




## **Criminal Code (Terrorist Organisation— Jemaah Anshorut Daulah) Regulations 2018**

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated  2018

 Peter Cosgrove  
Governor-General

By His Excellency's Command

Peter Dutton  
Minister for Home Affairs  
Minister for Immigration and Border Protection

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Section 1

**1 Name**

This instrument is the *Criminal Code (Terrorist Organisation—Jemaah Anshorut Daulah) Regulations 2018*.

**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	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

**3 Authority**

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

**4 Terrorist organisation—Jemaah Anshorut Daulah**

- (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 Jemaah Anshorut Daulah is specified.
- (2) Jemaah Anshorut Daulah is also known by the following names:
- (a) JAD;
  - (b) Jamaah Ansharet Daulat;
  - (c) Jamaah Ansharud Daulah;
  - (d) Jamaah Ansharut Daulah;
  - (e) Jamaah Ansharut Daulat.

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Jemaah Anshorut Daulah) Regulations 2018*

The purpose of the *Criminal Code (Terrorist Organisation—Jemaah Anshorut Daulah) Regulations 2018* (the Regulations) is to specify Jemaah Anshorut Daulah for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup> Details of the Regulations are set out in Attachment A.

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*.

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

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

The Minister for Home Affairs is satisfied on reasonable grounds that Jemaah Anshorut Daulah is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration an unclassified Statement of Reasons provided by the Director-General of Security, as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons is at Attachment B.

### *Effect of the instrument*

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

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation

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

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

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

The Regulations ensure that the offences in Division 102 of the *Criminal Code* apply to conduct relating to Jemaah Anshorut Daulah.

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

The Regulations commence on the day after it is registered. 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.

#### *Consultation*

The unclassified Statement of Reasons was prepared by the National Threat Assessment Centre in the Australian Security Intelligence Organisation, in consultation with the Department of Foreign Affairs and Trade and the Department of Home Affairs (Home Affairs). Home Affairs also sought the advice of the AGS to inform the decision of the Minister for Home Affairs.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that Jemaah Anshorut Daulah met the legislative criteria for listing.

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

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the states and territories. A majority of the states and territories did not object to the making of the Regulations within the time frame nominated by the Minister.

## Statement of Compatibility with Human Rights

### *Overview*

The *Criminal Code (Terrorist Organisation—Jemaah Anshorut Daulah) Regulations 2018* (the Regulations) specifies Jemaah Anshorut Daulah 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 Jemaah Anshorut Daulah 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 Jemaah Anshorut Daulah.

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 Regulations provide that the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Jemaah Anshorut Daulah.

Terrorist organisations, including Jemaah Anshorut Daulah, 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 these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act or advocates the doing of a terrorist act (refer to [Attachment B](#) for details).

### *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 Jemaah Anshorut Daulah. 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 Jemaah Anshorut Daulah.

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 Jemaah Anshorut Daulah, 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 the applicable disallowance period, which is 15 sitting days after the Regulations are laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

### *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 achieve a legitimate purpose and are reasonable, necessary and proportionate.



## ATTACHMENT A

### Details of the Criminal Code (Terrorist Organisation—Jemaah Anshorut Daulah Regulations 2018)

#### Section 1 – Name

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Jemaah Anshorut Daulah) Regulations 2018*.

#### Section 2 – Commencement

This section would provide for the commencement of each paragraph in the instrument, as set out in the table.

Subsection (1) would provide that each provision in the instrument 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 Regulations commence the day after the instrument is registered.

The note to subsection (1) would clarify that the table only relates to the provisions of this instrument as originally made, and that it will not be amended to deal with any later amendments to the instrument.

Subsection (2) would provide that information in column 3 of the table is not part of the instrument. It is designed to assist readers, and may be updated or changed in any published version of these Regulations. Column 3 is empty at the time of making the instrument.

#### Section 3 – Authority

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

#### Section 4 – Terrorist organisation — Jemaah Anshorut Daulah

Subsection (1) would provide that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Jemaah Anshorut Daulah is specified.

Subsection (2) would provide that Jemaah Anshorut Daulah is also known by the following names:

- a) JAD
- b) Jamaah Ansharet Daulat
- c) Jamaah Ansharud Daulah
- d) Jamaah Ansharut Daulah
- e) Jamaah Ansharut Daulat

**ATTACHMENT B**

<b>STATEMENT OF REASONS FOR JEMAAH ANSHORUT DAULAH</b>	
Also known as: Jamaah Anshoret Daulat, Jamaah Ansharut Daulat, Jamaah Ansharut Daulah, Jamaah Ansharud Daulah, JAD	
This statement is based on publicly available information about Jemaah Anshorut Daulah. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.	
<b>1.</b>	<p><b>Basis for listing a terrorist organisation</b></p> <p>Division 102 of the <i>Criminal Code</i> provides that for an organisation to be listed as a terrorist organisation, the Minister must be satisfied on reasonable grounds that the organisation:</p> <ol style="list-style-type: none"> <li>a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or</li> <li>b) advocates the doing of a terrorist act.</li> </ol> <p>For the purposes of listing a terrorist organisation under the <i>Criminal Code</i>, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
<b>2.</b>	<p><b>Background to this listing</b></p> <p>This is the first time Jemaah Anshorut Daulah has been proscribed by the Australian Government as a terrorist organisation.</p>
<b>3.</b>	<p><b>Terrorist activity of the organisation</b></p> <p><u>Objectives</u>                      Jemaah Anshorut Daulah's primary objective is the establishment of an Islamic State under Shariah law in Indonesia. Jemaah Anshorut Daulah is an umbrella organisation for smaller extremist groups supporting Islamic State. Jemaah Anshorut Daulah publically pledged its <i>bay'ah</i> (allegiance) to the proscribed terrorist organisation Islamic State in 2015 and its aims are consistent with those of Islamic State.</p> <p><u>Directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts</u>                      To achieve its objectives, Jemaah Anshorut Daulah continues to conduct terrorist attacks against police and civilian targets in Indonesia. Tactics employed include armed assaults, and bombings with intent to kill.</p> <p>Recent examples of terrorist attacks and actions for which Jemaah Anshorut Daulah is responsible, or can be reliably held responsible include:</p> <ul style="list-style-type: none"> <li>• 14 May 2018: a family of five conducted a suicide bombing attack at a police station in Surabaya, East Java, wounding seven. Police also raided the residence of another individual and located a further six improvised explosive devices (IEDs).</li> <li>• 13 May 2018: a family of six conducted coordinated suicide bombing attacks on three churches in Surabaya, East Java, killing 13 people and wounding over 40. An IED also detonated at the residence of a second family associated with this family.</li> <li>• 8 May 2018: individuals detained for, or convicted of terrorism offences rioted at Kelapa Dua mobile brigade (BRIMOB) headquarters detention facility in Depok, south-west of Jakarta. The incident resulted in the deaths of five Indonesian National Police (POLRI) detachment-88 (Det 88) counter-terrorism officers.</li> <li>• 11 February 2018: an extremist attacked a church congregation in Yogyakarta with a sword, wounding four civilians.</li> <li>• 31 December 2017: an extremist threw Molotov cocktails at police in Makassar.</li> </ul>

	<p>Historical attacks of note include:</p> <ul style="list-style-type: none"><li>• 24 May 2017: two suicide bombers attacked a police post in Kampung Melayu, killing three police officers.</li><li>• 14 January 2016: four people were killed and 25 wounded following an attack by a suicide bomber and gunmen in central Jakarta.</li></ul> <p>On the basis of these examples, ASIO assesses JAD is responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.</p> <p><u>Advocating or preparing the doing of terrorist acts</u></p> <p>Jemaah Anshorut Daulah has advocated the doing of terrorist acts, including:</p> <ul style="list-style-type: none"><li>• Jemaah Anshorut Daulah has directly called for terrorist attacks in Indonesia with their leader, Aman Abdurrahman, issuing a <i>fatwa</i> (directive) in early January 2016. This <i>fatwa</i> was circulated throughout the Indonesian extremist community and urged extremists to either emigrate to the Islamic State in Syria, or to conduct jihad wherever they are located, or to encourage others to conduct jihad, or to provide finances in support of others jihad.</li><li>• ASIO assesses that the use of the term 'jihad' in this context is in reference to conducting terrorist acts.</li></ul>
<b>4.</b>	<b>Details of the organisation</b> <p>Jemaah Anshorut Daulah—'Partisans of the [Islamic] State'—is aligned with Islamic State and follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and classifies those who do not agree with its interpretation as legitimate targets for attack. It opposes elected governments, seeking to remove them through violence if necessary.</p> <p>Jemaah Anshorut Daulah is the largest pro-Islamic State group in Indonesia, acting as an umbrella organisation for Islamic State supporters. Jemaah Anshorut Daulah was formed in 2015 by Abu Bakar Ba'asyir when he and his associates from al-Qa'ida aligned group Jemaah Ansharut Tauhid (JAT) pledged allegiance to Islamic State leader Abu Bakr al-Baghdadi.</p> <p>Since pledging allegiance to Islamic State, Jemaah Anshorut Daulah has conducted increasingly violent acts to achieve its goals, including suicide bombings. Given its allegiance to Islamic State, attacks conducted by Jemaah Anshorut Daulah are often claimed by Islamic State. For example, Jemaah Anshorut Daulah's attacks in Surabaya and at the Indonesian Police Mobile Brigade Headquarters prison in Jakarta during May 2018 were conducted by Jemaah Anshorut Daulah but were also claimed by Islamic State. This is similar to the 2016 Thamrin and 2017 Kampung Melayu attacks that were conducted by Jemaah Anshorut Daulah and claimed by Islamic State.</p> <p><u>Leadership</u></p> <p>Terrorism prisoner Oman Rochman (also known as Aman Abdurrahman), detained in preparation for his court case for his involvement in the 2016 Jakarta bombings, remains the emir of Jemaah Anshorut Daulah, despite his continued isolation within prison limiting his ability to communicate with his followers. Other ideologues and senior members of Jemaah Anshorut Daulah include Iman Dharmawan (also known as Rois), Zaenal Anshori and Musola Bin Rasim—all of whom have been charged for terrorism related offences in Indonesia and are currently in prison.</p> <p><u>Membership</u></p> <p>The total membership of Jemaah Anshorut Daulah is unclear. Membership is susceptible to fluctuation as members may move between extremist groups, follow other ideologues or may follow the group as</p>

individuals, aligning with the Islamic State cause without officially joining the group. The group is also a natural partner for any Indonesians wishing to travel to Syria/Iraq, deportees from the conflict zone or frustrated travellers who have been denied the opportunity to travel. Branches of Jemaah Anshorut Daulah are present across the Indonesian archipelago.

#### Recruitment and funding

Local and regional recruits are drawn to Jemaah Anshorut Daulah due to their ideological support for the organisation's objectives, including violently establishing an Islamic State under Shariah law. Terrorism activities of Jemaah Anshorut Daulah have been funded by prominent Islamic State-aligned Indonesian extremist ideologues in Syria and Iraq, including Bahrun Naim and Bahrumsyah.

#### Links to other terrorist organisations

Jemaah Anshorut Daulah is affiliated with Islamic State.

As the primary Islamic State-aligned group in Indonesia, Jemaah Anshorut Daulah is also comprised of members who now align with the Islamic State ideology but were previously aligned with other Indonesia-based Islamist extremist groups, including Jemaah Islamiyah, Jemaah Anshorut Tauhid and Mujahidin Indonesia Timur.

#### Links to Australia

At present there are no known links of security concern between Jemaah Anshorut Daulah and Australia. There have previously been links between Australians and Indonesian terrorist groups.

#### Threats to Australian interests

Jemaah Anshorut Daulah has not made statements specifically threatening Australians or Australian interests. However, given Jemaah Anshorut Daulah's use of indiscriminate tactics such as suicide bombings and the group's allegiance to Islamic State, who have an anti-western ideology, it is possible that Australia or Australian interests could be the target of or impacted by future attacks, particularly due to the considerable number of Australian interests in Indonesia.

#### Listed by the United Nations or like-minded countries

Jemaah Anshorut Daulah is listed by the United States and the United Kingdom as a terrorist organisation.

#### Engagement in peace or mediation processes

Jemaah Anshorut Daulah is not engaged in any peace or mediation processes with the Indonesian Government.

### **5. Conclusion**

On the basis of the above information, ASIO assesses that Jemaah Anshorut Daulah is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts.

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

- a) cause, or could cause, death, serious harm to persons, serious damage to property, endanger life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;
- b) are intended to have those effects;
- c) are done with the intention of advancing Jemaah Anshorut Daulah's political, religious or ideological causes;

	d) are done with the intention of intimidating the government of one or more foreign countries; and e) are done with the intention of intimidating the public or sections of the public.
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