’ida in the Arabian Peninsula

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as al-Qa’ida in the Arabian Peninsula is specified.

10. The effect of specifying al-Qa'ida in the Arabian Peninsula as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with al-Qa'ida in the Arabian Peninsula.
11. Subsection 5(2) provides a list of names by which the organisation al-Qa'ida in the Arabian Peninsula is also known, at paragraphs 5(2)(a) to (f):
 - al-Qa'ida in Yemen
 - Ansar al-Sharia
 - AQAP
 - AQY
 - Sons of Hadramawt
 - Supporters of Sharia.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Arabian Peninsula) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation al-Qa'ida in the Arabian Peninsula for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 26 November 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing al-Qa'ida in the Arabian Peninsula as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida in the Arabian Peninsula (AQAP). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

al-Qa'ida in the Arabian Peninsula

Known aliases

al-Qa'ida in Yemen; Ansar al-Sharia; AQAP; AQY; Sons of Hadramawt; Supporters of Sharia.

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (Cth) (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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*, subsection 102.1(20) of the *Criminal Code* describes that the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed AQAP as a terrorist organisation under the *Criminal Code* on 26 November 2010. AQAP was re-listed, effective on 26 November 2013, 26 November 2016, and 26 November 2019.

Details of the organisation

AQAP is a Sunni extremist group based in Yemen. The group is an officially recognised affiliate of al-Qa'ida that adheres to al-Qa'ida's violent, global jihadist ideology and follows an extreme interpretation of Islam, which is anti-Western. Although the group currently focuses on Yemeni targets, AQAP conducted attacks in Saudi Arabia during the mid-2000s, and has attempted to conduct attacks within the US and against US interests around the world.

AQAP was formed in 2009 when the Saudi Arabian and Yemeni branches of al-Qa'ida merged after Riyadh's counterterrorism efforts had driven al-Qa'ida members south into Yemen. It was originally founded as Al-Qa'ida Yemen, in February 2006, after the escape of 23 detained Islamic extremists from a high-security government correctional facility in Sana'a, Yemen. In a January 2009 statement, al-Qa'ida Yemen announced a change of name to AQAP, which was the name of al-Qa'ida Saudi Arabia before it was dismantled by Saudi authorities in 2006.

To increase its community appeal and promote itself as the defender of Sharia law, AQAP refers to itself using names such as 'Ansar al-Sharia' (Supporters of Sharia) and 'Sons of Hadramawt'. AQAP also supports local militias against the Huthi, integrating itself into local populations which reject Huthi attempts to control their territory.

AQAP primarily operates in south and central Yemen. Internal division and military offensives have weakened AQAP. The group has experienced significant territorial losses from Huthi offensives over the last few years, and is attempting to consolidate its foothold in Yemen. AQAP has previously attempted to carry out and inspire attacks against western interests outside Yemen, and likely maintains this intent, but its external operations capability is likely diminished by the group's current weakened state. AQAP maintains a rivalry with ISIL-Yemen, which is severely weakened and lacks significant operational capacity.

Leadership

In early 2020, Khalid Batarfi succeeded Qasim al-Raymi as AQAP's overall leader following al-Raymi's death in a US strike. Qasim al-Raymi, the group's former operational commander, had led AQAP since June 2015 when he replaced Nasir al-Wuhayshi after al-Wuhayshi was killed by a US drone strike.

AQAP's organisational structure likely comprises a shura council that is responsible for the overall political direction of the group, as well as military, propaganda and religious branches.

AQAP's bomb-making was led by explosives expert Ibrahim al-Asiri until his alleged death in a US air strike in late 2017. al-Asiri was the mastermind behind a number of plots targeting global aviation. Before his death, al-Asiri may have spent time training the next generation of AQAP bomb makers.

Membership

Estimates of AQAP's strength vary from several hundred to several thousand members. The estimation of AQAP membership is complicated by the tribal nature of Yemeni society and the November 2014 emergence of an Islamic State affiliate in Yemen. Some Sunni jihadist fighters are likely to have multiple allegiances, or pragmatically move between groups.

Recruitment and funding

AQAP targets recruits from a variety of sources including local Yemeni tribes sympathetic to their jihadist cause, and Sunni extremists from other Middle Eastern or South Asian countries. The group is comprised mostly of Yemenis and Saudis, but the group also recruits internationally.

AQAP releases its audio-visual messages online via its al-Malahim media outlet to broaden its reach and appeal.

AQAP is self-funded and collects revenue from numerous sources including donors in Yemen, Saudi Arabia and other countries; donations collected in mosques; ransom payments for kidnapped hostages; and criminal activities such as robberies and drug smuggling. After taking control of the port city of Mukalla, Hadramawt province in Yemen in April 2015, AQAP reportedly earned millions through stolen Yemeni state savings and customs revenues.

Links to other groups

AQAP is a recognised affiliate of al-Qa'ida. AQAP has also developed some links with al-Qa'ida-affiliated terrorist group al-Shabaab, which operates in Ethiopia, Kenya, and Somalia.

Terrorist activity

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

AQAP capitalised on the Huthi's uprising in September 2014, and the corresponding deteriorating security environment, by expanding its insurgency—taking control of the port city of Mukalla in April 2015. AQAP had gained control of significant territory in Yemen's south and east until a UAE-led military coalition offensive retook Mukalla in late April 2016. The group continues to undertake attacks in several provinces. These include bombings, kidnappings and assassinations against Yemeni and foreign government interests to destabilise the state. They also declared Yemen's Shia Huthi minority 'heretics'. AQAP maintains the intent to conduct external operations.

Attacks that AQAP has claimed responsibility for and is assessed to have undertaken since the group was re-listed in 2019 include:

- 22 May 2022: AQAP detonated an improvised explosive device on a Huthi truck in Mayfa'ah, Yemen. Killing and wounding those inside.

- 18 April 2022: AQAP released a video documenting its use of weaponised unmanned aircraft systems to strike enemy positions.
- 15 March 2022: AQAP conducted a vehicle-borne improvised explosive device attack against the commander of a separatist force in Abyan, Yemen.
- 11 February 2022: AQAP detonated an improvised explosive device on a Huthi truck in Rasad, Yemen.
- 10 February 2022: AQAP conducted a sniper attack on a Huthi fighter in Mayfa'ah, Yemen.
- 18 March 2021: AQAP killed eight members of the United Arab Emirates-backed Security Belt Forces in Abyan Governorate, Yemen, by storming their position and burning a truck.
- 7 December 2020: AQAP conducted a firearm and grenade attack on a security checkpoint in Lawdar, Yemen, killing at least six Yemeni troops.

AQAP has a long history of undertaking kidnapping operations, including against Westerners or individuals associated with Western organisations, to demand the payment of ransoms or the release of its members from prison. Recently, the following kidnapping in Yemen has been attributed to AQAP:

- In February 2022, AQAP members kidnapped five United Nations employees in Abyan Governorate in southern Yemen.

Advocating the doing of terrorist acts

AQAP leaders have, directly or indirectly, advocated terrorist attacks in order to further the group's objectives. Examples since the group was relisted in 2019 include:

- 26 September 2021: al-Malahem Media Foundation released a booklet explaining its origin, objectives and policies. Its listed military goals included liberating Palestine by waging guerrilla war against Jewish targets and liberating Yemen from enemies such as the US.
- 10 September 2020: al-Malahem Media Foundation released a statement in Arabic, English and French encouraging attacks against Charlie Hebdo staff and other Europeans who blasphemed against Islam.
- 13 September 2020: AQAP's media wing published a report examining the impact of the September 11 attacks on the US and calling for lone actor attacks against American interests everywhere.

In July 2010, AQAP launched its online English-language magazine 'Inspire', which aims to encourage individuals, especially in Western countries, to undertake acts of terrorism by providing practical guidance and ideological justification for attacks in their own countries. It has also released special editions of the magazine titled 'Inspire Guide' since 2016. One example of attack advocacy in editions of 'Inspire' released since the group was re-listed in 2019 is:

- 29 June 2021: Following a hiatus since April 2017, AQAP's al-Malahem Media Foundation published the sixth edition of 'Inspire Guide.' It analysed the March 2021 shooting at a supermarket in Colorado, US and provided ideas for lone actors to improve on the attack. Armed attacker tactics (using basic weapons or firearms), improvised explosive devices and improvised incendiary devices were advocated by the magazine.

Other considerations

Links to Australia and threats to Australian interests

There are no corroborated links between AQAP and Australian individuals or interests since the group was re-listed in 2019.

AQAP remains committed to conducting and encouraging others to undertake terrorist attacks against Western targets, which includes Australian interests; however, no known AQAP attacks have killed or injured Australian citizens.

AQAP claims to have directed the shooting attack in the US on 6 December 2019, in which a Royal Saudi Air Force officer participating in a training program opened fire at Naval Air Station Pensacola in Florida, killing three people. However, it is more likely AQAP inspired, rather than directed this attack.

There have been no attacks against Western interests since AQAP was re-listed in 2019, but demonstrated AQAP support for Western attacks since its re-listing include:

- 19 November 2021: AQAP released a video interview in which Batarfi insists that the US remains the primary enemy of AQAP.
- 6 October 2021: AQAP's media wing released a video in which a senior leader, Ibrahim al-Qosi, congratulated the Taliban, criticised the US involvement in Afghanistan and warned of future AQAP attacks against the US, citing the 2019 shooting in Pensacola, and the 2009 shooting in Fort Hood, Texas, as previous examples.
- 10 February 2021: AQAP released a video titled 'America and the Painful Seizure', in which Batarfi stated 'storming the Congress is only the tip of the iceberg of what will come to them, God willing.'
- 13 September 2020: AQAP's media wing published a report examining the impact of the September 11 attacks on the US and calling for lone actor attacks against American interests everywhere.

Listings by likeminded countries or the United Nations

AQAP is listed by the United Nations under UNSC Resolution 1267 (reviewed on 15 November 2021).

The group is listed as a proscribed terrorist organisation by the Governments of the US and Canada, and is included in the UK Government's listing of al-Qa'ida.

The New Zealand Government first designated AQAP a terrorist entity on 19 January 2010 with amendments made to the designation in 2015 and 2016.

Engagement in peace or mediation processes

AQAP was involved in peace talks with the Yemeni Government in 2013, but is not currently engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that AQAP 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, involving threats to human life and serious damage to property.

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

- 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 AQAP's political, religious or ideological causes
- are done with the intention of coercing or intimidating the government of one or more foreign countries
- are done with the intention of intimidating the public or sections of the public.

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations
2022*

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022* (the Regulations) is to specify the organisation known as al-Qa’ida in the Indian Subcontinent for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

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

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

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1), the **AFP 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. Subsection 100.1(1) provides that, for Part 5.3 of the *Criminal Code*, the **AFP Minister** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation al-Qa’ida in the Indian Subcontinent is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at [Attachment C](#)).

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

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

Effect of the instrument

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

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

The Regulations enable the offence provisions in Division 102 of Part 5.3 of the *Criminal Code* to continue to apply in relation to conduct relating to al-Qa'ida in the Indian Subcontinent.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Indian Subcontinent) Regulations 2019*, which would otherwise cease to have effect on 29 November 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation al-Qa'ida in the Indian Subcontinent continues to be specified for the purposes of paragraph (b) of the definition of **terrorist organisation**.

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

The Regulations commence on 29 November 2022. 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 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 this Statement is at [Attachment A](#).

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

Consultation

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

The Attorney-General 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 AFP Minister.

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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that al-Qa'ida in the Indian Subcontinent meets the legislative requirements for listing.

Advice was obtained from the Australian Government Solicitor in relation to the Statement of Reasons at [Attachment C](#).

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022* (the Regulations) specify al-Qa’ida in the Indian Subcontinent for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to specify al-Qa’ida in the Indian Subcontinent as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to al-Qa’ida in the Indian Subcontinent.

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

Terrorist organisations, including al-Qa’ida in the Indian Subcontinent, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)

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

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, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security.

The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including al-Qa'ida in the Indian Subcontinent. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests, and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

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

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

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

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with al-Qa'ida in the Indian Subcontinent, 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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the AFP Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the AFP Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the AFP Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the AFP Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Honourable Mark Dreyfus KC MP
Attorney-General

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence in their entirety on 29 November 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Indian Subcontinent) Regulations 2019*.

Section 5 – Terrorist organisation – Al-Qa’ida in the Indian Subcontinent

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as al-Qa’ida in the Indian Subcontinent is specified.

10. The effect of specifying al-Qa'ida in the Indian Subcontinent as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with al-Qa'ida in the Indian Subcontinent.
11. Subsection 5(2) provides that al-Qa'ida in the Indian Subcontinent is also known by the name AQIS.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Indian Subcontinent) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation al-Qa'ida in the Indian Subcontinent for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 29 November 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing al-Qa'ida in the Indian Subcontinent as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida in the Indian Subcontinent (AQIS). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

al-Qa'ida in the Indian Subcontinent

Known aliases

AQIS

Legislative basis for listing a terrorist organisation

Division 102 Criminal Code Act 1995 (Cth) (*the Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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*, subsection 102.1(20) of the *Criminal Code* describes that the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed AQIS as a terrorist organisation under the *Criminal Code* with effect from 29 November 2016. AQIS was re-listed, effective 29 November 2019.

Details of the organisation

AQIS is an al-Qa'ida-affiliated religiously motivated violent extremist organisation. It was established with the assistance of al-Qa'ida and shares the same anti-Western ideology. The then al-Qa'ida leader, Ayman al-Zawahiri, officially announced the existence of AQIS on 3 September 2014, and identified Pakistan-based Asim Umar as its leader.

Established with the purpose of advancing al-Qa'ida's ideology and objectives in South Asia, the objectives of AQIS are the same as those previously articulated by al-Qa'ida – to prepare Muslims for military jihad against their enemies, to liberate Muslim lands now ruled by non-Muslims, and to revive the Islamic caliphate. In his 2014 announcement of the establishment of AQIS, al-Zawahiri identified Burma (Myanmar), Bangladesh, and India's regions of Assam, Gujarat and Kashmir as regions where it would operate with the intention to fight the governments of Pakistan, Afghanistan, India and Bangladesh.

On 6 March 2016, the AQIS media branch, al-Sahad in the Indian Subcontinent, provided a link to the video 'Al-Hadeed News Report'. The video outlined the objectives of AQIS as being to conduct attacks on:

- the United States of America (US)
- the Pakistani Military Intelligence and Security agencies
- the Government of Pakistan
- enemies of Islam
- blasphemers, atheists and disbelievers.

The objectives were approved by the AQIS Central Shura following instructions from the then leader, al-Zawahiri.

Leadership

AQIS is currently led by Osama Mahmoud (variant Usamah Mahmood), who was formerly the AQIS spokesperson, and is reported to be a Pakistani national. Mahmoud's appointment in 2019 replaced the founding leader, Asim Umar, who was killed in a joint US/Afghan military operation in Afghanistan in 2019.

AQIS leadership resides in the eastern and southern regions of Afghanistan, and North and South Waziristan, Pakistan.

Membership

AQIS membership was initially drawn from extremist groups in Pakistan, with most members being Pakistani nationals. In 2020, media reported AQIS had between 150 and 200 members in the South Asian region. Information made public following disruptions by Pakistani authorities in 2021 indicated AQIS had small media, financing and operational cells located in parts of Pakistan, including in Punjab and Sindh Provinces.

Recruitment and funding

AQIS recruits from among Muslim communities in South Asia through a combination of real-world and virtual methods. Publications such as the AQIS Nawa-i-Afghan magazine are key tools for promoting membership. For example, AQIS published an article in this magazine in December 2019 providing guidance for recruiting members to undertake jihad.

AQIS established a presence in India in 2015 with the intention of radicalising and recruiting Indian nationals. The leader of AQIS in India, Mohammad Asif, was arrested by Indian authorities in late 2015. Asif said that the recruits from India were transported to Afghanistan for training in weapons, tactics and religious studies. In June 2016, charges were filed against 17 alleged AQIS members in Delhi, India, for conspiracy, recruitment for a terrorist act, and membership of a terrorist organisation.

Links to other groups

AQIS has close links with al-Qa'ida core (al-Qa'ida is listed as a terrorist organisation under the *Criminal Code*), the Afghan Taliban, and Tehrik-e-Taliban Pakistan. In October 2015, the former AQIS leader, Asim Umar, pledged allegiance to the then chief of the Afghan Taliban, Mullah Mansour, and AQIS members have been killed in Taliban-controlled territory (before the Taliban took control of Afghanistan) alongside Taliban members.

AQIS is also associated with Bangladesh-based extremist group Ansar al-Islam Bangladesh (AIB). AIB conducted eight killings of secularists and bloggers in Bangladesh between 2014 and 2016, and AQIS has claimed responsibility for each of these attacks.

Terrorist activity

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

AQIS members have historically conducted attacks against Pakistani military and security personnel. The attacks have ranged from targeted assassinations of senior military and intelligence officials to larger scale attacks using improvised explosive devices resulting in multiple deaths.

AQIS plots in Pakistan were regularly disrupted by Pakistani authorities throughout 2020 and 2021, and AQIS was also involved in fighting the former Afghan Government alongside the Afghan Taliban.

Recent reported plots or disruptions include:

- 9 November 2021: An AQIS member located near Chakwal City, Punjab Province, Pakistan was arrested in possession of large numbers of weapons including rocket-propelled grenades, rocket launchers, firearms, ammunition and ball bearings.
- 19 April 2020: Pakistani authorities arrested four AQIS members in Karachi, Sindh Province, Pakistan. Authorities seized weapons and explosives, which they claimed were intended for use by AQIS members in an act of terrorism targeting the Pakistani stock exchange, City Courts, Police Training Centre, or law enforcement agency offices.

Advocating the doing of terrorist acts

AQIS has publicly advocated the doing of terrorist attacks in order to further its objectives, including through online propaganda designed to radicalise and inspire susceptible individuals to undertake attacks. Public statements where AQIS has advocated terrorist attacks include:

- 7 June 2022: AQIS published an English and Urdu statement calling for attacks against the ‘Saffron terrorists’ (the Indian governing party), stating that ‘we shall bind explosives with our bodies and the bodies of our children to blow away the ranks of those who dare to dishonour our Prophet.’
- 18 November 2021: AQIS released a video through its As-Sahab Subcontinent media outlet calling for Muslims in India to ‘join the jihad in Kashmir’ and ‘actively participate in battles there.’

Other considerations

Links to Australia and threats to Australian interests

There are no known links between AQIS and Australia.

Australian interests have not been successfully attacked by AQIS, however, the anti-Western ideology of the group and AQIS's willingness to undertake large scale, indiscriminate attacks may result in attacks against Australian interests.

AQIS specifically mentioned an Australian Navy vessel during the planning of the AQIS operation to take control of a Pakistani Navy Ship in 2014. AQIS noted that the Australian Navy was participating in the patrols of sea routes. Targeting of the Australian Navy vessel was abandoned in favour of easier targets.

Listings by likeminded countries or the United Nations

AQIS is listed as a proscribed terrorist organisation by the Governments of the US and Canada, and is included in the UK Government's listing of al-Qa'ida.

Engagement in peace or mediation processes

AQIS is not known to have engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that AQIS 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, involving threats to human life and serious damage to property.

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

- 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 AQIS's political, religious or ideological causes.
- are done with the intention of coercing or intimidating, the government of one or more foreign countries.
- are done with the intention of intimidating the public or sections of the public.

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2022* (the Regulations) is to specify the organisation known as Islamic State in Libya for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

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

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

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1), the **AFP 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. Subsection 100.1(1) provides that, for Part 5.3 of the *Criminal Code*, the **AFP Minister** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation Islamic State in Libya is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at [Attachment C](#)).

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

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

Effect of the instrument

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

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

The Regulations enable the offence provisions in Division 102 of Part 5.3 of the *Criminal Code* to continue to apply in relation to conduct relating to Islamic State in Libya.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2019*, which would otherwise cease to have effect on 29 November 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation Islamic State in Libya continues to be specified for the purposes of paragraph (b) of the definition of ***terrorist organisation***.

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

The Regulations commence on 29 November 2022. 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 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 this Statement is at [Attachment A](#).

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

Consultation

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

The Attorney-General 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 AFP Minister.

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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that Islamic State in Libya meets the legislative requirements for listing.

Advice was obtained from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

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 in Libya) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2022* (the Regulations) specify Islamic State in Libya for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to specify Islamic State in Libya as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to Islamic State in Libya.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons. 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 in Libya as a listed terrorist organisation.

Terrorist organisations, including Islamic State in Libya, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 in Libya. 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 in Libya.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 in Libya, 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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the AFP Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the AFP Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the AFP Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the AFP Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Honourable Mark Dreyfus KC MP
Attorney-General

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence in their entirety on 29 November 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2019*.

Section 5 – Terrorist organisation – Islamic State in Libya

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State in Libya is specified.

10. The effect of specifying Islamic State in Libya as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State in Libya.
11. Subsection 5(2) provides a list of names by which the organisation Islamic State in Libya is also known, at paragraphs 5(2)(a) to (m):
 - Islamic State-Libya
 - Islamic State of Iraq and al-Sham in Libya
 - Islamic State of Iraq and al-Sham–Libya
 - Islamic State of Iraq and Syria in Libya
 - Islamic State of Iraq and Syria–Libya
 - Islamic State of Iraq and the Levant in Libya
 - Islamic State of Iraq and the Levant–Libya
 - Wilayat al-Tarabulus
 - Wilayat Barqa
 - Wilayat Barqah
 - Wilayat Fezzan
 - Wilayat Tarablus
 - Wilayat Tripolitania.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Islamic State in Libya) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Islamic State Islamic State in Libya for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 29 November 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing Islamic State in Libya as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Islamic State in Libya (IS-Libya). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Islamic State in Libya

Known aliases

Islamic State–Libya; Islamic State of Iraq and the Levant–Libya; Islamic State of Iraq and the Levant in Libya; Islamic State of Iraq and al-Sham in Libya; Islamic State of Iraq and al-Sham–Libya; Islamic State of Iraq and Syria in Libya; Islamic State of Iraq and Syria–Libya; Wilayat Barqa; Wilayat Barqah; Wilayat Fezzan; Wilayat Tripolitania; Wilayat Tarabulus; Wilayat al-Tarabulus.

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 must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation under the *Criminal Code*, subsection 102.1(20) of the *Criminal Code* describes that the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed IS-Libya as a terrorist organisation under the *Criminal Code* on 29 November 2016. IS-Libya was re-listed, effective on 29 November 2019.

Details of the organisation

IS-Libya was formed in Derna, Libya by local returnees from Syria, many of whom had fought as part of the Islamic State-affiliated Battar Brigade. These returnees, who established the Islamic Youth Shura Council in Derna in 2014, received an Islamic State delegation in September 2014 and subsequently pledged allegiance to Islamic State leader Abu Bakr al-Baghdadi.

IS-Libya is an officially recognised Islamic State affiliate adhering to Islamic State's global jihadist ideology and following an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and violently targets those who do not agree with its interpretation. IS-Libya seeks to assist Islamic State in its goal of creating an Islamic caliphate.

IS-Libya shares Islamic State's goals of consolidating territory under its control and expanding its territorial gains within Libya. The group's stated aim is for Libya to be the 'vanguard of the Caliphate'. IS-Libya has made public its aims to establish three Islamic State provinces in Libya – Barqa, Fezzan and Tripolitania – and remove the United Nations-backed transitional Government of National Accord.

In November 2014, the then Islamic State leader, al-Baghdadi, announced that he had accepted the oath of allegiance from the Islamic Shura Youth Council and created the IS-Libya 'branch'. Al-Baghdadi declared three wilayats or provinces: Barqa (eastern Libya) with Derna as its headquarters; Tarabulus (Tripoli) with Sirte as its headquarters; and Fezzan (southern Libya). Following the fall of Sirte to government forces in late 2016, and other losses, IS-Libya retreated into the desert areas of central Libya where it re-built its fighting forces.

In December 2018, IS-Libya recommenced attacks in major population centres.

Following the death of Islamic State leader Abu Ibrahim al-Hashimi al-Quraysh, in March 2022 IS-Libya publicly pledged allegiance to the 'new caliph' of Abu-Hassan al-Hashimi Al-Quraysh.

Leadership

Islamic State leadership in Syria and Iraq have appointed the close aides of former Islamic State leader Abu Bakr al-Baghdadi to lead IS-Libya. IS-Libya was led by Iraqi national Abu Nabil until November 2015, when he was killed in a United States airstrike. Following his death, IS-Libya was led by Abdul Qadr al-Najdi until he was killed by the Libyan National Army in Sabha, Libya in September 2020. Since then, IS-Libya has not publicly named who its leader is.

Membership

IS-Libya's membership is estimated to be around 50 fighters with hundreds of other supporters not involved in conflict. The majority of its members are foreigners emanating predominantly from North African and sub-Saharan African countries, with many from Tunisia and Sudan.

Recruitment and funding

IS-Libya uses domestic issues to recruit Libyans who felt aggrieved and marginalised in post-Gaddafi Libya. The group encourages defectors from armed Libyan groups and has paid fighters to join the group. IS-Libya has also recruited Muslims through calls to fulfil their obligation of immigration to the lands of Islam and by paying foreign fighters.

IS-Libya is largely self-funded through black-market activities, including taxation of smugglers, and also receives funding from Islamic State in Syria and Iraq through emissaries. Other funding sources include extortion, kidnapping for ransom, armed robbery, smuggling and selling antiquities.

Links to other groups

IS-Libya remains an affiliate of, and ideologically aligned with, Islamic State and has received support and guidance from Islamic State senior leadership.

Terrorist activity

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

To advance its ideology and achieve its objectives, IS-Libya has engaged in terrorist attacks and kidnappings against a wide range of targets in North Africa.

Attacks for which IS-Libya has claimed responsibility, and is assessed to have undertaken include:

- 18 April 2022: IS-Libya detonated a car bomb against a Libyan National Army (LNA) camp, killing at least one person.
- 24 January 2022: IS-Libya attacked a LNA militia convoy in southern Sabha Province, killing two militiamen.
- 6 June 2021: IS-Libya bombed a police checkpoint in the town of Sabha, killing two people.
- 23 May 2020: IS-Libya bombed a security point manned by LNA soldiers in the town of Traghan, southern Libya, resulting in no casualties.

On the basis of these incidents, IS-Libya is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Other considerations

Links to Australia and threats to Australian interests

There are no known links between IS-Libya and Australia.

IS-Libya has not made statements specifically threatening Australians or Australian interests. However, IS-Libya has issued statements threatening Westerners and Western interests in general.

- 4 July 2018: The IS-Libya video entitled ‘The Point of Death’ called on its fighters to attack the US and its allies, who it characterised as adversaries to the establishment of *a Caliphate in Libya*.

Listings by likeminded countries or the United Nations

IS-Libya was listed by the United Nations under UNSCR 1267 on 4 March 2020.

IS-Libya was designated as a foreign terrorist organisation by the US State Department in May 2016.

The New Zealand Government designated IS-Libya as a terrorist entity on 4 March 2020.

Engagement in peace or mediation processes

IS-Libya has not participated in peace talks with the Libyan Government and did not participate in United Nations-brokered negotiations to form a national unity government in Libya.

Conclusion

On the basis of the information above, the Australian Government assesses that IS-Libya 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.

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

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

Process for the 2022 re-listing of Islamic State Sinai Province (IS Sinai), Islamic State in Libya (IS Libya), al-Qa'ida in the Indian Subcontinent (AQIS), and al-Qa'ida in the Arabian Peninsula (AQAP) as terrorist organisations under the *Criminal Code Act 1995*

1. 1 June 2022: The Department of Home Affairs (Home Affairs) formally raised the re-listing of IS Sinai, IS Libya, AQIS and AQAP (the organisations) with relevant agencies and sought whole-of-government input to inform the Statements of Reasons outlining the case for re-listing these organisations.
2. 11 August 2022: Home Affairs wrote to state and territory officials to inform them of the proposed re-listing of the organisations and to provide them with advance notice that they would be consulted.
3. 19 September 2022: The Australian Government Solicitor (AGS) provided written advice to Home Affairs in relation to the organisations and the legislative requirements.
4. 4 October 2022: Home Affairs provided a submission to the Minister for Home Affairs seeking her consideration of the Statements of Reasons.
5. 17 October 2022: The Minister for Home Affairs wrote to the Attorney-General, endorsing the re-listing of the organisations. The Minister's letter attached the Statements of Reasons, and drafts of the Regulations, Explanatory Memorandum and Federal Executive Council documents.
6. 21 October 2022: The Attorney-General's Department provided a submission to the Attorney-General recommending that he agree to the re-listings.
7. 26 October 2022: The Attorney-General agreed to the re-listing of the organisations having been satisfied that they met the statutory criteria and approved the Regulations.
8. 26 October 2022: The Attorney-General wrote to the Prime Minister advising of the decision to re-list the organisations. The Attorney-General notified the Prime Minister that he had written to the First Ministers of each state and territory regarding the proposed re-listings.
9. 26 October 2022: The Attorney-General wrote to the Leader of the Opposition advising of his decision to re-list the organisations, attaching the Statements of Reasons and offering a briefing in relation to the organisations.
10. 26 October 2022: The Attorney-General wrote to the Minister for Home Affairs advising of his intention to re-list the organisations.
11. 26 October 2022: The Attorney-General wrote to First Ministers on behalf of the Prime Minister, advising of his decision to re-list the organisations, and attached copies of the draft Regulations and Statements of Reasons. The letters requested that a response be provided by 11 November 2022, advising whether the First Minister objected to the re-listing, and reasons for any objections.
12. 11 October 2022: The following responses were received from the Premier or Chief Minister of the following states and territories:
 - Queensland – received 2 November 2022.

- Northern Territory – received 10 November 2022.
- Australian Capital Territory – received 11 November 2022.
- New South Wales – received 11 November 2022.

No objections were made to the re-listing.

13. 24 November 2022: The Governor-General made the Regulation.
14. 24 November 2022: The *Criminal Code (Terrorist Organisation – Islamic State Sinai Province) Regulations 2022*, *Criminal Code (Terrorist Organisation – Islamic State in Libya) Regulations 2022*, *Criminal Code (Terrorist Organisation – Al-Qa’ida in the Indian Subcontinent) Regulations 2022* and *Criminal Code (Terrorist Organisation – Al-Qa’ida in the Arabian Peninsula) Regulations 2022* were registered on the Federal Register of Legislation [references: F2022L01516, F2022L01524, F2022L01515, F2022L01519]. To ensure there is no gap in the coverage of offences in relation to IS Sinai, IS Libya, AQIS, and AQAP, the Regulations commenced immediately and were not delayed until after the disallowance period.
15. 28 November 2022: The Attorney-General wrote to the Chair of the Parliamentary Joint Committee on Intelligence and Security advising of the re-listing of the organisations as terrorist organisations, and attaching the Regulations, Explanatory Statement, and Statements of Reasons, and this listing process document.

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2022* (the Regulations) is to specify the organisation known as Islamic State Sinai Province for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

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

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

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1), the **AFP 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. Subsection 100.1(1) provides that, for Part 5.3 of the *Criminal Code*, the **AFP Minister** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation Islamic State Sinai Province is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at Attachment C).

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

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

Effect of the instrument

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

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

The Regulations enable the offence provisions in Division 102 of Part 5.3 of the *Criminal Code* to continue to apply in relation to conduct relating to Islamic State Sinai Province.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019*, which would otherwise cease to have effect on 29 November 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation Islamic State Sinai Province continues to be specified for the purposes of paragraph (b) of the definition of ***terrorist organisation***.

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

The Regulations commence on 29 November 2022. 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 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 this Statement is at [Attachment A](#).

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

Consultation

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

The Attorney-General 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 AFP Minister.

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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that Islamic State Sinai Province meets the legislative requirements for listing.

Advice was obtained from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

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 Sinai Province) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2022* (the Regulations) specify Islamic State Sinai 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 specify Islamic State Sinai 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 that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to Islamic State Sinai Province.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons. 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 Sinai Province as a listed terrorist organisation.

Terrorist organisations, including Islamic State Sinai 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 Sinai 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 Sinai 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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Sinai 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 AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the AFP Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the AFP Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the AFP Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the AFP Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Honourable Mark Dreyfus KC MP
Attorney-General

ATTACHMENT B

Details of the Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence in their entirety on 29 November 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019*.

Section 5 – Terrorist organisation – Islamic State Sinai Province

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State Sinai Province is specified.

10. The effect of specifying Islamic State Sinai Province as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State Sinai Province.
11. Subsection 5(2) provides a list of names by which the organisation Islamic State Sinai Province is also known, at paragraphs 5(2)(a) to (x):
 - Aknaf Bayt al-Maqdis
 - Aknaf Beit al-Maqdis
 - Ansar Bayt al-Maqdes
 - Ansar Bayt al-Maqdis (ABM)
 - Ansar Beit al-Maqdis
 - Ansar Jerusalem
 - ISIL-Sinai
 - ISIL Sinai Province
 - ISIS-Sinai
 - ISIS-SP
 - Islamic State in the Sinai
 - Islamic State of Iraq and ash-Sham-Sinai
 - Islamic State of Iraq and Syria Sinai Province
 - Islamic State of Iraq and the Levant-Sinai
 - Islamic State of Iraq and the Levant-Sinai Province
 - Islamic State-Sinai Province
 - IS-Sinai
 - Jamaat Ansar Beit al-Maqdis
 - Jamaat Ansar Beit al-Maqdis fi Sinaa
 - Sinai Province
 - Supporters of Jerusalem
 - Supporters of the Holy Place
 - The State of Sinai
 - Wilayat Sinai.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019* (the 2019 Regulations).

13. The 2019 Regulations specify the organisation Islamic State Sinai Province for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 29 November 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

ATTACHMENT C

Statement of Reasons

Listing Islamic State Sinai Province as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Islamic State Sinai Province (IS-Sinai). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Islamic State Sinai Province

Known aliases

Islamic State of Iraq and the Levant-Sinai Province; Islamic State of Iraq and the Levant-Sinai; Islamic State of Iraq and ash-Sham-Sinai; Islamic State of Iraq and Syria Sinai Province; ISIL Sinai Province; Islamic State-Sinai Province; Islamic State in the Sinai; Wilayat Sinai; The State of Sinai; ISIL-Sinai; IS-Sinai; ISIS-SP; ISIS-Sinai; Sinai Province; Ansar Bayt al-Maqdis (ABM); Ansar Beit al-Maqdis; Ansar Bayt al-Maqdes; Aknaf Bayt al-Maqdis; Aknaf Beit al-Maqdis; Ansar Jerusalem; Supporters of Jerusalem; Jamaat Ansar Beit al-Maqdis; Jamaat Ansar Beit al-Maqdis fi Sinaa; Supporters of the Holy Place.

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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*, subsection 102.1(20) of the *Criminal Code* describes that the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed IS-Sinai as a terrorist organisation under the *Criminal Code* with effect from 29 November 2016. IS-Sinai was re-listed, effective on 29 November 2019.

Details of the organisation

IS-Sinai is a Sunni religiously motivated violent extremist group located in Egypt's Sinai Peninsula. IS-Sinai is an officially recognised Islamic State of Iraq and the Levant (ISIL) affiliate that adheres to ISIL's global jihadist ideology and follows an extreme interpretation of Islam, which is anti-Western, promotes sectarian violence and targets those that do not agree with its interpretations as infidels and apostates.

IS-Sinai seeks to assist ISIL to establish an Islamic caliphate covering historic greater Syria (Iraq, Syria and other parts of the Levant). ISIL has tasked IS-Sinai to help establish the caliphate in Egypt's Sinai and, over the longer-term, historic Palestine (Israel and the Palestinian Territories). In achieving this, IS-Sinai seeks to eliminate the Egyptian government and to realise ISIL's goal of establishing a Salafist-orientated Islamic state in Egypt.

On 9 November 2014, Egypt-based extremist group Ansar Bayt al-Maqdis (ABM) pledged allegiance to ISIL and its then leader, Abu Bakr al-Baghdadi. Following the pledge, the group adopted the name IS-Sinai and became a recognised ISIL affiliate. IS-Sinai has pledged allegiance to successive Islamic State leaders, most recently Abu al-Hassan al-Hashemi al-Qurayshi.

Before pledging allegiance to ISIL, ABM mainly carried out attacks against Israeli and Egyptian Government interests, including Egypt's tourism industry. Since becoming an affiliate of ISIL, IS-Sinai has also claimed attacks on foreign and sectarian interests, including the bombing of a Russian passenger aircraft, the execution of a Croatian citizen, and attacks on Egyptian Coptic Christians.

Leadership

Details of IS-Sinai's leadership structure are limited, however it is expected that IS-Sinai has a similar leadership structure to ISIL in Iraq and Syria, with an overall leader and a number of provincial or regional cells. It is likely that some legacy members of the ABM leadership remain, despite a number of key members being killed or having defected in recent years.

- April 2022: IS-Sinai claimed Israeli air strikes had killed prominent IS-Sinai military leader Abu Omar al-Ansari.
- September 2021: senior IS-Sinai jurist Muhammad Sa'ad Kamel al-Sai'id, also known as Abu Hamza al-Qadi, defected to Egyptian authorities.
- March 2021: prominent IS-Sinai leader Salim Salma Said Mahmoud al-Hamadin was killed in a security force operation.

Membership

The majority of IS-Sinai members are Egyptian nationals, including from the marginalised, and underdeveloped North Sinai, many are likely to be former members of ABM. The group also likely comprises members from across mainland Egypt, and a number of foreigners, including Palestinians.

Estimates from 2020 put the group's numbers at approximately 800-1200 fighters, however this has probably declined due to consistent counter-terrorism operations, low morale and the defection of key members.

Recruitment and funding

IS-Sinai uses domestic issues in Egypt, propaganda, and its terrorist record to attract recruits. In the Sinai, the demilitarisation of the region following the 1979 Israel-Egypt Peace Treaty, difficult economic conditions and a perception of neglect from the mainland influences IS-Sinai recruitment.

IS-Sinai likely relies on income from its smuggling operations to and from northern Africa and the Gaza Strip, and other criminal enterprises, to fund terrorist operations. In addition, as a recognised affiliate, IS-Sinai likely receives some funding from ISIL in Syria and Iraq.

Links to other groups

IS-Sinai remains an affiliate of, and ideologically aligned with, ISIL and has received support and guidance from ISIL senior leadership.

IS-Sinai has had a fractious relationship with Hamas elements in Gaza. Despite ideological differences, IS-Sinai and Hamas have historically cooperated due to familial links, cross-border pragmatism, common interests, and arms smuggling; however, while cooperation endures, the relationship has deteriorated on both sides. In January 2018, IS-Sinai released a video which showed the execution of an accused Hamas smuggler for smuggling weapons to Hamas' Izz al-Din al Qassam Brigades. The group has also urged attacks on Hamas in its propaganda.

ISIL and Hamas are both proscribed terrorist organisations under Australia's *Criminal Code Act 1995*.

Terrorist activity

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

IS-Sinai conducts regular small arms, light weapon and improvised explosive device (IED) attacks in Egypt's North Sinai. The majority of its attacks target Egyptian security forces, anti-ISIL tribal militias, local civilians and infrastructure; however Western, Israeli and sectarian interests have also been attacked.

Attacks IS-Sinai is assessed to have undertaken include:

- 18 June 2022: A dual IED attack on a joint Egyptian military and Sinai tribal militia patrol in Rafah, North Sinai, killing at least five. IS-Sinai claimed responsibility for this attack on 19 June 2020.
- 11 May 2022: An attack on an Egyptian military checkpoint in western Rafah, North Sinai. IS-Sinai killed at least five and possibly up to 12 Egyptian soldiers. IS-Sinai claimed responsibility for this attack on 14 May.
- 7 May 2022: IS-Sinai engaged in an attack on an Egyptian military outpost in western North Sinai, southwest of Bir al-Abd city. IS-Sinai claimed the attack on 8 May 2022 and said that it had killed all 17 Egyptian soldiers present, seized their weapons, and burnt the site, whereas Egyptian officials confirmed 11 deaths and five injuries during the attack.
 - IS-Sinai praised this attack and indicated more attacks would follow: ‘Let the apostates know that this is only some of the revenge for the imprisoned Muslim women in Rafah and that the wheel of jihad in Sinai continues to turn, by the permission of Allah the Almighty.’
- 30 April 2022: IS-Sinai detonated a gas pipeline after rigging it with explosives to the east of Bir al-Abd city, North Sinai. IS-Sinai sporadically attacks gas pipelines in North Sinai likely to target both Egyptian state economic interests and Israel, which exports gas to Egypt.
- 24 and 26 April 2022: ISIL’s Amaq News Agency released videos showing IS-Sinai’s executions of three men, accused of being ‘spies’ for Sinai tribal militias in Bir al-Abd, North Sinai. IS-Sinai often publicises attacks on perceived collaborators to dissuade local Bedouin from assisting Egyptian regime forces.
- 27 March 2022: Three small-scale operations in North Sinai:
 - the killing of two tribal militiamen via sniper fire in Rafah city;
 - wounding an unspecified number of Egyptian soldiers during an attack on a military checkpoint on the coast of Rafah; and
 - destroying a vehicle and injuring those onboard in an IED attack south of Sheikh Zuweid.
- 12 August 2021: A roadside IED attack against an Egyptian military vehicle in Rafah, North Sinai. The attack killed eight Egyptian soldiers and wounded six. IS-Sinai claimed responsibility for this attack.
- 21 July 2020: IS-Sinai conducted a multi-mode attack using vehicle-borne IEDs, various small arms and light weapons on an Egyptian army camp in Bir al-Abd, North Sinai. While IS-Sinai claimed it had killed 40 and wounded 60 others, Egyptian authorities claimed to have ‘foiled’ the attack, which had killed two soldiers and injured four. IS-Sinai subsequently occupied at least four nearby villages, planting IEDs and raising ISIL’s flag. From October to December 2020, at least 15 civilians were killed by booby-trapped IEDs left by IS-Sinai when returning to their villages.

- 30 April 2020: IS-Sinai killed 10 Egyptian soldiers and injured three others by detonating an IED under a military vehicle in Bir al-Abd, North Sinai. The Egyptian military acknowledged 10 of its troops had been killed or wounded in the attack. IS-Sinai claimed responsibility for this attack on 1 May 2020.

Advocating attacks

IS-Sinai regularly claims attacks through official ISIL media channels and publications, including ISIL's al-Naba and Amaq News Agency, and via social media. It praises these attacks as being against apostates, infidels and spies, and seeks to portray them as religiously justified.

- 17 April 2021: IS-Sinai released the propaganda video 'The Makers of the Epics', which showcased its recent attacks – including multiple attacks against Egyptian military targets, and the execution of three Egyptian civilians accused of collusion – and encouraged further violence in the Sinai.
 - An IS-Sinai fighter rallied his colleagues by citing Qur'anic verses of the duty to fight and seek reward from God. He urged fighters to wage jihad followed by clips of fighters planting improvised explosive devices. He assured his colleagues of victory, while encouraging them to seek paradise in the afterlife.
 - Separately, an IS-Sinai fighter threatened further attacks against Christians before executing a local Coptic Christian: 'Our message to the Crusaders in all parts of the world is this: As you kill, you will be killed, and as you take prisoner, you will be taken prisoner. And as for you, O Christians of Egypt: This is the consequence of your loyalty to the Egyptian army, which is no longer useful to its own soldiers and cannot benefit you.'

Other considerations

Links to Australia and threats to Australian interests

There are no known direct links between IS-Sinai and Australia.

IS-Sinai has expressed anti-Western sentiment in its rhetoric. It likely views the West, and the United States in particular, as supporters of Israel and Egypt, its primary adversaries; and complicit in global anti-ISIL operations.

Listings by likeminded countries or the United Nations

IS-Sinai is listed as a terrorist organisation by the Governments of the US and Canada, and in New Zealand is a designated terrorist group pursuant to United Nations UNSC resolution 1373. It is also listed under its former name, ABM, by the Government of the United Kingdom. The Islamic State or Islamic State of Iraq and the Levant is listed under the United Nations Security Council resolution 2253 (2015) which expands on the United Nations Security Council resolution 1267 (1999) Sanctions Committee's consolidated list.

Engagement in peace or mediation processes

IS-Sinai is not engaged in any peace talks with the Egyptian Government.

Conclusion

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

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

- 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 IS-Sinai's political, religious or ideological causes
- are done with the intention of intimidating or coercing the government of one or more foreign countries
- are done with the intention of intimidating the public or sections of the public.



Australian Government
Department of Home Affairs

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Statement of Reasons - AQAP

Listing al-Qa'ida in the Arabian Peninsula as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida in the Arabian Peninsula (AQAP). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

al-Qa'ida in the Arabian Peninsula

Known aliases

al-Qa'ida in Yemen; Ansar al-Sharia; AQAP; AQY; Sons of Hadramawt; Supporters of Sharia.

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (Cth) (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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*, subsection 102.1(20) of the *Criminal Code* describes the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed AQAP as a terrorist organisation under the *Criminal Code* on 26 November 2010. AQAP was re-listed on 26 November 2013, 26 November 2016, and 26 November 2019.

Details of the organisation

AQAP is a Sunni extremist group based in Yemen. The group is an officially recognised affiliate of al-Qa'ida that adheres to al-Qa'ida's violent, global jihadist ideology and follows an extreme interpretation of Islam, which is anti-Western. Although the group currently focuses on Yemeni targets, AQAP conducted attacks in Saudi Arabia during the mid-2000s, and has attempted to conduct attacks within the US and against US interests around the world.

AQAP was formed in 2009 when the Saudi Arabian and Yemeni branches of al-Qa'ida merged after Riyadh's counterterrorism efforts had driven al-Qa'ida members south into Yemen. It was originally founded as

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Al-Qa'ida Yemen, in February 2006, after the escape of 23 detained Islamic extremists from a high-security government correctional facility in Sana'a, Yemen. In a January 2009 statement, al-Qa'ida Yemen announced a change of name to AQAP, which was the name of al-Qa'ida Saudi Arabia before it was dismantled by Saudi authorities in 2006.

To increase its community appeal and promote itself as the defender of Sharia law, AQAP refers to itself using names such as 'Ansar al-Sharia' (Supporters of Sharia) and 'Sons of Hadramawt'. AQAP also supports local militias against the Huthi, integrating itself into local populations which reject Huthi attempts to control their territory.

AQAP primarily operates in south and central Yemen. Internal division and military offensives have weakened AQAP. The group has experienced significant territorial losses from Huthi offensives over the last few years, and is attempting to consolidate its foothold in Yemen. AQAP has previously attempted to carry out and inspire attacks against western interests outside Yemen, and likely maintains this intent, but its external operations capability is likely diminished by the group's current weakened state. AQAP maintains a rivalry with ISIL-Yemen, which is severely weakened and lacks significant operational capacity.

Leadership

In early 2020, Khalid Batarfi succeeded Qasim al-Raymi as AQAP's overall leader following al-Raymi's death in a US strike. Qasim al-Raymi, the group's former operational commander, had led AQAP since June 2015 when he replaced Nasir al-Wuhayshi after al-Wuhayshi was killed by a US drone strike.

AQAP's organisational structure likely comprises a shura council that is responsible for the overall political direction of the group, as well as military, propaganda and religious branches.

AQAP's bomb-making was led by explosives expert Ibrahim al-Asiri until his alleged death in a US air strike in late-2017. al-Asiri was the mastermind behind a number of plots targeting global aviation. Before his death, al-Asiri may have spent time training the next generation of AQAP bomb makers.

Membership

Estimates of AQAP's strength vary from several hundred to several thousand members. The estimation of AQAP membership is complicated by the tribal nature of Yemeni society and the November 2014 emergence of an Islamic State affiliate in Yemen. Some Sunni jihadist fighters are likely to have multiple allegiances, or pragmatically move between groups.

Recruitment and funding

AQAP targets recruits from a variety of sources including local Yemeni tribes sympathetic to their jihadist cause, and Sunni extremists from other Middle Eastern or South Asian countries. The group is comprised mostly of Yemenis and Saudis, but the group also recruits internationally.

AQAP releases its audio-visual messages online via its al-Malahim media outlet to broaden its reach and appeal.

AQAP is self-funded and collects revenue from numerous sources including donors in Yemen, Saudi Arabia and other countries; donations collected in mosques; ransom payments for kidnapped hostages; and criminal activities such as robberies and drug smuggling. After taking control of the port city of Mukalla, Hadramawt province in Yemen in April 2015, AQAP reportedly earned millions through stolen Yemeni state savings and customs revenues.

Links to other groups

AQAP is a recognised affiliate of al-Qa'ida. AQAP has also developed some links with al-Qa'ida-affiliated terrorist group al-Shabaab, which operates in Ethiopia, Kenya, and Somalia.

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Terrorist activity

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

AQAP capitalised on the Huthi's uprising in September 2014, and the corresponding deteriorating security environment, by expanding its insurgency—taking control of the port city of Mukalla in April 2015. AQAP had gained control of significant territory in Yemen's south and east until a UAE-led military coalition offensive retook Mukalla in late April 2016. The group continues to undertake attacks in several provinces. These include bombings, kidnappings and assassinations against Yemeni and foreign government interests to destabilise the state and has declared Yemen's Shia Huthi minority 'heretics'. AQAP maintains the intent to conduct external operations.

Attacks that AQAP has claimed responsibility for and is assessed to have undertaken since the group was re-listed in 2019 include:

- 22 May 2022: AQAP detonated an improvised explosive device on a Huthi truck in Mayfa'ah, Yemen, killing and wounding those inside.
- 18 April 2022: AQAP released a video documenting its use of weaponised unmanned aircraft systems to strike enemy positions.
- 15 March 2022: AQAP conducted a vehicle-borne improvised explosive device attack against the commander of a separatist force in Abyan, Yemen.
- 11 February 2022: AQAP detonated an improvised explosive device on a Huthi truck in Rasad, Yemen.
- 10 February 2022: AQAP conducted a sniper attack on a Huthi fighter in Mayfa'ah, Yemen.
- 18 March 2021: AQAP killed eight members of the United Arab Emirates-backed Security Belt Forces in Abyan Governorate, Yemen, by storming their position and burning a truck.
- 7 December 2020: AQAP conducted a firearm and grenade attack on a security checkpoint in Lawdar, Yemen, killing at least six Yemeni troops.

AQAP has a long history of undertaking kidnapping operations, including against Westerners or individuals associated with Western organisations, to demand the payment of ransoms or the release of its members from prison. Recently, the following kidnapping in Yemen has been attributed to AQAP:

- In February 2022, AQAP members kidnapped five United Nations employees in Abyan Governorate in southern Yemen.

Advocating the doing of terrorist acts

AQAP leaders have, directly or indirectly, advocated terrorist attacks in order to further the group's objectives. Examples since the group was relisted in 2019 include:

- 26 September 2021: al-Malahem Media Foundation released a booklet explaining its origin, objectives and policies. Its listed military goals included liberating Palestine by waging guerrilla war against Jewish targets and liberating Yemen from enemies such as the US.
- 10 September 2020: al-Malahem Media Foundation released a statement in Arabic, English and French encouraging attacks against Charlie Hebdo staff and other Europeans who blasphemed against Islam.
- 13 September 2020: AQAP's media wing published a report examining the impact of the September 11 attacks on the US and calling for lone actor attacks against American interests everywhere.

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In July 2010, AQAP launched its online English-language magazine 'Inspire', which aims to encourage individuals, especially in Western countries, to undertake acts of terrorism by providing practical guidance and ideological justification for attacks in their own countries. It has also released special editions of the magazine titled 'Inspire Guide' since 2016. One example of attack advocacy in editions of 'Inspire' released since the group was re-listed in 2019 is:

- 29 June 2021: Following a hiatus since April 2017, AQAP's al-Malahem Media Foundation published the sixth edition of 'Inspire Guide.' It analysed the March 2021 shooting at a supermarket in Colorado, US and provided ideas for lone actors to improve on the attack. Armed attacker tactics (using basic weapons or firearms), improvised explosive devices and improvised incendiary devices were advocated by the magazine.

Other considerations

Links to Australia and threats to Australian interests

There are no corroborated links between AQAP and Australian individuals or interests since the group was re-listed in 2019.

AQAP remains committed to conducting and encouraging others to undertake terrorist attacks against Western targets, which includes Australian interests; however, no known AQAP attacks have killed or injured Australian citizens.

AQAP claims to have directed the shooting attack in the US on 6 December 2019, in which a Royal Saudi Air Force officer participating in a training program opened fire at Naval Air Station Pensacola in Florida, killing three people. However, it is more likely AQAP inspired, rather than directed this attack.

There have been no attacks against Western interests since AQAP was re-listed in 2019, but demonstrated AQAP support for Western attacks since its re-listing include:

- 19 November 2021: AQAP released a video interview in which Batarfi insists that the US remains the primary enemy of AQAP.
- 6 October 2021: AQAP's media wing released a video in which a senior leader, Ibrahim al-Qosi, congratulated the Taliban, criticised the US involvement in Afghanistan and warned of future AQAP attacks against the US. Citing the 2019 shooting in Pensacola, and the 2009 shooting in Fort Hood, Texas, as previous examples.
- 10 February 2021: AQAP released a video titled 'America and the Painful Seizure', in which Batarfi stated 'storming the Congress is only the tip of the iceberg of what will come to them, God willing.'
- 13 September 2020: AQAP's media wing published a report examining the impact of the September 11 attacks on the US and calling for lone actor attacks against American interests everywhere.

Listings by likeminded countries or the United Nations

AQAP is listed by the United Nations under UNSC Resolution 1267 (reviewed on 15 November 2021).

The group is listed as a proscribed terrorist organisation by the Governments of the US and Canada, and is included in the UK Government's listing of al-Qa'ida.

The New Zealand Government first designated AQAP a terrorist entity on 19 January 2010 with amendments made to the designation in 2015 and 2016.

Engagement in peace or mediation processes

AQAP was involved in peace talks with the Yemeni Government in 2013, but is not currently engaged in any peace or mediation processes.

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Conclusion

On the basis of the information above, the Australian Government assesses that AQAP 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, involving threats to human life and serious damage to property.

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

- 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 AQAP's political, religious or ideological causes
- are done with the intention of intimidating, the government of one or more foreign countries
- are done with the intention of intimidating the public or sections of the public.



Australian Government
Department of Home Affairs

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Statement of Reasons - AQIS

Listing al-Qa'ida in the Indian Subcontinent as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about al-Qa'ida in the Indian Subcontinent (AQIS). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

al-Qa'ida in the Indian Subcontinent

Known aliases

AQIS

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (Cth) (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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*, subsection 102.1(20) of the *Criminal Code* describes the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed AQIS as a terrorist organisation under the *Criminal Code* with effect from 29 November 2016. AQIS was re-listed effective 29 November 2019.

Details of the organisation

AQIS is an al-Qa'ida-affiliated religiously motivated violent extremist organisation. It was established with the assistance of al-Qa'ida and shares the same anti-Western ideology. The then al-Qa'ida leader, Ayman al-Zawahiri, officially announced the existence of AQIS on 3 September 2014, and identified Pakistan-based Asim Umar as its leader.

Established with the purpose of advancing al-Qa'ida's ideology and objectives in South Asia, the objectives of AQIS are the same as those previously articulated by al-Qa'ida – to prepare Muslims for military jihad against their enemies, to liberate Muslim lands now ruled by non-Muslims, and to revive the Islamic caliphate. In his 2014 announcement of the establishment of AQIS, al-Zawahiri identified Burma (Myanmar),

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Bangladesh, and India's regions of Assam, Gujarat and Kashmir as regions where it would operate with the intention to fight the governments of Pakistan, Afghanistan, India and Bangladesh.

On 6 March 2016, the AQIS media branch, al-Sahad in the Indian Subcontinent, provided a link to the video 'Al-Hadeed News Report'. The video outlined the objectives of AQIS as being to conduct attacks on:

- the United States of America (US)
- the Pakistani Military Intelligence and Security agencies
- the Government of Pakistan
- enemies of Islam
- blasphemers, atheists and disbelievers.

The objectives were approved by the AQIS Central Shura following instructions from the then leader, al-Zawahiri.

Leadership

AQIS is currently led by Osama Mahmoud (variant Usamah Mahmood), who was formerly the AQIS spokesperson, and is reported to be a Pakistani national. Mahmoud's appointment in 2019 replaced the founding leader, Asim Umar, who was killed in a joint US/Afghan military operation in Afghanistan in 2019.

AQIS leadership resides in the eastern and southern regions of Afghanistan, and North and South Waziristan, Pakistan.

Membership

AQIS membership was initially drawn from extremist groups in Pakistan, with most members being Pakistani nationals. In 2020, media reported AQIS had between 150 and 200 members in the South Asian region. Information made public following disruptions by Pakistani authorities in 2021 indicated AQIS had small media, financing and operational cells located in parts of Pakistan, including in Punjab and Sindh Provinces.

Recruitment and funding

AQIS recruits from among Muslim communities in South Asia through a combination of real-world and virtual methods. Publications such as the AQIS *Nawa-i-Afghan* magazine are key tools for promoting membership. For example, AQIS published an article in this magazine in December 2019 providing guidance for recruiting members to undertake jihad.

AQIS established a presence in India in 2015 with the intention of radicalising and recruiting Indian nationals. The leader of AQIS in India, Mohammad Asif, was arrested by Indian authorities in late 2015. Asif said that the recruits from India were transported to Afghanistan for training in weapons, tactics and religious studies. In June 2016, charges were filed against 17 alleged AQIS members in Delhi, India, for conspiracy, recruitment for a terrorist act, and membership of a terrorist organisation.

Links to other groups

AQIS has close links with al-Qa'ida core (al-Qa'ida is listed as a terrorist organisation under the *Criminal Code*), the Afghan Taliban, and Tehrik-e-Taliban Pakistan. In October 2015, the former AQIS leader, Asim Umar, pledged allegiance to the then chief of the Afghan Taliban, Mullah Mansour, and AQIS members have been killed in Taliban-controlled territory (before the Taliban took control of Afghanistan) alongside Taliban members.

AQIS is also associated with Bangladesh-based extremist group Ansar al-Islam Bangladesh (AIB). AIB conducted eight killings of secularists and bloggers in Bangladesh between 2014 and 2016, and AQIS has claimed responsibility for each of these attacks.

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Terrorist activity

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

AQIS members have historically conducted attacks against Pakistani military and security personnel. The attacks have ranged from targeted assassinations of senior military and intelligence officials to larger scale attacks using improvised explosive devices resulting in multiple deaths.

AQIS plots in Pakistan were regularly disrupted by Pakistani authorities throughout 2020 and 2021, and AQIS was also involved in fighting the former Afghan Government alongside the Afghan Taliban.

Recent reported plots or disruptions include:

- 9 November 2021: An AQIS member located near Chakwal City, Punjab Province, Pakistan was arrested in possession of large numbers of weapons including rocket-propelled grenades, rocket launchers, firearms, ammunition and ball bearings.
- 19 April 2020: Pakistani authorities arrested four AQIS members in Karachi, Sindh Province, Pakistan. Authorities seized weapons and explosives, which they claimed were intended for use by AQIS members in an act of terrorism targeting the Pakistani stock exchange, City Courts, Police Training Centre, or law enforcement agency offices.

Advocating the doing of terrorist acts

AQIS has publicly advocated the doing of terrorist attacks in order to further its objectives, including through online propaganda designed to radicalise and inspire susceptible individuals to undertake attacks. Public statements where AQIS has advocated terrorist attacks include:

- 7 June 2022: AQIS published an English and Urdu statement calling for attacks against the 'Saffron terrorists' (the Indian governing party), stating that 'we shall bind explosives with our bodies and the bodies of our children to blow away the ranks of those who dare to dishonour our Prophet.'
- 18 November 2021: AQIS released a video through its As-Sahab Subcontinent media outlet calling for Muslims in India to 'join the jihad in Kashmir' and 'actively participate in battles there.'

Other considerations

Links to Australia and threats to Australian interests

There are no known links between AQIS and Australia.

Australian interests have not been successfully attacked by AQIS, however, the anti-Western ideology of the group and AQIS's willingness to undertake large scale, indiscriminate attacks may result in attacks against Australian interests.

AQIS specifically mentioned an Australian Navy vessel during the planning of the AQIS operation to take control of a Pakistani Navy Ship in 2014. AQIS noted that the Australian Navy was participating in the patrols of sea routes. Targeting of the Australian Navy vessel was abandoned in favour of easier targets.

Listings by likeminded countries or the United Nations

AQIS is listed as a proscribed terrorist organisation by the Governments of the US and Canada, and is included in the UK Government's listing of al-Qa'ida.

Engagement in peace or mediation processes

AQIS is not known to have engaged in any peace or mediation processes.

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Conclusion

On the basis of the information above, the Australian Government assesses that AQIS 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, involving threats to human life and serious damage to property.

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

- 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 AQIS's political, religious or ideological causes.
- are done with the intention of intimidating, the government of one or more foreign countries.
- are done with the intention of intimidating the public or sections of the public.



Australian Government
Department of Home Affairs

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Statement of Reasons – IS-Libya

Listing Islamic State in Libya as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Islamic State in Libya (IS-Libya). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Islamic State in Libya

Known aliases

Islamic State–Libya; Islamic State of Iraq and the Levant–Libya; Islamic State of Iraq and the Levant in Libya; Islamic State of Iraq and al-Sham in Libya; Islamic State of Iraq and al-Sham–Libya; Islamic State of Iraq and Syria in Libya; Islamic State of Iraq and Syria–Libya; Wilayat Barqa; Wilayat Barqah; Wilayat Fezzan; Wilayat Tripolitania; Wilayat Tarablus; Wilayat al-Tarabulus.

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 must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation under the *Criminal Code*, subsection 102.1(20) of the *Criminal Code* describes the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed IS-Libya as a terrorist organisation under the *Criminal Code* on 29 November 2016. IS-Libya was re-listed on 29 November 2019.

Details of the organisation

IS-Libya was formed in Derna, Libya by local returnees from Syria, many of whom had fought as part of the Islamic State-affiliated Battar Brigade. These returnees, who established the Islamic Youth Shura Council in Derna in 2014, received an Islamic State delegation in September 2014 and subsequently pledged allegiance to Islamic State leader Abu Bakr al-Baghdadi.

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IS-Libya is an officially recognised Islamic State affiliate adhering to Islamic State's global jihadist ideology and following an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and violently targets those who do not agree with its interpretation. IS-Libya seeks to assist Islamic State in its goal of creating an Islamic caliphate.

IS-Libya shares Islamic State's goals of consolidating territory under its control and expanding its territorial gains within Libya. The group's stated aim is for Libya to be the 'vanguard of the Caliphate'. IS-Libya has made public its aims to establish three Islamic State provinces in Libya – Barqah, Fezzan and Tripolitania – and remove the United Nations-backed transitional Government of National Accord.

In November 2014, the then Islamic State leader, al-Baghdadi, announced that he had accepted the oath of allegiance from Islamic Shura Youth Council and created the IS-Libya 'branch'. Al-Baghdadi declared three wilayats or provinces: Barqa (eastern Libya) with Derna as its headquarters; Tarablus (Tripoli) with Sirte as its headquarters; and Fezzan (southern Libya). Following the fall of Sirte to government forces in late 2016, and other losses, IS-Libya retreated into the desert areas of central Libya where it re-built its fighting forces.

In December 2018, IS-Libya recommenced attacks in major population centres.

Following the death of Islamic State leader Abu Ibrahim al-Hashimi al-Quraysh, in March 2022, IS-Libya publicly pledged allegiance to the 'new caliph' of Abu-Hassan al-Hashimi Al-Quraysh.

Leadership

Islamic State leadership in Syria and Iraq have appointed the close aides of former Islamic State leader Abu Bakr al-Baghdadi to lead IS-Libya. IS-Libya was led by Iraqi national Abu Nabil until November 2015, when he was killed in a United States airstrike. Following his death, IS-Libya was led by Abdul Qadr al-Najdi until he was killed by the Libyan National Army in Sabha, Libya in September 2020. Since then, IS-Libya has not publicly named who its leader is.

Membership

IS-Libya's membership is estimated to be around 50 fighters with hundreds of other supporters not involved in conflict. The majority of its members are foreigners emanating predominantly from North African and sub-Saharan African countries, with many from Tunisia and Sudan.

Recruitment and funding

IS-Libya uses domestic issues to recruit Libyans who felt aggrieved and marginalised in post-Gaddafi Libya. The group encourages defectors from armed Libyan groups and has paid fighters to join the group. IS-Libya has also recruited Muslims through calls to fulfil their obligation of immigration to the lands of Islam and by paying foreign fighters.

IS-Libya is largely self-funded through black-market activities, including taxation of smugglers, and also receives funding from Islamic State in Syria and Iraq through emissaries. Other funding sources include extortion, kidnapping for ransom, armed robbery, smuggling and selling antiquities.

Links to other groups

IS-Libya remains an affiliate of, and ideologically aligned with, Islamic State and has received support and guidance from Islamic State senior leadership.

Terrorist activity

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

To advance its ideology and achieve its objectives, IS-Libya has engaged in terrorist attacks and kidnappings against a wide range of targets in North Africa.

Attacks for which IS-Libya has claimed responsibility, and is assessed to have undertaken include:

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- 18 April 2022: IS-Libya detonated a car bomb against a Libyan National Army (LNA) camp, killing at least one person.
- 24 January 2022: IS-Libya attacked a LNA militia convoy in southern Sabha Province, killing two militiamen.
- 6 June 2021: IS-Libya bombed a police checkpoint in the town of Sabha, killing two people.
- 23 May 2020: IS-Libya bombed a security point manned by LNA soldiers in the town of Traghan, southern Libya, resulting in no casualties.

On the basis of these incidents, IS-Libya is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Other considerations

Links to Australia and threats to Australian interests

There are no known links between IS-Libya and Australia.

IS-Libya has not made statements specifically threatening Australians or Australian interests. However, IS-Libya has issued statements threatening Westerners and Western interests in general.

- 4 July 2018: The IS-Libya video entitled 'The Point of Death' called on its fighters to attack the US and its allies, who it characterised as adversaries to the establishment of *a Caliphate in Libya*.

Listings by likeminded countries or the United Nations

IS-Libya was listed by the United Nations under UNSCR Resolution 1267 on 4 March 2020.

IS-Libya was designated as foreign terrorist organisation by the US State Department in May 2016.

The New Zealand Government designated IS-Libya as a terrorist entity on 4 March 2020.

Engagement in peace or mediation processes

IS-Libya has not participated in peace talks with the Libyan Government and did not participate in United Nations-brokered negotiations to form a national unity government in Libya.

Conclusion

On the basis of the information above, the Australian Government assesses that IS-Libya 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.

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

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



Australian Government
Department of Home Affairs

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Statement of Reasons – IS-Sinai

Listing Islamic State Sinai Province as a terrorist organisation under Division 102 of Part 5.3 of Chapter 5 the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Islamic State Sinai Province (IS-Sinai). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

Name of the organisation

Islamic State Sinai Province

Known aliases

Islamic State of Iraq and the Levant-Sinai Province; Islamic State of Iraq and the Levant-Sinai; Islamic State of Iraq and ash-Sham-Sinai; Islamic State of Iraq and Syria Sinai Province; ISIL Sinai Province; Islamic State-Sinai Province; Islamic State in the Sinai; Wilayat Sinai; The State of Sinai; ISIL-Sinai; IS-Sinai; ISIS-SP; Sinai Province; Ansar Bayt al-Maqdis (ABM); Ansar Beit al-Maqdis; Ansar Bayt al-Maqdes; Aknaf Bayt al-Maqdis; Aknaf Beit al-Maqdis; Ansar Jerusalem; Supporters of Jerusalem; Jamaat Ansar Beit al-Maqdis; Jamaat Ansar Beit al-Maqdis fi Sinaa; Supporters of the Holy Place.

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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, subsection 102.1(20) of the Criminal Code describes the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act, and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed IS-Sinai as a terrorist organisation under the Criminal Code with effect from 29 November 2016. IS-Sinai was re-listed effective 29 November 2019.

Details of the organisation

IS-Sinai is a Sunni religiously motivated violent extremist group located in Egypt's Sinai Peninsula. IS-Sinai is an officially recognised Islamic State of Iraq and the Levant (ISIL) affiliate that adheres to ISIL's global jihadist ideology and follows an extreme interpretation of Islam, which is anti-Western, promotes sectarian violence and targets those that do not agree with its interpretations as infidels and apostates.

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IS-Sinai seeks to assist ISIL to establish an Islamic caliphate covering historic greater Syria (Iraq, Syria and other parts of the Levant). ISIL has tasked IS-Sinai to help establish the caliphate in Egypt's Sinai and, over the longer-term, historic Palestine (Israel and the Palestinian Territories). In achieving this, IS-Sinai seeks to eliminate the Egyptian government and to realise ISIL's goal of establishing a Salafist-orientated Islamic state in Egypt.

On 9 November 2014, Egypt-based extremist group Ansar Bayt al-Maqdis (ABM) pledged allegiance to ISIL and its then leader, Abu Bakr al-Baghdadi. Following the pledge, the group adopted the name IS-Sinai and became a recognised ISIL affiliate. IS-Sinai has pledged allegiance to successive Islamic State leaders, most recently Abu al-Hassan al-Hashemi al-Qurayshi.

Before pledging allegiance to ISIL, ABM mainly carried out attacks against Israeli and Egyptian Government interests, including Egypt's tourism industry. Since becoming an affiliate of ISIL, IS-Sinai has also claimed attacks on foreign and sectarian interests, including the bombing of a Russian passenger aircraft, the execution of a Croatian citizen, and attacks on Egyptian Coptic Christians.

Leadership

Details of IS-Sinai's leadership structure are limited, however it is expected that IS-Sinai has a similar leadership structure to ISIL in Iraq and Syria, with an overall leader and a number of provincial or regional cells. It is likely that some legacy members of the ABM leadership remain, despite a number of key members being killed or having defected in recent years.

- April 2022: IS-Sinai claimed Israeli air strikes had killed prominent IS-Sinai military leader Abu Omar al-Ansari.
- September 2021: senior IS-Sinai jurist Muhammad Sa'ad Kamel al-Sai'id, also known as Abu Hamza al-Qadi, defected to Egyptian authorities.
- March 2021: prominent IS-Sinai leader Salim Salma Said Mahmoud al-Hamadin was killed in a security force operation.

Membership

The majority of IS-Sinai members are Egyptian nationals, including from the marginalised, and underdeveloped North Sinai. Many are likely to be former members of ABM. The group also likely comprises members from across mainland Egypt, and a number of foreigners, including Palestinians.

Estimates from 2020 put the group's numbers at approximately 800-1200 fighters, however this has probably declined due to consistent counter-terrorism operations, low morale and the defection of key members.

Recruitment and funding

IS-Sinai uses domestic issues in Egypt, propaganda, and its terrorist record to attract recruits. In the Sinai, the demilitarisation of the region following the 1979 Israel-Egypt Peace Treaty, difficult economic conditions and a perception of neglect from the mainland influences IS-Sinai recruitment.

IS-Sinai likely relies on income from its smuggling operations to and from northern Africa and the Gaza Strip, and other criminal enterprises, to fund terrorist operations. In addition, as a recognised affiliate, IS-Sinai likely receives some funding from ISIL in Syria and Iraq.

Links to other groups

IS-Sinai remains an affiliate of, and ideologically aligned with, ISIL and has received support and guidance from ISIL senior leadership.

IS-Sinai has had a fractious relationship with Hamas elements in Gaza. Despite ideological differences, IS-Sinai and Hamas have historically cooperated due to familial links, cross-border pragmatism, common interests, and arms smuggling; however, while cooperation endures, the relationship has deteriorated on both sides. In January 2018, IS-Sinai released a video which showed the execution of an accused Hamas

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smuggler for smuggling weapons to Hamas' Izz al-Din al-Qassam Brigades. The group has also urged attacks on Hamas in its propaganda.

ISIL and Hamas are both proscribed terrorist organisations under Australia's *Criminal Code Act 1995*.

Terrorist activity

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

IS-Sinai conducts regular small arms, light weapon and improvised explosive device (IED) attacks in Egypt's North Sinai. The majority of its attacks target Egyptian security forces, anti-ISIL tribal militias, local civilians and infrastructure; however Western, Israeli and sectarian interests have also been attacked.

Attacks IS-Sinai is assessed to have undertaken include:

- 18 June 2022: A dual IED attack on a joint Egyptian military and Sinai tribal militia patrol in Rafah, North Sinai, killing at least five. IS-Sinai claimed responsibility for this attack on 19 June 2022.
- 11 May 2022: An attack on an Egyptian military checkpoint in western Rafah, North Sinai. IS-Sinai killed at least five and possibly up to 12 Egyptian soldiers. IS-Sinai claimed responsibility for this attack on 14 May 2022.
- 7 May 2022: IS-Sinai engaged in an attack on an Egyptian military outpost in western North Sinai, southwest of Bir al-Abd city. IS-Sinai claimed the attack on 8 May 2022 and said that it had killed all 17 Egyptian soldiers present, seized their weapons, and burnt the site, whereas Egyptian officials confirmed 11 deaths and five injuries during the attack.
 - IS-Sinai praised this attack and indicated more attacks would follow: 'Let the apostates know that this is only some of the revenge for the imprisoned Muslim women in Rafah and that the wheel of jihad in Sinai continues to turn, by the permission of Allah the Almighty.'
- 30 April 2022: IS-Sinai detonated a gas pipeline after rigging it with explosives to the east of Bir al-Abd city, North Sinai. IS-Sinai sporadically attacks gas pipelines in North Sinai likely to target both Egyptian state economic interests and Israel, which exports gas to Egypt.
- 24 and 26 April 2022: ISIL's Amaq News Agency released videos showing IS-Sinai's executions of three men, accused of being 'spies' for Sinai tribal militias in Bir al-Abd, North Sinai. IS-Sinai often publicises attacks on perceived collaborators to dissuade local Bedouin from assisting Egyptian regime forces.
- 27 March 2022: Three small-scale operations in North Sinai:
 - the killing of two tribal militiamen via sniper fire in Rafah city;
 - wounding an unspecified number of Egyptian soldiers during an attack on a military checkpoint on the coast of Rafah; and
 - destroying a vehicle and injuring those onboard in an IED attack south of Sheikh Zuweid.
- 12 August 2021: A roadside IED attack against an Egyptian military vehicle in Rafah, North Sinai. The attack killed eight Egyptian soldiers and wounded six. IS-Sinai claimed responsibility for this attack.
- 21 July 2020: IS-Sinai conducted a multi-mode attack using vehicle-borne IEDs, various small arms and light weapons on an Egyptian army camp in Bir al-Abd, North Sinai. While IS-Sinai claimed it had killed 40 and wounded 60 others, Egyptian authorities claimed to have 'foiled' the attack, which had killed two soldiers and injured four. IS-Sinai subsequently occupied at least four nearby villages, planting IEDs and raising ISIL's flag. From October to December 2020, at least 15 civilians were killed by booby-trapped IEDs left by IS-Sinai when returning to their villages.

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- 30 April 2020: IS-Sinai killed 10 Egyptian soldiers and injured three others by detonating an IED under a military vehicle in Bir al-Abd, North Sinai. The Egyptian military acknowledged 10 of its troops had been killed or wounded in the attack. IS-Sinai claimed responsibility for this attack on 1 May 2020.

Advocating attacks

IS-Sinai regularly claims attacks through official ISIL media channels and publications, including ISIL's al-Naba and Amaq News Agency, and via social media. It praises these attacks as being against apostates, infidels and spies, and seeks to portray them as religiously justified.

- 17 April 2021: IS-Sinai released the propaganda video 'The Makers of the Epics', which showcased its recent attacks – including multiple against Egyptian military targets, and the execution of three Egyptian civilians accused of collusion – and encouraged further violence in the Sinai.
 - An IS-Sinai fighter rallied his colleagues by citing Qur'anic verses of the duty to fight and seek reward from God. He urged fighters to wage jihad followed by clips of fighters planting improvised explosive devices. He assured his colleagues of victory, while encouraging them to seek paradise in the afterlife.
 - Separately, an IS-Sinai fighter threatened further attacks against Christians before executing a local Coptic Christian: 'Our message to the Crusaders in all parts of the world is this: As you kill, you will be killed, and as you take prisoner, you will be taken prisoner. And as for you, O Christians of Egypt: This is the consequence of your loyalty to the Egyptian army, which is no longer useful to its own soldiers and cannot benefit you.'

Other considerations

Links to Australia and threats to Australian interests

There are no known direct links between IS-Sinai and Australia.

IS-Sinai has expressed anti-Western sentiment in its rhetoric. It likely views the West, and the United States in particular, as supporters of Israel and Egypt, its primary adversaries; and complicit in global anti-ISIL operations.

Listings by likeminded countries or the United Nations

IS-Sinai is listed as a terrorist organisation by the Governments of the US and Canada, and in New Zealand is a designated terrorist group pursuant to United Nations UNSC resolution 1373. It is also listed under its former name, ABM, by the Government of the United Kingdom. The Islamic State or Islamic State of Iraq and the Levant is listed under the United Nations Security Council resolution 2253 (2015) which expands on the United Nations Security Council resolution 1267 (1999) Sanctions Committee's consolidated list.

Engagement in peace or mediation processes

IS-Sinai is not engaged in any peace talks with the Egyptian Government.

Conclusion

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

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

- 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

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- are done with the intention of advancing IS-Sinai's political, religious or ideological causes
- are done with the intention of intimidating the government of one or more foreign countries
- are done with the intention of intimidating the public or sections of the public.