



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

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 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

George Brandis QC
Attorney-General

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Section 1

1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2017*.

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Note: This table relates only to the provisions of this instrument as originally made.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—Islamic State Khorasan Province

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State Khorasan Province is specified.
- (2) Islamic State Khorasan Province is also known by the following names:
- Daesh-Khorasan;
 - IS-Khorasan;
 - Islamic State in the Khorasan Province;
 - Islamic State Khorasan;
 - Islamic State-Khorasan;
 - Islamic State of Iraq and al-Sham-Khorasan;
 - Islamic State of Iraq and Syria-Khorasan;
 - Islamic State of Iraq and the Levant-Khorasan;
 - Wilayat Khorasan.

EXPLANATORY STATEMENT

Select Legislative Instrument 2017 No.

Issued by the authority of the Attorney-General

Criminal Code Act 1995

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

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2017* (the Regulations) is to specify Islamic State Khorasan Province for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Islamic State Khorasan Province has not previously been specified for this purpose under the *Criminal Code*.

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 Attorney-General is satisfied on reasonable grounds that Islamic State Khorasan Province is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Attorney-General 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).

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

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

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

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

The Regulations ensure that the offences in Division 102 of the *Criminal Code* apply to conduct relating to Islamic State Khorasan Province.

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

The Regulations commence on the day registration on the Federal Register of Legislative Instruments. 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 Attorney-General’s Department (AGD). AGD also consulted the Centre for Counter-Terrorism Coordination in the Department of the Prime Minister and Cabinet and sought the advice of the AGS to inform the decision of the Attorney-General.

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 Attorney-General wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that Islamic State Khorasan Province met the legislative criteria for listing.

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

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

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2017* (the Regulations) specify Islamic State Khorasan Province for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

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

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the 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 Islamic State Khorasan Province.

Terrorist organisations, including Islamic State Khorasan Province, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act which includes the causing of serious harm to persons or death and serious damage to property.

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 Khorasan Province. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

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

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

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

General safeguards and accountability mechanisms

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

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

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code* the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) 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 the applicable disallowance period, which is 15 sitting days after the Regulation was 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 — Islamic State Khorasan Province) Regulations 2017

Section 1 – Name

This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Islamic State Khorasan Province) Regulations 2017*.

Section 2 – Commencement

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

Subsection (1) provides 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 provide that the Regulations commence the day after the instrument is registered.

The note to subsection (1) clarifies that for 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) provides 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 provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation — Islamic State Khorasan Province

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

Subsection (2) provides that Islamic State Khorasan Province is also known by the following names:

- a) Daesh Khorasan
- b) IS-Khorasan
- c) Islamic State in the Khorasan Province
- d) Islamic State Khorasan
- e) Islamic State–Khorasan
- f) Islamic State of Iraq and al-Sham–Khorasan
- g) Islamic State of Iraq and Syria–Khorasan
- h) Islamic State of Iraq and the Levant–Khorasan
- i) Wilayat Khorasan.

ATTACHMENT B

STATEMENT OF REASONS FOR ISLAMIC STATE KHORASAN PROVINCE	
<p>Also known as: Islamic State in the Khorasan Province; Islamic State Khorasan; Islamic State–Khorasan; IS-Khorasan; Islamic State of Iraq and the Levant–Khorasan; Islamic State of Iraq and Syria–Khorasan; Islamic State of Iraq and al-Sham–Khorasan; Wilayat Khorasan; Daesh Khorasan.</p>	
<p>This statement is based on publicly available information about Islamic State Khorasan Province (IS-KP). To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information.</p>	
1.	<p>Basis for listing a terrorist organisation</p> <p>Division 102 of the <i>Criminal Code</i> provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:</p> <ol style="list-style-type: none"> a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or b) advocates the doing of a terrorist act. <p>For the purposes of listing a terrorist organisation under the <i>Criminal Code</i>, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
2.	<p>Background to this listing</p> <p>The Australian Government has not previously proscribed Islamic State Khorasan Province (IS-KP) as a terrorist organisation under the <i>Criminal Code</i>.</p>
3.	<p>Terrorist activity of the organisation</p> <p><u>Objectives</u> IS-KP is an officially-recognised Islamic State (IS) affiliate that adheres to IS’s global jihadist ideology and follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those who do not agree with its interpretations as infidels and apostates. The objective of IS-KP is to establish the <i>wilayat</i> (province) of Khorasan as part of the global caliphate of IS. Khorasan is the historic name for the region encompassing present day Afghanistan, Pakistan and Central Asia.</p> <p>IS-KP has undertaken the following to advance its ideology and achieve its objectives:</p> <p><u>Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts</u> IS-KP directly engages in terrorist attacks in Afghanistan and Pakistan, including assassinations, attacks using remote detonated improvised explosive devices (IEDs), and suicide IED attacks. Attacks claimed by, or reasonably attributable to, IS-KP include:</p> <ul style="list-style-type: none"> • 16 February 2017: IS-KP claimed responsibility for a suicide bomb attack against a Sufi shrine in Sehwan, Sindh, Pakistan, that killed at least 72 worshippers and injured more than

150.

- 8 February 2017: Six local employees of the International Committee of the Red Cross were shot and killed in Qushtipa, Jowzjan, Pakistan. Pakistani authorities identified IS-KP as responsible.
- 7 February 2017: IS-KP claimed responsibility for a suicide bomb attack outside the Supreme Court of Afghanistan in Kabul that killed at least 21 people and wounded 40.
- 10 December 2016: IS-KP claimed responsibility for assassinating a Pakistani counter-terrorism officer and wounding his son in Peshawar, Pakistan.
- 21 November 2016: IS-KP claimed responsibility for a suicide bomb attack against a Shia mosque in Kabul, Afghanistan, that killed at least 30 worshippers and injured over 80.
- 12 November 2016: IS-KP claimed responsibility for a suicide attack against a Sufi shrine in Kuzdar, Balochistan, Pakistan, that killed 52 worshippers and injured more than 100.
- 20 June 2016: IS-KP claimed responsibility for a suicide bomb attack in Kabul, Afghanistan, against a convoy of Nepali security guards working for the Canadian Embassy that killed 14 guards. The Taliban issued a rival claim of responsibility for this attack.
- 23 July 2016: IS-KP claimed responsibility for a three man suicide bomb attack against an ethnic Hazara protest gathering in Kabul, Afghanistan, that killed at least 80 people and injured over 230.
- 18 April 2015: IS-KP claimed responsibility for a suicide bomb attack outside a bank in Jalalabad, Nangarhar, Afghanistan, where Afghan government staff and military personnel were collecting their salaries. At least 33 people were killed and a further 100 injured in the attack.

Advocating the doing of terrorist acts

IS-KP has publicly advocated terrorist attacks in order to further its objectives. Public statements in which IS-KP has advocated terrorist attacks include:

- June 19 2016: IS-KP released a video statement praising the perpetrator of the nightclub attack in Orlando, Florida, and urging Muslims loyal to Abu-Bakr al-Baghdadi to undertake lone actor attacks.
- 30 May 2015: IS-KP released a video statement declaring that the group's 'Caliphate' is not limited to a particular country, but will expand across the world, and that it will raise the IS flag above Jerusalem and the White House.
- 17 March 2015: IS-KP released a video statement in which its then-leader, Hafiz Saeed Khan, eulogises his deputy killed in a US airstrike and vows to 'take revenge for his blood from those disbelievers. We will give them a lesson they will not forget'.

4. Details of the organisation

In October 2014, six former senior Tehrik-e-Taliban Pakistan (TTP) members pledged allegiance to IS leader Abu Bakr al-Baghdadi. In January 2015, then-IS spokesman Abu Mohammad al-Adnani named the leaders of IS-KP.

Leadership

IS-KP's original leader, Hafiz Saeed Khan, was killed by a US Drone strike in Nangarhar in July 2016. His successor, Molve Abdul Haseeb, was publicly reported as his successor in November 2016. The central leadership comprises a Shura Council mainly made up of former TTP commanders.

Membership

A variety of authoritative sources estimate the total strength of IS-KP at between 9,000 and 11,500 members. This figure includes both fighters and support elements, with 7,000 to 8,500 members based in Afghanistan and the remainder located in Pakistan.

Recruitment and funding

IS-KP recruits primarily from disaffected former Taliban members and the relatively small number of Salafist adherents present in Afghanistan. IS-KP receives funding from overseas sympathisers via hawala networks; through its own criminal enterprises; and through direct subsidy from IS.

Links to other terrorist organisations

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

Links to Australia

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

Threats to Australian interests

No Australian citizens have been killed or injured in IS-KP attacks, nor has IS-KP specifically mentioned Australia or Australian interests as a target. However, IS-KP is formally aligned with IS, which has specifically called for attacks against Australia and Australian interests. IS-KP has called for attacks against Westerners and Western interests (which would include Australians) in Khorasan and Western countries. IS-KP has also improved its capability to conduct large-scale and complex attacks in Kabul, where Australians are most likely to be located in Afghanistan.

Listed by the United Nations or like-minded countries

The United States proscribed IS-KP as a terrorist organisation under the listing Islamic State in Iraq and the Levant-Khorasan (ISIL-K) in September 2015.

Engagement in peace or mediation processes

IS-KP is not involved in any peace or mediation processes.

5. Conclusion

On the basis of the above information, ASIO assesses that IS-KP 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, the IS-KP 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;

- | | |
|--|--|
| | <ul style="list-style-type: none">c) are done with the intention of advancing the Islamic State in Khorasan' Province's political, religious or ideological causes;d) are done with the intention of intimidating the government of one or more foreign countries; ande) are done with the intention of intimidating the public or sections of the public. |
|--|--|