



## Attorney-General

Reference: MS23-000775

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

By email: [pjicis@aph.gov.au](mailto:pjicis@aph.gov.au)

Dear Chair

I write to advise that Islamic State (IS), Islamic State West Africa Province (ISWAP) and Boko Haram have been re-listed as terrorist organisations under the *Criminal Code Act 1995* (the Criminal Code).

Under subsection 102.1(2) of the Criminal Code, before an organisation is listed as a terrorist organisation, as the Australian Federal Police (AFP) Minister, I must be satisfied 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 advice provided to me by relevant agencies, and after receiving legal advice from the Australian Government Solicitor, I am satisfied that the organisations continue to meet the legal threshold for listing.

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. IS, ISWAP and Boko Haram were re-listed as terrorist organisations with effect from 1 July 2023.

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 listings.

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 briefing.

### Review by the Parliamentary Joint Committee on Intelligence and Security

Section 102.1A of the Criminal Code provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review listings regulations 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. If the Committee resolves to inquire into these re-listings, I request that the Committee conduct its review in public as far as possible.

To assist the Committee in its consideration, I attach a copy of the Regulations and the Explanatory Statements. I also attach the Statements of Reasons that provide information on the ideology and activities of the respective 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 submission should the Committee decide to conduct a review into the re-listings, and I consent to its publication for that purpose.

Relevant amendments to the listing process

I note the Committee is currently reviewing the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 which proposes to remove the sunset provisions for terrorist listings. The Bill also proposes to extend the Committee's mandate to permit it to review regulations listing terrorist organisations at any time. I look forward to receiving the Committee's report on this Bill in due course.

Yours sincerely



**THE HON MARK DREYFUS KC MP**

28/6/2023

**Encl.** *Criminal Code Regulations – IS, ISWAP, Boko Haram*  
*Explanatory Statement – IS, ISWAP, Boko Haram*  
*Statement of Reasons – IS, ISWAP, Boko Haram*  
*Process of re-listing – IS, ISWAP, Boko Haram*

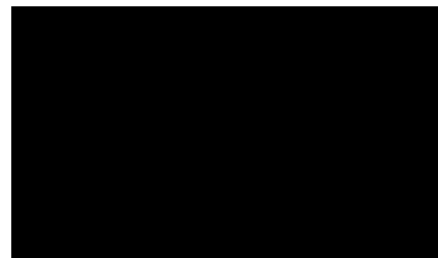
**CC.** *The Hon Clare O'Neil MP, Minister for Home Affairs*



## Criminal Code (Terrorist Organisation— Islamic State) Regulations 2023

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 19 June 2023



David Hurley  
Governor-General

By His Excellency's Command



Mark Dreyfus  
Attorney-General



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## Contents

1	Name .....	1
2	Commencement.....	1
3	Authority .....	1
4	Schedules.....	1
5	Terrorist organisation—Islamic State .....	1
<b>Schedule 1—Repeals</b>		<b>3</b>
<i>Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020</i>		<b>3</b>

Section 1

**1 Name**

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2023*.

**2 Commencement**

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2023.	1 July 2023

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

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

**3 Authority**

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

**4 Schedules**

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

**5 Terrorist organisation—Islamic State**

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State is specified.
- (2) Islamic State is also known by the following names:
- (a) Al-Qa'ida in Iraq;
  - (b) Al-Qa'ida in Iraq – Zarqawi;
  - (c) Al-Qa'ida of Jihad in the Land of the Two Rivers;
  - (d) Al-Qa'ida of Jihad Organization in the Land of the Two Rivers;
  - (e) Al-Tawhid;
  - (f) Al-Tawhid and al-Jihad;
  - (g) Brigades of Tawhid;
  - (h) Daesh;

Section 5

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

## **Schedule 1—Repeals**

### *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020*

#### **1 The whole of the instrument**


Repeal the instrument.



## Criminal Code (Terrorist Organisation— Islamic State West Africa Province) Regulations 2023


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 19 June 2023



David Hurley  
Governor-General

By His Excellency's Command



Mark Dreyfus  
Attorney-General



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## Contents

1 Name 1	
2 Commencement.....	1
3 Authority .....	1
4 Schedules.....	1
5 Terrorist organisation—Islamic State West Africa Province.....	1
<b>Schedule 1—Repeals</b>	<b>2</b>
<i>Criminal Code (Terrorist Organisation—Islamic State West Africa Province)</i>	
<i>Regulations 2020</i>	2

Section I

**1 Name**

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State West Africa Province) Regulations 2023*.

**2 Commencement**

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2023.	1 July 2023

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

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

**3 Authority**

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

**4 Schedules**

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

**5 Terrorist organisation—Islamic State West Africa Province**

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State West Africa Province is specified.
- (2) Islamic State West Africa Province is also known by the following names:
- (a) Islamic State in West Africa;
  - (b) Islamic State of Iraq and Syria – West Africa;
  - (c) Islamic State of Iraq and the Levant – West Africa;
  - (d) Wilayat Gharb Afriqiyah.

Schedule 1 Repeals

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## Schedule 1—Repeals

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

#### 1 The whole of the instrument

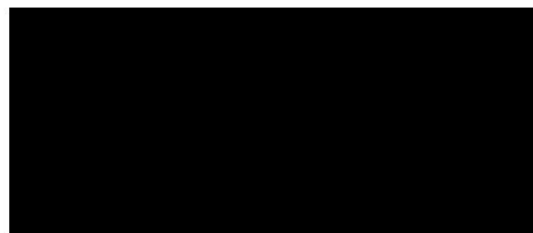
Repeal the instrument.



## Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2023

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 19 June 2023



David Hurley  
Governor-General

By His Excellency's Command



Mark Dreyfus  
Attorney-General

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## Contents

1 Name 1	
2 Commencement.....	1
3 Authority .....	1
4 Schedules.....	1
5 Terrorist organisation—Boko Haram.....	1
<b>Schedule 1—Repeals</b>	<b>3</b>
<i>Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020</i>	3



Section 1

**1 Name**

This instrument is the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2023*.

**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
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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—Boko Haram**

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as Boko Haram is specified.
- (2) Boko Haram is also known by the following names:
- (a) Group of the Followers of the Prophet for Propagation and Holy Struggle;
  - (b) Jama'at Ahl al-Sunnah lil-Da'awa wal-Jihad;
  - (c) Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad;
  - (d) Nigerian Mujahideen;
  - (e) Nigerian Taliban;
  - (f) People Committed to the Propagation of the Prophet's Teachings and Jihad;
  - (g) Western Education is Forbidden;
  - (h) Yusuffiya Movement;

Section 5

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(i) Yusuffiya Sect.

## **Schedule 1—Repeals**

### ***Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020***

#### **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 – Islamic State) Regulations 2023*

The purpose of the *Criminal Code (Terrorist Organisation – Islamic State) Regulations 2023* (the Regulations) is to specify the organisation known as Islamic State for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code).

Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Criminal Code to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Criminal Code.

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 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](#)).

### *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 5.3 of the Criminal Code to continue to apply in relation to conduct relating to Islamic State.

The Regulations repeal the *Criminal Code (Terrorist Organisation – Islamic State) Regulations 2020*, which would otherwise cease to have effect on 1 July 2023 by operation of subsection 102.1(3) of the Criminal Code. Making new regulations ensures that the organisation Islamic State 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 1 July 2023. 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 (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 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 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 meets the legislative requirements for listing.



## ATTACHMENT A

### **Statement of Compatibility with Human Rights**

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

#### ***Criminal Code (Terrorist Organisation – Islamic State) Regulations 2023***

This Disallowable 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) Regulations 2023* (the Regulations) specify Islamic State for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

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

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

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

#### **Human rights implications**

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

- the inherent right to life in Article 6.

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

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

### ***The inherent right to life in Article 6***

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

### ***The right to freedom of expression in Article 19***

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Islamic State. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

### ***The right to freedom of association in Article 22***

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

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

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

### ***General safeguards and accountability mechanisms***

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Islamic State, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the

interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

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

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code* the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) of the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003* and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations.

## **Conclusion**

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

**The Honourable Mark Dreyfus KC MP**

**Attorney-General**

## **ATTACHMENT B**

### **Details of the *Criminal Code (Terrorist Organisation – Islamic State) Regulations 2023***

#### Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2023*.

#### Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the proposed Regulations, as specified in column 1 of the table, would commence in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the proposed Regulations commence on 1 July 2023.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of this instrument as originally made, and will not be amended to deal with any subsequent amendments to the proposed Regulations.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

#### Section 3 – Authority

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

#### Section 4 – Schedules

7. This section would provide that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule has effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020*.

#### Section 5 – Terrorist organisation—Islamic State

9. Subsection 5(1) would provide that, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State is specified.
10. The effect of specifying Islamic State as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State.

11. Subsection 5(2) provides a list of 33 names that Islamic State is also known as:

- a) al-Qa'ida in Iraq;
- b) al-Qa'ida in Iraq – Zarqawi;
- c) al-Qa'ida of Jihad in the Land of the Two Rivers;
- d) al-Qa'ida of Jihad Organization in the Land of the Two Rivers;
- e) al-Tawhid;
- f) al-Tawhid and al-Jihad;
- g) Brigades of Tawhid;
- h) Daesh;
- i) Da'ish;
- j) Dawla al-Islamiya;
- k) Dawla al-Islamiya fi al-Iraq wa as-Sham;
- l) Islamic State of Iraq;
- m) Islamic State of Iraq and al-Sham;
- n) Jama'at al-Tawhid wa'al-Jihad;
- o) Kateab al-Tawhid;
- p) Mujahidin Shura Council;
- q) Qaida of the Jihad in the Land of the Two Rivers;
- r) Tanzeem Qa'idat al Jihad Bilad al Raafidaini;
- s) Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn;
- t) The al-Zarqawi network;
- u) The Islamic Caliphate;
- v) The Islamic Caliphate State;
- w) The Islamic State of Iraq and al-Sham;
- x) The Islamic State of Iraq and Greater Syria;
- y) The Islamic State of Iraq and Syria;
- z) The Islamic State of Iraq and the Levant;
- aa) The Monotheism and Jihad Group;
- bb) The Organisation Base of Jihad Country of the Two Rivers;
- cc) The Organisation Base of Jihad Mesopotamia;
- dd) The Organisation of Jihad's Base in the Country of the Two Rivers;
- ee) Unity and Holy Struggle;
- ff) Unity and Holy War;
- gg) Unity and Jihad Group.

#### Schedule 1— Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020* (the Current Regulations).

13. The Current Regulations specify Islamic State as a terrorist organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, commencing on 1 July 2020. Pursuant to subsection 102.1(3) of the *Criminal Code*, regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which they take effect. Clause 1 of Schedule 1 ensures there is no duplication where the proposed Regulations are made before the Current Regulations cease to have effect.



**ATTACHMENT C**

**Statement of Reasons – Islamic State**

<p style="text-align: center;"><b>Listing the Islamic State as a terrorist organisation under Division 102 of the Criminal Code Act 1995</b></p>
<p>This Statement of Reasons is based on publicly available information about the Islamic State. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information where available.</p>
<p><b>Known aliases</b></p> <p>al-Qa’ida in Iraq; al-Qa’ida in Iraq – Zarqawi; al-Qa’ida of Jihad in the Land of the Two Rivers; al-Qa’ida of Jihad Organization in the Land of the Two Rivers; al-Tawhid; al-Tawhid and al-Jihad; Brigades of Tawhid; Daesh; Da’ish; Dawla al-Islamiya; Dawla al-Islamiya fi al-Iraq wa as-Sham; Islamic State of Iraq; Islamic State of Iraq and al-Sham; Jama’at al-Tawhid wa’al-Jihad; Kateab al-Tawhid; Mujahidin Shura Council; Qaida of the Jihad in the Land of the Two Rivers; Tanzeem Qa’idat al Jihad Bilad al Raafidaini; Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn; The al-Zarqawi network; The Islamic Caliphate; The Islamic Caliphate State; The Islamic State of Iraq and al-Sham; The Islamic State of Iraq and Greater Syria; The Islamic State of Iraq and Syria; The Islamic State of Iraq and the Levant; The Monotheism and Jihad Group; The Organisation Base of Jihad Country of the Two Rivers; The Organisation Base of Jihad Mesopotamia; The Organisation of Jihad’s Base in the Country of the Two Rivers; Unity and Holy Struggle; Unity and Holy War; Unity and Jihad Group.</p>
<p><b>Legislative basis for listing a terrorist organisation</b></p> <p>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:</p> <ul style="list-style-type: none"><li>a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or</li><li>b) advocates the doing of a terrorist act.</li></ul> <p>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 as including the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
<p><b>Background to this listing</b></p> <p>The Australian Government first listed Islamic State under its former Arabic name, Tanzim Qa’idat al-Jihad fi Bilad al-Rafidayn, in 2005. The group was re-listed under this name on 17 February 2007. The group was formerly listed as al-Qa’ida in Iraq on 1 November 2008, and re-listed on 29 October 2010 and 12 July 2013.</p> <p>The group was formerly listed as Islamic State of Iraq and the Levant (ISIL) on 14 December 2013. On 11 July 2014, the group was listed as Islamic State to reflect the</p>

expansion of its operating area and its announcement of an Islamic caliphate on 29 June 2014. The group was re-listed on 1 July 2017 and 1 July 2020.

### **Details of the organisation**

Islamic State is a Sunni Islamic extremist group and self-declared pan-Islamic Caliphate with a historic base of operations within Northern Iraq and Syria. At its 2014 peak, Islamic State controlled large swathes of both countries, subsuming government resources and bureaucracy, along with commerce and industry. In March 2019, Islamic State lost the last of its territory in Iraq and Syria. As such, Islamic State has since reverted to traditional terrorist tactics in the region with an increasing degree of ferocity and tactical sophistication, including areas within Türkiye.

Islamic State continues to maintain an active presence around the globe through satellite entities, operationally active within declared 'provinces' (Wilayat). These include IS-Libya, IS-Sinai, IS-Khorasan Province, IS-East Asia, IS Somalia, IS West Africa Province, and the Abu Sayyaf Group, all of whom are listed terrorist organisations pursuant to Australia's Criminal Code. Islamic State rejects existing national borders and opposes elected governments, seeking to remove them through violence.

Islamic State adheres to the extreme Salafi interpretation of Islam which regards all who fail to follow its religious doctrine as apostates and infidel. Seeking to emulate the expansive success of Islamic conquests during the 7th to 10th centuries, Islamic State seeks to subjugate through terror and establish a pan-Islamic imperialist theocracy, with a view of ultimately dominating the globe. In prosecuting this agenda, it has commissioned numerous crimes against humanity, including genocide, ethnic cleansing, summary execution (including public beheading, crucifixion, stoning, hanging, burning, mutilation and dismemberment), mass rape, paedophilia, sexual slavery, forced marriages (including minors), theft, extortion, kidnapping and trafficking.

Islamic State began operations as Jama'at al-Tawhid wa'al-Jihad (JTJ) with the first attributable terrorist act committed on October 28, 2002: the murder of U.S. Agency for International Development (USAID) officer Laurence Foley outside his home in Jordan. In October 2004, JTJ leader Abu Musab al-Zarqawi, declared allegiance to Usama bin Laden and the group became known as al-Qa'ida in Iraq (AQI). In late 2011, the group established operations in Syria through its former subordinate organisation, Jabhat al-Nusra (now known as Hay'at Tahrir al-Sham). In April 2013, then leader Abu Bakr al-Baghdadi announced the creation of Islamic State in Iraq and the Levant (ISIL) to subsume the then Jabhat al-Nusra and consolidate operations across Iraq and Syria.

The then-Jabhat al-Nusra (and now Hay'at Tahrir al-Sham) leader Abu-Muhammad al-Jawlani attempted to annul the announcement by pledging allegiance to then al-Qa'ida leader Ayman al-Zawahiri. In June 2013, al-Zawahiri ruled that the then Jabhat al-Nusra was the only al-Qa'ida affiliate in Syria and annulled the creation of ISIL. However, al-Baghdadi refused to follow this ruling and confirmed the creation of ISIL, later announcing the formation of Islamic State with himself as the Caliph in 29 June 2014

### **Leadership**

Fourth Caliph: On November 2022, Abu al-Hussein al-Husseini al-Qurashi (aka Juma Awad al-Badri) was named as the new (extant) leader and fourth Caliph of Islamic State.

The announcement was made in a recorded audio message distributed online. On 29 April 2023, the Caliph was allegedly killed during a Turkish security operation conducted by the National Intelligence Organisation (MIT). The announcement was made by Turkish President Recep Tayyip Erdoğan on 30 April 2023. At the time of writing, a new IS leader had not been announced.

Third Caliph: On 10 March 2022, Abu al-Hassan al-Hashimi al-Qurashi was named as the new leader and third Caliph of Islamic State. On 15 October 2022, the Caliph killed himself with a suicide vest during an operation by the Free Syrian Army in Dar'a province, Syria.

Second Caliph: On 31 October 2019, Abu Ibrahim al-Hashimi al-Qurashi was named as the new leader and second Caliph of Islamic State. On 3 February 2022, the Caliph killed himself and family with a suicide vest during a US counterterrorism operation in Atme, Syria.

First Caliph: On 16 May 2010, Abu Bakr al-Baghdadi was named leader of al-Qa'ida in Iraq (AQI); changing the group's name to Islamic State in Iraq and the Levant (ISIL) in April 2013. On 29 June 2014, the group declared the Islamic State Caliphate with al-Baghdadi as its first Caliph. On 27 October 2019, Baghdadi killed himself and children with a suicide vest during a US counterterrorism operation in Barisha, Syria.

The current Islamic State spokesman, Abu Omar al-Muhajir, assumed this role following the death of former Islamic State spokesman, Abu Hamza al-Qurashi, who was also killed during the US operation on 3 February 2022.

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

### **Membership**

At the height of its power, Islamic State's membership was believed to have reached over 65,000, including approximately 40,000 foreign fighters from over 120 countries. Following Islamic State's complete loss of territory in 2019, membership numbers are difficult to determine, but are estimated to range between 14,000 and 18,000 across Syria and Iraq. There are also around 30,000 Islamic State fighters detained in prisons across Iraq and Syria.

### **Recruitment and funding**

Since its establishment, Islamic State has used a combination of threats, incentives and ideology to recruit new members, including through a sophisticated social media campaign in several languages. It has mostly targeted young Sunni men worldwide, exploiting anger at the perceived mistreatment of Sunni Muslims and encouraging them to join in restoring an Islamic caliphate. Islamic State also targets young women and children. However, since

2017, the Islamic State's media and propaganda capabilities have suffered significantly, limiting its global reach for recruitment.

Islamic State forcefully recruited from areas under its control and is known to have run schools to indoctrinate children into its extremist ideology at a young age. It also aims to recruit Iraqi security force members to gather intelligence and undermine the performance of those who oppose the group. In recent years, the group has targeted prisons and internally displaced person camps in Syria to free members and for its ranks.

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

Following the appointment of Islamic State's then leader, Abu al-Hassan al-Hasemi al-Quraishi, Islamic State spokesperson, Abu Omar al-Muhajir, declared that IS personnel had "pledged allegiance" to the new caliph.

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

Islamic State initially relied on funds donated for operations in Syria to also fund its activities in Iraq and transfers weapons, fighters and resources between the two countries. As Islamic State expanded, it began seizing assets from areas under its control, particularly oil refineries and banks. While oil was a major source of revenue, Islamic State also taxed and extorted those living in areas under its control. Since its loss of territory, Islamic State's ability to raise revenue has been reduced; however, the group was likely able to move cash reserves out of Iraq and Syria prior to their territorial defeat to ensure it had sufficient funds to maintain an insurgency.

Islamic State has also been able to diversify its funding through criminal activity, including but not limited to extortion, kidnapping for ransom and theft. Furthermore, the group has significant funds invested in legitimate businesses globally. As operating costs for an insurgency is considerably less than running a caliphate, Islamic State are likely to have sufficient funds to continue attacks in Iraq and Syria.

### **Links to other groups**

Islamic State's success in Iraq, particularly in 2014, attracted the support of other terrorist groups around the world with a number of Islamist militant organisations declaring allegiance or support to Islamic State; particularly from the Middle East, West Africa, Central Asia and Southeast Asia. While some of these groups were created as a response to Islamic State's call for Muslim support, others were already in existence.

Islamic State has accepted a number of pledges of allegiance; however, this does not always indicate a working relationship or operational ties. Islamic State continues to have contentious relationships with various Syrian opposition groups, which have included cooperation where tactically useful.

Eight groups currently listed as terrorist organisations under the Criminal Code are either official Islamic State affiliates or have publicly pledged support for the group. They include the Abu Sayyaf Group, Boko Haram, Islamic State West Africa Province, Islamic State in Libya, Islamic State Sinai Province, Islamic State East Asia, Islamic State Khorasan Province, and Islamic State Somalia.

### **Terrorist activity**

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

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

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

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

IS can be reliably attributed to commission of the following terrorist activity since it was last proscribed (in July 2020):

- On 17 March 2023, Islamic State militants attacked a group gathering truffles near Hama, Syria; killing 26.

- On 16 March 2023, Islamic State militants attacked shepherds in Deir Ezzor, Syria; killing four.
- On 18 February 2023, Islamic State sleeper cells carried out an attack in Syria's central desert of Homs, which killed 53 civilians and wounding two.
- On 12 February 2023, Islamic State militants fired machine guns at a group of about 75 people picking mushrooms near Palmyra, Syria, which resulted in 11 deaths.
- On 26 October 2022, an armed Islamic State operative carried out a shooting attack in the Shiite Shah Cheragh shrine in the city of Shiraz, Iran. This attack killed 15 people and injured 40 others.
- On 27 March 2022, Islamic State militants attacked a bus stop in Hadera, Israel; killing two and wounding 12.
- On 20 January 2022, Islamic State militants launched an assault on the al-Sina prison in al-Hasakah, Syria, killing 121 Syrian Defence Force personnel and wounding scores of others. Hundreds of prisoners, including Islamic State fighters, escaped during the 10 day battle. This attack caused 159 casualties.
- On 21 January 2021, 2 Islamic State suicide bombers detonated bombs in a busy marketplace in eastern Baghdad, which killed 32 people and injured 100 others. Islamic State claimed responsibility for the bombings through a statement on Telegram.
- On 2 November 2020, a lone gunman killed four people and injured 23 others in central Vienna, Austria.

On the basis of these examples, Islamic State is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

***Advocates the doing of a terrorist act***

Since the group was last proscribed, several media statements have been issued by the group's official media arms, including:

- On June 21, 2021, Islamic State's al-Furqan Media Foundation released an audiotape titled "You are the Sublime Ones if you believe". The audiotape encouraged Islamic State fighters around the world to intensify their attacks against their enemies, particularly against 'Crusaders'.
- On 2 February 2023, Islamic State's weekly Al-Naba published an article titled "Kill the Jews," which called on Muslims around the world to carry out terrorist attacks against Jews.

On the basis of these examples, Islamic State is assessed to advocate the doing of a terrorist act.

**Other considerations**

***Links to Australia and threats to Australian interests***

In September 2014, Islamic State released a directive to supporters around the world, sanctioning unilateral terrorist attacks against Australia and other western nations "wherever, whenever and however" they could, without requiring instruction or permission from Islamic State leadership.

In December 2014, Australian citizen Man Haron Monis held ten civilians hostage within the Lindt Café, Martin Place, Sydney. During the ensuing siege, hostages were forced to hold jihadist flags against the window of the café whilst Monis made repeated requests for an Islamic State flag from Police. Two civilians and Monis himself subsequently lost their lives. Monis a Shia Muslim, had previously converted to Sunni Islam and swore allegiance to Islamic State.

Islamic State retains an enduring presence within certain extremist fora. Islamic State's coordinated and effective propaganda campaign exposed susceptible Australians to an extremist ideology and influenced some toward radicalization and violence. Research shows that from 2012 until 2019, more than 200 Australian men, women and children travelled to Syria and Iraq to join Islamic State. Dozens more assisted Islamic State by supporting those overseas or by planning or carrying out terrorist attacks in Australia. Australians fighting with Islamic State have been involved in acts of violence including suicide bombings and holding the decapitated head of a Syrian soldier following Islamic State beheadings. These incidents have subsequently been used in Islamic State's propaganda campaign.

In addition to those who have travelled to Syria and Iraq, Australia-based individuals can pledge allegiance to Islamic State, affirming their support for the group without the need to travel to Iraq or Syria, and their intent to be a member of the group.

Since the collapse of the Islamic State Caliphate, support for Islamic State within Australia has declined.

Islamic State has openly called for attacks against Australia and its interests, both because of Australia's support to military operations against Islamic State in Iraq and Syria, and because of the group's anti- Western ideology. Islamic State promotes its opposition to Australia through propaganda material, foreign fighter videos and speeches by senior leadership.

A successful terrorist attack directed or inspired by Islamic State or one of its affiliates could result in harm to Australians, and the group's activities and propaganda have the potential to inspire Australian violent extremists.

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

Islamic State is listed as Islamic State of Iraq and the Levant under the United Nations Security Council resolution 2253 (2015) which expands on the United Nations Security Council Resolution 1267 (1999) Sanctions Committee's consolidated list. It is also listed as a proscribed terrorist organisation by the United States, Canada, United Kingdom and New Zealand.

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

Islamic State is not engaged in any peace or mediation process.

#### **Conclusion**

On the basis of the above information, the Australian Government assesses that Islamic State continues to be directly or indirectly engaged in, preparing, planning, assisting in or

fostering the doing of terrorist acts or advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

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

- 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 the Islamic State'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.



## **EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations  
2023*

The purpose of the *Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations 2023* (the Regulations) is to specify the organisation known as Islamic State West Africa Province for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code).

Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Criminal Code to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Criminal Code.

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 West Africa Province 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](#)).

### *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 5.3 of the Criminal Code to continue to apply in relation to conduct relating to Islamic State West Africa Province.

The Regulations repeal the *Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations 2020*, which would otherwise cease to have effect on 1 July 2023 by operation of subsection 102.1(3) of the Criminal Code. Making new regulations ensures that the organisation Islamic State West Africa 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 1 July 2023. 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 (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 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 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 West Africa Province meets the legislative requirements for listing.

## ATTACHMENT A

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
***Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations 2023***

This Disallowable 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 West Africa Province) Regulations 2023* (the Regulations) specify Islamic State West Africa Province for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

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

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

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

#### **Human rights implications**

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

- the inherent right to life in Article 6.

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

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

- the right to freedom of association in Article 22.

### ***The inherent right to life in Article 6***

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

### ***The right to freedom of expression in Article 19***

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Islamic State West Africa Province. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

### ***The right to freedom of association in Article 22***

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

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

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

### ***General safeguards and accountability mechanisms***

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

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

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code* the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003* and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations.

### **Conclusion**

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

**The Honourable Mark Dreyfus KC MP**

**Attorney-General**

## ATTACHMENT B

### Details of the *Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations 2023*

#### Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Islamic State West Africa Province) Regulations 2023*.

#### Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) would provide that each provision in the instrument, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the proposed Regulations commence on 1 July 2023.
4. The note to subsection 2(1) clarifies that the table only relates to the provisions of this instrument as originally made, and will not be amended to deal with any subsequent amendments to the proposed Regulations.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

#### Section 3 – Authority

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

#### Section 4 – Schedules

7. This section would provide that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule has effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Islamic State West Africa) Regulations 2020*.

#### Section 5 – Terrorist organisation—Islamic State West Africa Province

9. Subsection 4(1) would provide that, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State West Africa Province is specified.
10. The effect of specifying Islamic State West Africa Province as a terrorist organisation would be to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that

relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State West Africa Province.

11. Subsection 4(2) would provide a list of names that Islamic State West Africa Province is also known as, namely:

- (a) Islamic State in West Africa
- (b) Islamic State of Iraq and Syria – West Africa
- (c) Islamic State of Iraq and the Levant – West Africa
- (d) Wilayat Gharb Afriqiyah

#### Schedule 1— Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic State West Africa) Regulations 2020* (the Current Regulations).

13. The Current Regulations specify Islamic State West Africa Province as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, commencing on 1 July 2020. Pursuant to subsection 102.1(3) of the *Criminal Code*, regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect. Clause 1 of Schedule 1 ensures there is no duplication where the proposed Regulations are made before the Current Regulations cease to have effect.

**ATTACHMENT C**

**Statement of Reasons – Islamic State West Africa Province**

<p><b>Listing Islamic State West Africa Province as a terrorist organisation under Division 102 of the Criminal Code Act 1995</b></p>
<p>This Statement of Reasons is based on publicly available information about Islamic State West Africa Province. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information where available.</p>
<p><b>Known aliases</b></p> <p>Islamic State in West Africa, Islamic State of Iraq and the Levant – West Africa, Islamic State of Iraq and Syria – West Africa, Wilayat Gharb Afriqiyah</p>
<p><b>Legislative basis for listing a terrorist organisation</b></p> <p>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:</p> <ul style="list-style-type: none"><li>a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or</li><li>b) advocates the doing of a terrorist act.</li></ul> <p>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 as including the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
<p><b>Background to this listing</b></p> <p>ISWAP was first listed as a terrorist organisation on 1 July 2020. Prior to this date, ISWAP was included as an alias of listed terrorist group Boko Haram on 1 July 2017.</p> <p>Boko Haram pledged allegiance to, and was accepted as a branch of, Islamic State in March 2015 and renamed itself as ISWAP. A dispute over the leadership of ISWAP in August 2016 resulted in the emergence of two factions of the group. One faction continued to operate as ISWAP and another faction reverted to the use of Boko Haram’s formal name Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad.</p>
<p><b>Details of the organisation</b></p> <p>ISWAP is a Sunni Islamic extremist group with a sphere of operations that encompass north-eastern Nigeria and the southern Lake Chad Basin, Nigeria’s northern border regions with Niger and Cameroon. Over the past two years, ISWAP activity has increasingly extended south into southern Nigeria.</p> <p>ISWAP adheres to the extreme Salafi interpretation of Islam which views all who fail to adhere to their beliefs as apostates and infidels. As such, ISWAP has made a point of</p>



targeting non-adherents, often promoting sectarian violence and indiscriminate executions resulting in many deaths over the past ten years. ISWAP rejects existing national borders and opposes elected governments, seeking to remove them through violence.

ISWAP developed as a faction of listed terrorist organisation Boko Haram, formally named Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad. In March 2015, Boko Haram leader Abubakar Shekau's pledge of allegiance to Islamic State was accepted and the group commenced operations under the name ISWAP. In August 2016, Islamic State leadership replaced Shekau with Abu Musab al-Barnawi as ISWAP's leader following apparent internal dissatisfaction with Shekau's leadership. Shekau disputed this decision and rejected al-Barnawi as the new leader, resulting in the development of two factions, one under al-Barnawi and one under Shekau.

The faction loyal to al-Barnawi continues to operate under the name ISWAP and remains closely allied to Islamic State. The faction under Shekau reverted to operating under the name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and is also known as Boko Haram. Nigeria is the most populous country in Africa and will overtake the US as the third most populous country in the world by 2050. It also has the continent's largest GDP and plays a key role in regional peacekeeping efforts. ISWAP presents one of the greatest security threats to Nigeria, and by association a potential threat to stability across Africa.

### **Leadership**

Abubakar Shekau was the first leader when ISWAP commenced operations under that name in March 2015. In August 2016, Islamic State leadership publicly replaced Shekau with Abu Musab al-Barnawi (aka Habib Yusuf). According to media reporting, Abu Musab al-Barnawi was deposed in March 2019 with Abdullah Ibn Umar al-Barnawi (aka Ba Idrisa) assuming leadership. Following internal disputes within ISWAP, Ba Idrisa was succeeded by Lawan Abubaka (aka Ba Lawan) until early 2021 when Abu Musab al-Barnawi was reinstated as leader of ISWAP. Abu Musab al-Barnawi held the leadership until August 2021 when he was reportedly wounded following an engagement with Boko Haram fighters under the direction of Ibrahim Bakura Doro.

### **Membership**

ISWAP's total membership is estimated at around 5000 fighters, with members originating chiefly from north eastern Nigeria and neighbouring regions.

### **Recruitment and funding**

ISWAP exploits poor economic and social conditions in north eastern Nigeria and neighbouring regions to attract members. ISWAP provides protection from attacks by Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and some relief from counter-terrorism measures implemented by Nigerian authorities. Recruits are also drawn by ISWAP's proselytisation, its ability to provide social services, and the economic prospects for its members.

Following the death of Shekau in May 2021, ISWAP opened negotiations with Shekau's commanders, bringing several Boko Haram fighting groups operating in the Sambisa forest into its ranks.

ISWAP funds itself through activities such as taxation and extortion of locals, raids, and kidnap-for-ransom operations. The current state of financial ties with Islamic State or other terrorist groups is unclear.

### **Links to other groups**

ISWAP is an officially recognised affiliate of, and ideologically aligned with, Islamic State. After the 2016 split between ISWAP and Boko Haram, ISIS had initially directed ISWAP to avoid attacking Boko Haram. This stance changed in 2021 following the reinstatement of Abu Musab al-Barnawi and subsequent attack on Shekau. In a recording made in June 2021, al-Barnawi credited ISIS as having directed the attack on Shekau.

### **Terrorist activity**

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

ISWAP can be reliably attributed to commission of the following terrorist activity:

- 29 December 2022: A car bomb explosion that killed four people in the Okene Local Government Area of Kogi State, Nigeria.
- 19 November 2022: A late night attack on the northern Nigerian town of Malam Fatori. The following dawn, ISWAP attempted an assault on the nearby military base. After being repulsed, militants went on a killing and looting spree within the town. Nine Nigerian military, two police officers and several dozen civilians were killed.
- 30 July 2022: An attack in the Federal Capital Territory, targeting a Nigerian Army checkpoint near Zuma Rock and wounding 20 soldiers.
- On 6 July 2022: An attack against a prison in Abuja, allowing 600 of the 994 inmates to escape.
- 5 June 2022: An attack on a Catholic Church during mass in Owo, Nigeria, which killed at least 40 people. In August 2022, Nigerian security forces arrested six individuals over the attack, including ISWAP members Idris Abdulmalik Omeiza (aka Bin Malike), Momoh Otohu Abubakar, Aliyu Yusuf Itopa and Auwal Ishaq Onimisi.
- 20 April 2022: An attack where three people were killed and 30 injured during an explosion at a market in Nigeria's Taraba state.
- 21 March 2021: An attack by gunmen that killed 137 civilians in three coordinated attacks in the Tahoua region, Nigeria. ISWAP claimed to be targeting pro-government militia members.
- 2 January 2021: Gunmen on motorbikes killed around 70 civilians and wounded 17 others in the village of Tchombangou, Nigeria.

On the basis of these examples, ISWAP 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 corroborated links between ISWAP and Australian individuals or interests since the group was re-listed in 2020.

Boko Haram has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general.

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

The United States designated ISWAP as a foreign terrorist organisation in February 2018. New Zealand designated ISWAP as a terrorist organisation in February 2020. Canada listed ISWAP as a terrorist entity in February 2021.

The United Nations Security Council ISIL (Da'esh) and Al-Qaida Committee listed ISWAP as an entity subject to sanctions in the ISIL (Da'esh) and Al-Qaida Sanctions List in February 2020.

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

ISWAP is not known to have engaged in any peace or mediation process.

**Conclusion**

On the basis of the information above, the Australian Government assesses that the organisation known as Islamic State West Africa Province is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

## EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation – Boko Haram) Regulations 2023*

The purpose of the *Criminal Code (Terrorist Organisation – Boko Haram) Regulations 2023* (the Regulations) is to specify the organisation known as Boko Haram for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code).

Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Criminal Code to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Criminal Code.

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 Boko Haram 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](#)).

### *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 5.3 of the Criminal Code to continue to apply in relation to conduct relating to Boko Haram.

The Regulations repeal the *Criminal Code (Terrorist Organisation – Boko Haram) Regulations 2020*, which would otherwise cease to have effect on 1 July 2023 by operation of subsection 102.1(3) of the Criminal Code. Making new regulations ensures that the organisation Boko Haram 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 1 July 2023. 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 (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 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 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 Boko Haram meets the legislative requirements for listing.

## ATTACHMENT A

### **Statement of Compatibility with Human Rights**

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

#### ***Criminal Code (Terrorist Organisation – Boko Haram) Regulations 2023***

This Disallowable 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—Boko Haram) Regulations 2023* (the Regulations) specify Boko Haram for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

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

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

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

#### **Human rights implications**

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

- the inherent right to life in Article 6.

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

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

### ***The inherent right to life in Article 6***

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

### ***The right to freedom of expression in Article 19***

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Boko Haram. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

### ***The right to freedom of association in Article 22***

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

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

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

### ***General safeguards and accountability mechanisms***

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Boko Haram, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the

interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

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

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code* the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003* and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations.

## **Conclusion**

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

**The Honourable Mark Dreyfus KC MP**  
**Attorney-General**



## **ATTACHMENT B**

### **Details of the *Criminal Code (Terrorist Organisation – Boko Haram) Regulations 2023***

#### Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2023*.

#### Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) would provide that each provision in the proposed Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the proposed Regulations commence in their entirety on 1 July 2023.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of the proposed Regulations as originally made, and will not be amended to deal with any subsequent amendments to the instrument.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

#### Section 3 – Authority

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

#### Section 4 – Schedules

7. This section would provide that each instrument that is specified in a Schedule to the proposed Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule would have effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020*.

#### Section 5 – Terrorist organisation—Boko Haram

9. Subsection 5(1) would provide that, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Boko Haram is specified.
10. The effect of specifying Boko Haram as a terrorist organisation would be to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that relate to terrorist

organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Boko Haram.

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

#### Schedule 1 — Repeals

12. Clause 1 of Schedule 1 repeals the *Criminal Code (Terrorist Organisation—Boko Haram) Regulations 2020* (the Current Regulations).
13. The Repealed Regulations specify Boko Haram as a terrorist organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, commencing on 1 July 2020. Pursuant to subsection 102.1(3) of the *Criminal Code*, regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which they take effect. Clause 1 of Schedule 1 ensures there is no duplication where the Regulations are made before the current Regulations cease to have effect.

**ATTACHMENT C**

**Statement of Reasons – Boko Haram**

<p style="text-align: center;"><b>Listing Boko Haram as a terrorist organisation under Division 102 of the Criminal Code Act 1995</b></p>
<p>This Statement of Reasons is based on publicly available information about Boko Haram. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information where available.</p>
<p><b>Known aliases</b></p> <p>Group of the Followers of the Prophet for Propagation and Holy Struggle; Jama’at Ahl al-Sunna lil-Da’awa wal-Jihad; Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad; Nigerian Mujahideen; Nigerian Taliban; People Committed to the Propagation of the Prophet's Teachings and Jihad; Western Education is Forbidden; Yusuffiya Movement; Yusuffiya Sect.</p>
<p><b>Legislative basis for listing a terrorist organisation</b></p> <p>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:</p> <ul style="list-style-type: none"><li>a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or</li><li>b) advocates the doing of a terrorist act.</li></ul> <p>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 as including the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
<p><b>Background to this listing</b></p> <p>The Australian Government first proscribed Boko Haram as a terrorist organisation under the Criminal Code on 1 July 2014. Boko Haram was re-listed on 1 July 2017 and 1 July 2020.</p> <p>Boko Haram pledged allegiance to, and was accepted as a branch of, Islamic State in March 2015 and renamed itself as Islamic State West Africa Province (ISWAP). A dispute over the leadership of ISWAP in August 2016 resulted in the emergence of two factions of the group. One faction continued to operate as ISWAP and another faction reverted to the use of Boko Haram’s formal name Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad (JAS).</p>
<p><b>Details of the organisation</b></p> <p>Boko Haram is a Sunni Islamic extremist group with a sphere of operations that encompass the Northern Nigerian Sambisa Forest and the Mandara mountains on the Nigeria-Cameroon border.</p>

Boko Haram (“Western education is forbidden”) adheres to the extreme Salafi interpretation of Islam which views all who fail to adhere to their beliefs as apostates and infidel. As such, ISWAP has made a point of targeting non-adherents, often promoting sectarian violence and indiscriminate executions resulting in several thousand deaths over the past ten years. ISWAP rejects existing national borders and opposes elected governments, seeking to remove them through violence.

Boko Haram was initially formed as a non-violent religious movement in 1995. It was constituted by small bands of mainly young, middle-class Nigerians in the northern, Muslim-dominated states of Nigeria. Boko Haram began its violent activities in December 2003, initiating unrest in northern Nigeria that prompted an extensive security force response. Since July 2010, Boko Haram adopted a much more active and violent approach to advance its goals, undertaking frequent attacks against civilian and military targets.

### **Leadership**

Abubakar Shekau assumed leadership of Boko Haram in July 2010 and declared allegiance to Islamic State in March 2015, changing the group’s formal name from Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad to Islamic State in West Africa Province (ISWAP). However, Islamic State leadership nominated Abu Musab al-Barnawi as Boko Haram’s leader in August 2016 following apparent internal dissatisfaction with Shekau’s leadership. Shekau disputed this decision and rejected al-Barnawi as the new leader, resulting in the development of two factions.

Shekau reverted to using the group name Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad (also known as Boko Haram), and commanded a faction of loyalists operating separately to those remaining in Islamic State in West Africa. On 19 May 2021, ISWAP launched an assault into Sambisa Forest, Boko Haram's traditional stronghold, and encircled Shekau. Shekau was subsequently killed on 21 May 2021.

Shortly following Shekau’s death, Bakura Sahalaba, a prominent Islamic judge was appointed iman of Boko Haram, while Ibrahim Bakura Doro, one of Shekau’s key supporters following the split from ISWAP, took up the role as operational leader of the organisation. This ambiguous dual leadership structure continued until March 2022 when Bakura Doro had Sahalaba executed and replaced him as iman under the pseudonym Abu Umaymah.

### **Membership**

Boko Haram’s total membership was estimated at around 1500 at the time of Shekau’s death, with members originating chiefly from north eastern Nigeria and neighbouring regions. Following the demise of their leader, authorities in Nigeria and Cameroon have reported an increase in the number of Boko Haram militants surrendering to government and military forces. In addition, many former Boko Haram commanders have been reported to have defected to ISWAP.

### **Recruitment and funding**

Boko Haram exploits poor economic and social conditions in north eastern Nigeria and neighbouring regions to attract members. Recruits are drawn by Boko Haram's ability to provide economic prospects for its members and to avoid persecution by the group.

Recruits also join Boko Haram through coercion from the group or pressure from associates and family members. The group bolsters its recruited numbers through kidnappings, forcing captives to serve the group. Some captives, including women and children, are forced to conduct attacks, including suicide bombings.

Boko Haram funds itself primarily through criminal activities such as arms and human trafficking, extortion, bank robberies, looting and kidnap-for-ransom operations. The current state of financial ties with Islamic State or other terrorist groups is unclear.

### **Links to other groups**

The current state of Boko Haram's links with Islamic State remains uncertain. Although Shekau did not publicly rescind his pledge of allegiance to Islamic State, following his removal as leader, he conspicuously failed to renew his pledge on the death of Islamic State 'Caliph' al-Baghdadi in October 2019. Further, Islamic State was credited as having directed the attack that led to Shekau's death in 2021.

Boko Haram had historical ties with al-Qa'ida in the Lands of the Islamic Maghreb and al-Shabaab but these are no longer current due to Boko Haram's more recent alignment with Islamic State. Since Shekau's death in May 2021, Boko Haram has persisted in the 'factional' conflict against ISWAP, with reports of conflict as recently as January 2023.

### **Terrorist activity**

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

Boko Haram has engaged in terrorist attacks and kidnappings against a wide range of targets in Nigeria and neighbouring countries. Recent attacks that can be reliably attributed to Boko Haram include:

- 18 January 2023: Boko Haram abducted eight farmers and killed one person in Makilwe village, Borno state, Nigeria.
- 26 December 2022: Boko Haram militants attacked and killed 17 herders guarding cattle near Airamne village in Mafa district, Nigeria.
- 11 December 2022: Boko Haram militants killed seven civilians during attacks on Fougoh village and Fourkoulom camp for internally displaced persons.
- 24 May 2022: Boko Haram militants launched an attack in Rann village in Borno State, Nigeria, killing over 50 people.
- 24 February 2021: Boko Haram militants killed 10 people during a rocket attack in Maiduguri, Nigeria.
- 23 March 2020: Boko Haram militants staged an attack on Chadian troops station at a base in Bohoma, killing 98 Chadian soldiers.

On the basis of these examples, Boko Haram 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 corroborated links between Boko Haram and Australian individuals or interests since the group was re-listed in 2020. Boko Haram has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general.

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

Boko Haram was listed by the United Kingdom in July 2013, the United States in November 2013, Canada in December 2013 and New Zealand in March 2014. The ISIL (Da'esh) and Al-Qaida United Nations Security Council Committee listed Boko Haram as an entity subject to sanctions in the ISIL (Da'esh) and Al-Qaida Sanctions List on 22 May 2014.

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

Since it was last listed, Boko Haram has not participated in peace or mediation processes with the Governments of Nigeria, Niger, Cameroon or Chad.

**Conclusion**

On the basis of the information above, the Australian Government assesses that the organisation known as Boko Haram is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.



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# Statement of Reasons

## Listing the Islamic State as a terrorist organisation under Division 102 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about the Islamic State. 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 (IS)

### Known aliases

al-Qa'ida in Iraq; al-Qa'ida in Iraq – Zarqawi; al-Qa'ida of Jihad in the Land of the Two Rivers; al-Qa'ida of Jihad Organization in the Land of the Two Rivers; al-Tawhid; al-Tawhid and al-Jihad; Brigades of Tawhid; Daesh; Da'ish; Dawla al-Islamiya; Dawla al-Islamiya fi al-Iraq wa as-Sham; Islamic State of Iraq; Islamic State of Iraq and al-Sham; Jama'at al-Tawhid wa'al-Jihad; Kateab al-Tawhid; Mujahidin Shura Council; Qaida of the Jihad in the Land of the Two Rivers; Tanzeem Qa'idat al Jihad Bilad al Raafidaini; Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn; The al-Zarqawi network; The Islamic Caliphate; The Islamic Caliphate State; The Islamic State of Iraq and al-Sham; The Islamic State of Iraq and Greater Syria; The Islamic State of Iraq and Syria; The Islamic State of Iraq and the Levant; The Monotheism and Jihad Group; The Organisation Base of Jihad Country of the Two Rivers; The Organisation Base of Jihad Mesopotamia; The Organisation of Jihad's Base in the Country of the Two Rivers; Unity and Holy Struggle; Unity and Holy War; Unity and Jihad Group.

### 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:

- 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.

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 as including 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 Islamic State under its former Arabic name, *Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn*, in 2005. The group was re-listed under this name on 17 February 2007.

The group was formerly listed as *al-Qa'ida in Iraq* on 1 November 2008, and re-listed on 29 October 2010 and 12 July 2013.

The group was formerly listed as *Islamic State of Iraq and the Levant* (ISIL) on 14 December 2013.

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On 11 July 2014, the group was listed as Islamic State to reflect the expansion of its operating area and its announcement of an Islamic caliphate on 29 June 2014. The group was re-listed on 1 July 2017 and 1 July 2020.

### Details of the organisation

Islamic State is a Sunni Islamic extremist group and self-declared pan-Islamic Caliphate with a historic base of operations within Northern Iraq and Syria. At its 2014 peak, Islamic State controlled large swathes of both countries, subsuming government resources and bureaucracy, along with commerce and industry. In March 2019, Islamic State lost the last of its territory in Iraq and Syria. As such, Islamic State has since reverted to traditional terrorist tactics in the region with an increasing degree of ferocity and tactical sophistication, including areas within Türkiye.

Islamic State continues to maintain an active presence around the globe through satellite entities, operationally active within declared 'provinces' (Wilayat). These include IS-Libya, IS-Sinai, IS-Khorasan Province, IS-East Asia, IS Somalia, IS West Africa Province, and the Abu Sayyaf Group, all of whom are listed terrorist organisations pursuant to Australia's Criminal Code. Islamic State rejects existing national borders and opposes elected governments, seeking to remove them through violence.

Islamic State adheres to the extreme Salafi interpretation of Islam which regards all who fail to follow its religious doctrine as apostates and infidel. Seeking to emulate the expansive success of Islamic conquests during the 7<sup>th</sup> to 10<sup>th</sup> centuries, Islamic State seeks to subjugate through terror and establish a pan-Islamic imperialist theocracy, with a view of ultimately dominating the globe. In prosecuting this agenda, it has commissioned numerous crimes against humanity, including genocide, ethnic cleansing, summary execution (including public beheading, crucifixion, stoning, hanging, burning, mutilation and dismemberment), mass rape, paedophilia, sexual slavery, forced marriages (including minors), theft, extortion, kidnaping and trafficking.

Islamic State began operations as *Jama'at al-Tawhid wa'al-Jihad* (JTJ) with the first attributable terrorist act committed on October 28, 2002: the murder of U.S. Agency for International Development (USAID) officer Laurence Foley outside his home in Jordan. In October 2004, JTJ leader Abu Musab al-Zarqawi, declared allegiance to Usama bin Laden and the group became known as *al-Qa'ida in Iraq* (AQI). In late 2011, the group established operations in Syria through its former subordinate organisation, *Jabhat al-Nusra* (now known as *Hay'at Tahrir al-Sham*). In April 2013, then leader Abu Bakr al-Baghdadi announced the creation of *Islamic State in Iraq and the Levant* (ISIL) to subsume the then *Jabhat al-Nusra* and consolidate operations across Iraq and Syria.

The then-*Jabhat al-Nusra* (and now *Hay'at Tahrir al-Sham*) leader Abu-Muhammad al-Jawlani attempted to annul the announcement by pledging allegiance to then *al-Qa'ida* leader Ayman al-Zawahiri. In June 2013, al-Zawahiri ruled that the then *Jabhat al-Nusra* was the only *al-Qa'ida* affiliate in Syria and annulled the creation of ISIL. However, al-Baghdadi refused to follow this ruling and confirmed the creation of ISIL, later announcing the formation of Islamic State with himself as the Caliph in 29 June 2014.

### Leadership

Fourth Caliph: On November 2022, Abu al-Hussein al-Husseini al-Qurashi (aka Juma Awad al-Badri) was named as the new (extant) leader and fourth Caliph of Islamic State. The announcement was made in a recorded audio message distributed online. On 29 April 2023, the Caliph was allegedly killed during a Turkish security operation conducted by the *National Intelligence Organisation* (MIT). The announcement was made by Turkish President Recep Tayyip Erdoğan on 30 April 2023. At the time of writing, a new IS leader had not been announced.

Third Caliph: On 10 March 2022, Abu al-Hassan al-Hashimi al-Qurashi was named as the new leader and third Caliph of Islamic State. On 15 October 2022, the Caliph killed himself with a suicide vest during an operation by the Free Syrian Army in Dar'a province, Syria.



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Second Caliph: On 31 October 2019, Abu Ibrahim al-Hashimi al-Qurashi was named as the new leader and second Caliph of Islamic State. On 3 February 2022, the Caliph killed himself and family with a suicide vest during a US counterterrorism operation in Atme, Syria.

First Caliph: On 16 May 2010, Abu Bakr al-Baghdadi was named leader of *al-Qa'ida in Iraq* (AQI); changing the group's name to *Islamic State in Iraq and the Levant* (ISIL) in April 2013. On 29 June 2014, the group declared the Islamic State Caliphate with al-Baghdadi as its first Caliph. On 27 October 2019, Baghdadi killed himself and children with a suicide vest during a US counterterrorism operation in Barisha, Syria.

The current Islamic State spokesman, Abu Omar al-Muhajir, assumed this role following the death of former Islamic State spokesman, Abu Hamza al-Qurashi, who was also killed during the US operation on 3 February 2022.

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

### Membership

At the height of its power, Islamic State's membership was believed to have reached over 65,000, including approximately 40,000 foreign fighters from over 120 countries. Following Islamic State's complete loss of territory in 2019, membership numbers are difficult to determine, but are estimated to range between 14,000 and 18,000 across Syria and Iraq. There are also around 30,000 Islamic State fighters detained in prisons across Iraq and Syria.

### Recruitment and funding

Since its establishment, Islamic State has used a combination of threats, incentives and ideology to recruit new members, including through a sophisticated social media campaign in several languages. It has mostly targeted young Sunni men worldwide, exploiting anger at the perceived mistreatment of Sunni Muslims and encouraging them to join in restoring an Islamic caliphate. Islamic State also targets young women and children. However, since 2017, the Islamic State's media and propaganda capabilities have suffered significantly, limiting its global reach for recruitment.

Islamic State forcefully recruited from areas under its control and is known to have run schools to indoctrinate children into its extremist ideology at a young age. It also aims to recruit Iraqi security force members to gather intelligence and undermine the performance of those who oppose the group. In recent years, the group has targeted prisons and internally displaced person camps in Syria to free members and for its ranks.

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

Following the appointment of Islamic State's then leader, Abu al-Hassan al-Hasemi al-Quraishi, Islamic State spokesperson, Abu Omar al-Muhajir, declared that IS personnel had "pledged allegiance" to the new caliph.

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

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Islamic State initially relied on funds donated for operations in Syria to also fund its activities in Iraq and transfers weapons, fighters and resources between the two countries. As Islamic State expanded, it began seizing assets from areas under its control, particularly oil refineries and banks. While oil was a major source of revenue, Islamic State also taxed and extorted those living in areas under its control. Since its loss of territory, Islamic State's ability to raise revenue has been reduced; however, the group was likely able to move cash reserves out of Iraq and Syria prior to their territorial defeat to ensure it had sufficient funds to maintain an insurgency.

Islamic State has also been able to diversify its funding through criminal activity, including but not limited to extortion, kidnapping for ransom and theft. Furthermore, the group has significant funds invested in legitimate businesses globally. As operating costs for an insurgency is considerably less than running a caliphate, Islamic State are likely to have sufficient funds to continue attacks in Iraq and Syria.

### Links to other groups

Islamic State's success in Iraq, particularly in 2014, attracted the support of other terrorist groups around the world with a number of Islamist militant organisations declaring allegiance or support to Islamic State; particularly from the Middle East, West Africa, Central Asia and Southeast Asia. While some of these groups were created as a response to Islamic State's call for Muslim support, others were already in existence. Islamic State has accepted a number of pledges of allegiance; however, this does not always indicate a working relationship or operational ties. Islamic State continues to have contentious relationships with various Syrian opposition groups, which have included cooperation where tactically useful.

Eight groups currently listed as terrorist organisations under the Criminal Code are either official Islamic State affiliates or have publicly pledged support for the group. They include the Abu Sayyaf Group, Boko Haram, Islamic State West Africa Province, Islamic State in Libya, Islamic State Sinai Province, Islamic State East Asia, Islamic State Khorasan Province, and Islamic State Somalia.

### Terrorist activity

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

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

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

In Syria, attacks are predominately against the Syrian regime of Bashar al-Assad and the Kurdish Syrian Democratic Forces, but Islamic State also attacks some other Syrian armed opposition groups, which it considers apostates and infidels as well as on occasion directly targeting civilians. Islamic State has targeted

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Turkish forces, Turkish, Kurdish and Shia militants in northern Syria, Syrian refugees and Kurdish organisations in Türkiye. The group has also targeted US forces present in Syria.

IS can be reliably attributed to commission of the following terrorist activity since it was last proscribed (in July 2020):

- On 17 March 2023, Islamic State militants attacked a group gathering truffles near Hama, Syria; killing 26.
- On 16 March 2023, Islamic State militants attacked shepherds in Deir Ezzor, Syria; killing four.
- On 18 February 2023, Islamic State sleeper cells carried out an attack in Syria's central desert of Homs, which killed 53 civilians and wounding two.
- On 12 February 2023, Islamic State militants fired machine guns at a group of about 75 people picking mushrooms near Palmyra, Syria, which resulted in 11 deaths.
- On 26 October 2022, an armed Islamic State operative carried out a shooting attack in the Shiite Shah Cheragh shrine in the city of Shiraz, Iran. This attack killed 15 people and injured 40 others.
- On 27 March 2022, Islamic State militants attacked a bus stop in Hadera, Israel; killing two and wounding 12.
- On 20 January 2022, Islamic State militants launched an assault on the al-Sina prison in al-Hasakah, Syria, killing 121 Syrian Defence Force personnel and wounding scores of others. Hundreds of prisoners, including Islamic State fighters, escaped during the 10 day battle. This attack caused 159 casualties.
- On 21 January 2021, 2 Islamic State suicide bombers detonated bombs in a busy marketplace in eastern Baghdad, which killed 32 people and injured 100 others. Islamic State claimed responsibility for the bombings through a statement on Telegram.
- On 2 November 2020, a lone gunman killed four people and injured 23 others in central Vienna, Austria.

On the basis of these examples, Islamic State is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

### ***Advocates the doing of a terrorist act***

Since the group was last proscribed, several media statements have been issued by the group's official media arms, including:

- On June 21, 2021, Islamic State's al-Furqan Media Foundation released an audiotope titled "You are the Sublime Ones if you believe". The audiotope encouraged Islamic State fighters around the world to intensify their attacks against their enemies, particularly against 'Crusaders'.
- On 2 February 2023, Islamic State's weekly Al-Naba published an article titled "Kill the Jews," which called on Muslims around the world to carry out terrorist attacks against Jews.

On the basis of these examples, Islamic State is assessed to advocate the doing of a terrorist act.

### **Other considerations**

#### ***Links to Australia and threats to Australian interests***

In September 2014, Islamic State released a directive to supporters around the world, sanctioning unilateral terrorist attacks against Australia and other western nations "wherever, whenever and however" they could, without requiring instruction or permission from Islamic State leadership.

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In December 2014, Australian citizen Man Haron Monis held ten civilians hostage within the Lindt Café, Martin Place, Sydney. During the ensuing siege, hostages were forced to hold jihadist flags against the window of the café whilst Monis made repeated requests for an Islamic State flag from Police. Two civilians and Monis himself subsequently lost their lives. Monis a Shia Muslim, had previously converted to Sunni Islam and swore allegiance to Islamic State.

Islamic State retains an enduring presence within certain extremist fora. Islamic State's coordinated and effective propaganda campaign exposed susceptible Australians to an extremist ideology and influenced some toward radicalization and violence. Research shows that from 2012 until 2019, more than 200 Australian men, women and children travelled to Syria and Iraq to join Islamic State. Dozens more assisted Islamic State by supporting those overseas or by planning or carrying out terrorist attacks in Australia. Australians fighting with Islamic State have been involved in acts of violence including suicide bombings and holding the decapitated head of a Syrian soldier following Islamic State beheadings. These incidents have subsequently been used in Islamic State's propaganda campaign.

In addition to those who have travelled to Syria and Iraq, Australia-based individuals can pledge allegiance to Islamic State, affirming their support for the group without the need to travel to Iraq or Syria, and their intent to be a member of the group.

Since the collapse of the Islamic State Caliphate, support for Islamic State within Australia has declined.

Islamic State has openly called for attacks against Australia and its interests, both because of Australia's support to military operations against Islamic State in Iraq and Syria, and because of the group's anti-Western ideology. Islamic State promotes its opposition to Australia through propaganda material, foreign fighter videos and speeches by senior leadership.

A successful terrorist attack directed or inspired by Islamic State or one of its affiliates could result in harm to Australians, and the group's activities and propaganda have the potential to inspire Australian violent extremists.

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

Islamic State is listed as Islamic State of Iraq and the Levant under the United Nations Security Council resolution 2253 (2015) which expands on the United Nations Security Council Resolution 1267 (1999) Sanctions Committee's consolidated list. It is also listed as a proscribed terrorist organisation by the United States, Canada, United Kingdom and New Zealand.

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

Islamic State is not engaged in any peace or mediation process.

## Conclusion

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

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

- 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 the Islamic State's political, religious or ideological causes
- are done with the intention of intimidating the government of one or more foreign countries

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- are done with the intention of intimidating the public or sections of the public.



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# Statement of Reasons

## Listing Islamic State West Africa Province as a terrorist organisation under Division 102 of the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Islamic State West Africa Province. 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 West Africa Province (ISWAP)

### Known aliases

- Islamic State in West Africa;
- Islamic State of Iraq and the Levant – West Africa;
- Islamic State of Iraq and Syria – West Africa;
- Wilayat Gharb Afriqiyah.

### 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 as including 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

ISWAP was first listed as a terrorist organisation on 1 July 2020. Prior to this date, ISWAP was included as an alias of listed terrorist group Boko Haram on 1 July 2017.

Boko Haram pledged allegiance to, and was accepted as a branch of, Islamic State in March 2015 and renamed itself as ISWAP. A dispute over the leadership of ISWAP in August 2016 resulted in the emergence of two factions of the group. One faction continued to operate as ISWAP and another faction reverted to the use of Boko Haram's formal name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad.

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### Details of the organisation

ISWAP is a Sunni Islamic extremist group with a sphere of operations that encompass north-eastern Nigeria and the southern Lake Chad Basin, Nigeria's northern border regions with Niger and Cameroon. Over the past two years, ISWAP activity has increasingly extended south into southern Nigeria.

ISWAP adheres to the extreme Salafi interpretation of Islam which views all who fail to adhere to their beliefs as apostates and infidels. As such, ISWAP has made a point of targeting non-adherents, often promoting sectarian violence and indiscriminate executions resulting in many deaths over the past ten years. ISWAP rejects existing national borders and opposes elected governments, seeking to remove them through violence.

ISWAP developed as a faction of listed terrorist organisation Boko Haram, formally named Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad. In March 2015, Boko Haram leader Abubakar Shekau's pledge of allegiance to Islamic State was accepted and the group commenced operations under the name ISWAP. In August 2016, Islamic State leadership replaced Shekau with Abu Musab al-Barnawi as ISWAP's leader following apparent internal dissatisfaction with Shekau's leadership. Shekau disputed this decision and rejected al-Barnawi as the new leader, resulting in the development of two factions, one under al-Barnawi and one under Shekau.

The faction loyal to al-Barnawi continues to operate under the name ISWAP and remains closely allied to Islamic State. The faction under Shekau reverted to operating under the name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and is also known as Boko Haram.

Nigeria is the most populous country in Africa and will overtake the US as the third most populous country in the world by 2050. It also has the continent's largest GDP and plays a key role in regional peacekeeping efforts. ISWAP presents one of the greatest security threats to Nigeria, and by association a potential threat to stability across Africa.

### Leadership

Abubakar Shekau was the first leader when ISWAP commenced operations under that name in March 2015. In August 2016, Islamic State leadership publicly replaced Shekau with Abu Musab al-Barnawi (aka Habib Yusuf). According to media reporting, Abu Musab al-Barnawi was deposed in March 2019 with Abdullah Ibn Umar al-Barnawi (aka Ba Idrisa) assuming leadership. Following internal disputes within ISWAP, Ba Idrisa was succeeded by Lawan Abubaka (aka Ba Lawan) until early 2021 when Abu Musab al-Barnawi was reinstated as leader of ISWAP. Abu Musab al-Barnawi held the leadership until August 2021 when he was reportedly wounded following an engagement with Boko Haram fighters under the direction of Ibrahim Bakura Doro.

### Membership

ISWAP's total membership is estimated at around 5000 fighters, with members originating chiefly from north eastern Nigeria and neighbouring regions.

### Recruitment and funding

ISWAP exploits poor economic and social conditions in north eastern Nigeria and neighbouring regions to attract members. ISWAP provides protection from attacks by Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad and some relief from counter-terrorism measures implemented by Nigerian authorities. Recruits are also drawn by ISWAP's proselytisation, its ability to provide social services, and the economic prospects for its members.

Following the death of Shekau in May 2021, ISWAP opened negotiations with Shekau's commanders, bringing several Boko Haram fighting groups operating in the Sambisa forest into its ranks.

ISWAP funds itself through activities such as taxation and extortion of locals, raids, and kidnap-for-ransom operations. The current state of financial ties with Islamic State or other terrorist groups is unclear.

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### ***Links to other groups***

ISWAP is an officially recognised affiliate of, and ideologically aligned with, Islamic State. After the 2016 split between ISWAP and Boko Haram, ISIS had initially directed ISWAP to avoid attacking Boko Haram. This stance changed in 2021 following the reinstatement of Abu Musab al-Barnawi and subsequent attack on Shekau. In a recording made in June 2021, al-Barnawi credited ISIS as having directed the attack on Shekau.

### **Terrorist activity**

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

ISWAP can be reliably attributed to commission of the following terrorist activity:

- 29 December 2022: A car bomb explosion that killed four people in the Okene Local Government Area of Kogi State, Nigeria.
- 19 November 2022: A late night attack on the northern Nigerian town of Malam Fatori. The following dawn, ISWAP attempted an assault on the nearby military base. After being repulsed, militants went on a killing and looting spree within the town. Nine Nigerian military, two police officers and several dozen civilians were killed.
- 30 July 2022: An attack in the Federal Capital Territory, targeting a Nigerian Army checkpoint near Zuma Rock and wounding 20 soldiers.
- On 6 July 2022: An attack against a prison in Abuja, allowing 600 of the 994 inmates to escape.
- 5 June 2022: An attack on a Catholic Church during mass in Owo, Nigeria, which killed at least 40 people. In August 2022, Nigerian security forces arrested six individuals over the attack, including ISWAP members Idris Abdulmalik Omeiza (aka Bin Malike), Momoh Otohu Abubakar, Aliyu Yusuf Itopa and Auwal Ishaq Onimisi.
- 20 April 2022: An attack where three people were killed and 30 injured during an explosion at a market in Nigeria's Taraba state.
- 21 March 2021: An attack by gunmen that killed 137 civilians in three coordinated attacks in the Tahoua region, Nigeria. ISWAP claimed to be targeting pro-government militia members.
- 2 January 2021: Gunmen on motorbikes killed around 70 civilians and wounded 17 others in the village of Tchombangou, Nigeria.

On the basis of these examples, ISWAP 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 corroborated links between ISWAP and Australian individuals or interests since the group was re-listed in 2020.

Boko Haram has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general.

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

The United States designated ISWAP as a foreign terrorist organisation in February 2018. New Zealand designated ISWAP as a terrorist organisation in February 2020. Canada listed ISWAP as a terrorist entity in February 2021.



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The United Nations Security Council ISIL (Da'esh) and Al-Qaida Committee listed ISWAP as an entity subject to sanctions in the ISIL (Da'esh) and Al-Qaida Sanctions List in February 2020

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

ISWAP is not known to have engaged in any peace or mediation process.

### **Conclusion**

On the basis of the information above, the Australian Government assesses that the organisation known as Islamic State West Africa Province is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.



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# Statement of Reasons

## Listing Boko Haram as a terrorist organisation under Division 102 of the *Criminal Code Act 1995*

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

### Name of the organisation

Boko Haram

### Known aliases

- Group of the Followers of the Prophet for Propagation and Holy Struggle;
- Jama'at Ahl al-Sunna lil-Da'awa wal-Jihad;
- Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad;
- Nigerian Mujahideen; Nigerian Taliban;
- People Committed to the Propagation of the Prophet's Teachings and Jihad;
- Western Education is Forbidden;
- Yusuffiya Movement;
- Yusuffiya Sect.

### 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 as including 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 proscribed Boko Haram as a terrorist organisation under the Criminal Code on 1 July 2014. Boko Haram was re-listed on 1 July 2017 and 1 July 2020.

Boko Haram pledged allegiance to, and was accepted as a branch of, Islamic State in March 2015 and renamed itself as Islamic State West Africa Province (ISWAP). A dispute over the leadership of ISWAP in

**OFFICIAL**

## OFFICIAL

August 2016 resulted in the emergence of two factions of the group. One faction continued to operate as ISWAP and another faction reverted to the use of Boko Haram's formal name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad (JAS).

### Details of the organisation

Boko Haram is a Sunni Islamic extremist group with a sphere of operations that encompass the Northern Nigerian Sambisa Forest and the Mandara mountains on the Nigeria-Cameroon border.

Boko Haram ("Western education is forbidden") adheres to the extreme Salafi interpretation of Islam which views all who fail to adhere to their beliefs as apostates and infidel. As such, ISWAP has made a point of targeting non-adherents, often promoting sectarian violence and indiscriminate executions resulting in several thousand deaths over the past ten years. ISWAP rejects existing national borders and opposes elected governments, seeking to remove them through violence.

Boko Haram was initially formed as a non-violent religious movement in 1995. It was constituted by small bands of mainly young, middle-class Nigerians in the northern, Muslim-dominated states of Nigeria. Boko Haram began its violent activities in December 2003, initiating unrest in northern Nigeria that prompted an extensive security force response. Since July 2010, Boko Haram adopted a much more active and violent approach to advance its goals, undertaking frequent attacks against civilian and military targets.

### Leadership

Abubakar Shekau assumed leadership of Boko Haram in July 2010 and declared allegiance to Islamic State in March 2015, changing the group's formal name from Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad to Islamic State in West Africa Province (ISWAP). However, Islamic State leadership nominated Abu Musab al-Barnawi as Boko Haram's leader in August 2016 following apparent internal dissatisfaction with Shekau's leadership. Shekau disputed this decision and rejected al-Barnawi as the new leader, resulting in the development of two factions.

Shekau reverted to using the group name Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad (also known as Boko Haram), and commanded a faction of loyalists operating separately to those remaining in Islamic State in West Africa. On 19 May 2021, ISWAP launched an assault into Sambisa Forest, Boko Haram's traditional stronghold, and encircled Shekau. Shekau was subsequently killed on 21 May 2021.

Shortly following Shekau's death, Bakura Sahalaba, a prominent Islamic judge was appointed *iman* of Boko Haram, while Ibrahim Bakura Doro, one of Shekau's key supporters following the split from ISWAP, took up the role as operational leader of the organisation. This ambiguous dual leadership structure continued until March 2022 when Bakura Doro had Sahalaba executed and replaced him as *iman* under the pseudonym Abu Umaymah.

### Membership

Boko Haram's total membership was estimated at around 1500 at the time of Shekau's death, with members originating chiefly from north eastern Nigeria and neighbouring regions. Following the demise of their leader, authorities in Nigeria and Cameroon have reported an increase in the number of Boko Haram militants surrendering to government and military forces. In addition, many former Boko Haram commanders have been reported to have defected to ISWAP.

### Recruitment and funding

Boko Haram exploits poor economic and social conditions in north eastern Nigeria and neighbouring regions to attract members. Recruits are drawn by Boko Haram's ability to provide economic prospects for its members and to avoid persecution by the group. Recruits also join Boko Haram through coercion from the group or pressure from associates and family members. The group bolsters its recruited numbers through kidnappings, forcing captives to serve the group. Some captives, including women and children, are forced to conduct attacks, including suicide bombings.

## OFFICIAL

Boko Haram funds itself primarily through criminal activities such as arms and human trafficking, extortion, bank robberies, looting and kidnap-for-ransom operations. The current state of financial ties with Islamic State or other terrorist groups is unclear.

### ***Links to other groups***

The current state of Boko Haram's links with Islamic State remains uncertain. Although Shekau did not publicly rescind his pledge of allegiance to Islamic State, following his removal as leader, he conspicuously failed to renew his pledge on the death of Islamic State 'Caliph' al-Baghdadi in October 2019. Further, Islamic State was credited as having directed the attack that led to Shekau's death in 2021.

Boko Haram had historical ties with al-Qa'ida in the Lands of the Islamic Maghreb and al-Shabaab but these are no longer current due to Boko Haram's more recent alignment with Islamic State. Since Shekau's death in May 2021, Boko Haram has persisted in the 'factional' conflict against ISWAP, with reports of conflict as recently as January 2023.

### **Terrorist activity**

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

Boko Haram has engaged in terrorist attacks and kidnappings against a wide range of targets in Nigeria and neighbouring countries. Recent attacks that can be reliably attributed to Boko Haram include:

- 18 January 2023: Boko Haram abducted eight farmers and killed one person in Makilwe village, Borno state, Nigeria.
- 26 December 2022: Boko Haram militants attacked and killed 17 herders guarding cattle near Airamne village in Mafa district, Nigeria.
- 11 December 2022: Boko Haram militants killed seven civilians during attacks on Fougoh village and Fourkoulom camp for internally displaced persons.
- 24 May 2022: Boko Haram militants launched an attack in Rann village in Borno State, Nigeria, killing over 50 people.
- 24 February 2021: Boko Haram militants killed 10 people during a rocket attack in Maiduguri, Nigeria.
- 23 March 2020: Boko Haram militants staged an attack on Chadian troops station at a base in Bohoma, killing 98 Chadian soldiers.

On the basis of these examples, Boko Haram 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 corroborated links between Boko Haram and Australian individuals or interests since the group was re-listed in 2020.

Boko Haram has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general.

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

Boko Haram was listed by the United Kingdom in July 2013, the United States in November 2013, Canada in December 2013 and New Zealand in March 2014.

The ISIL (Da'esh) and Al-Qaida United Nations Security Council Committee listed Boko Haram as an entity subject to sanctions in the ISIL (Da'esh) and Al-Qaida Sanctions List on 22 May 2014.

## OFFICIAL

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

Since it was last listed, Boko Haram has not participated in peace or mediation processes with the Governments of Nigeria, Niger, Cameroon or Chad.

### **Conclusion**

On the basis of the information above, the Australian Government assesses that the organisation known as Boko Haram is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

**Process for the 2023 re-listing of Islamic State (IS), Islamic State West Africa Province (ISWAP), and Boko Haram as terrorist organisations under the *Criminal Code Act 1995***

1. 24 March 2023: The Department of Home Affairs (Home Affairs) formally raised the re-listing of IS, ISWAP and Boko Haram (the organisations) with relevant agencies and sought whole-of-government input to inform the Statements of Reasons.
2. 21 April 2023: Home Affairs provided the Australian Government Solicitor (AGS) with the consolidated Statements of Reasons, seeking advice as to whether, based on the information contained within the Statements of Reasons provided, the Attorney-General could be satisfied that the organisations met the legislative threshold to be listed as a terrorist organisation.
3. 11 May 2023: AGS provided its finalised advice to Home Affairs.
4. 12 May 2023: Home Affairs provided final copies of the Statements of Reasons and accompanying AGS advice to the Attorney-General's Department.
5. 16 May 2023: The Attorney-General's Department provided a submission to the Attorney-General recommending that he agree to the re-listings.
6. 17 May 2023: The Attorney-General agreed to the re-listing of the organisations having been satisfied that they met the statutory criteria and approved the Regulations, and:
  - a. The Attorney-General wrote to the Prime Minister advising of his decision to re-list the organisations and notified the Prime Minister that he had written to the First Ministers of each state and territory regarding the proposed re-listings.
  - b. 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.
  - c. 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 12 June 2023, advising whether the First Minister objected to the re-listing, and reasons for any objection.
7. 9 June 2023: The Attorney-General's Department provided a submission to the Attorney-General, requesting his approval and signature of the regulations and supporting documents for Federal Executive Council, in the case that a majority of jurisdictions did not oppose the re-listings by 12 June.
8. The following responses were received from the First Ministers of the following states and territories:
  - a. Queensland – received 5 June 2023.
  - b. Tasmania – received 8 June 2023.
  - c. South Australia – received 13 June 2023.
  - d. Australian Capital Territory – received 13 June 2023.
  - e. New South Wales – received 14 June 2023.
  - f. Victoria – received 21 June 2023.

No objections were made to the re-listings.
9. 12 June 2023: The Attorney-General approved the documents for Executive Council.
10. 19 June 2023: The Governor-General made the Regulations.

11. 21 June 2023: The *Criminal Code (Terrorist Organisation – Islamic State) Regulations 2023*, *Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations 2023* and *Criminal Code (Terrorist Organisation – Boko Haram) Regulations 2023* were lodged on the Federal Register of Legislation [references: F2023L00847, F2023L00830, F2023L00829].