



Criminal Code (Terrorist Organisation— Islamic State East Asia) 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 East Asia) 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Note: This table relates only to the provisions of this instrument as originally made.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 East Asia

- (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 East Asia is specified.
- (2) Islamic State East Asia is also known by the following names:
- (a) Ansharul Khilafah Philippines;
 - (b) Bangsamoro Islamic Freedom Fighters—Abubakar;
 - (c) Bangsamoro Islamic Freedom Fighters—Bungos;
 - (d) Dawlah Islamiyah;
 - (e) Dawlatul Islamiyah Waliyatul Masrik;
 - (f) Islamic State Lanao;
 - (g) Islamic State-Philippines;
 - (h) Islamic State Ranao;
 - (i) Jama'atu al-Muhajirin wal Ansar fil Filibin;
 - (j) Maute Group.

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 East Asia) Regulations 2017

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

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 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 East Asia 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 East Asia) Regulations 2017* (the Regulations) specify Islamic State East Asia 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 East Asia 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 East Asia.

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 East Asia.

Terrorist organisations, including Islamic State East Asia, 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 East Asia. 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 East Asia.

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 East Asia, 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 Regulation may only be made if a majority of the states and territories do not object to the Regulation 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 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 East Asia) Regulations 2017

Section 1 – Name

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

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

Section 4 – Terrorist organisation — Islamic State East Asia

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 East Asia is specified.

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

- a) Ansharul Khilafah Philippines
- b) Bangsamoro Islamic Freedom Fighters– Abubakar
- c) Bangsamoro Islamic Freefom Fighters– Bungos
- d) Dawlah Islamiyah
- e) Dawlatul Islamiyah Waliyatul Masrik
- f) Islamic State Lanao
- g) Islamic State-Philippines
- h) Islamic State Ranao
- i) Jama’atu al-Muhajirin wal Ansar fil Filibin
- j) Maute Group

ATTACHMENT B

STATEMENT OF REASONS FOR ISLAMIC STATE EAST ASIA	
Also known as: Islamic State-Philippines, Ansharul Khilafah Philippines, Bangsamoro Islamic Freedom Fighters – Bungos, Bangsamoro Islamic Freedom Fighters – Abubakar, Jama’atu al-Muhajirin wal Ansar fil Filibin, Dawlah Islamiyah, Islamic State Lanao, Islamic State Ranao, Maute Group, Dawlatul Islamiyah Waliyatul Masrik	
This statement is based on publicly available information about Islamic State East Asia. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information.	
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> <ul 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>This is the first time Islamic State East Asia has been proscribed by the Australian Government as a terrorist organisation.</p>
3.	<p>Terrorist activity of the organisation</p> <p><u>Objectives</u></p> <p>Islamic State East Asia’s primary objective is the establishment of an Islamic State under Shariah law in the Philippines. Its secondary objective is the wider imposition of Islamic rule beyond the Philippines. The Islamic State East Asia publically pledged its <i>bay’ah</i> (allegiance) to the proscribed terrorist organisation Islamic State in December 2015 and its aims are consistent with those of Islamic State. Its members are referred to as ‘soldiers of the khilafah (‘caliphate’), in Islamic State propaganda.</p> <p><u>Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts</u></p> <p>To achieve its objectives, Islamic State East Asia continues to conduct terrorist attacks against military and civilian targets in the Philippines. Tactics employed include armed assaults, murders and bombings.</p> <p>Examples of terrorist attacks and actions for which Islamic State East Asia is responsible, or can be reliably held responsible, include:</p> <ul style="list-style-type: none"> • 21 June 2017: attacking a military outpost in Pigcawayan, Cotabato Province, taking five hostages following the attack.

	<ul style="list-style-type: none"> • June 2017: executing a number of hostages in orange jumpsuits in Marawi City for being Christian, with an image of the hostages being shown in Islamic State’s propaganda magazine, <i>Rumiyah</i>. • 23 May 2017: conducting a large-scale attack in Marawi City, Philippines, where they killed a large number of security officials and civilians, raising the Islamic State flag in some locations throughout the city. Islamic State subsequently published an account of this attack in its magazine, <i>Rumiyah</i> 11. • 26 November 2016: occupying the Butig town hall and raising the Islamic State flag. • 2 September 2016: bombing a market in Davao City killing 15 and injuring 69. • 28 August 2016: attacking a prison in Marawi City, rescuing eight members of the Maute Group. • 11 April 2016: beheaded two hostages in orange jumpsuits in Lanao, Philippines, mimicking a style of murder used by Islamic State. <p><u>Advocating or preparing the doing of terrorist acts</u></p> <p>Islamic State East Asia has advocated the doing of terrorist acts, including:</p> <ul style="list-style-type: none"> • A public statement on 28 June 2017, by an unidentified individual, likely an Islamic State East Asia member, on a pro-Islamic State chat group who said that Islamic State East Asia members across the Philippines should hunt down (kill) those who had abandoned Islam. • A public statement published on 8 June 2017, where Islamic State East Asia leader Isnilon Hapilon stated that Islamic State in East Asia had established a separate Islamic State and encouraged further individuals to travel to take part in the armed conflict against the ‘crusader’ Philippine Government. • On 5 May 2017, Islamic State East Asia used Islamic State’s <i>Amaq</i> media distribution wing to post a photo report from “Abu Anas al-Muhajir Camp” which showed fighters at a training camp conducting target practice and small weaponry drills. • On 21 June 2016, Islamic State East Asia with the assistance of Islamic State, released a 21 minute video titled Solid Structure, which featured footage of South East Asian foreign fighters affiliated with Islamic State in Syria and Iraq. These individuals encouraged the murders of ‘polytheists and apostates’ and encouraged the overthrow of ‘tyrant’ governments of Indonesia, Malaysia, Thailand and the Philippines.
4.	<p>Details of the organisation</p> <p>Islamic State East Asia is affiliated with Islamic State and it follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those who do not agree with its interpretation as infidels and crusaders. It opposes elected governments, seeking to remove them through violence if necessary.</p> <p>Islamic State East Asia is comprised of a number of violent extremist organisations, who have pledged allegiance to Islamic State and merged under the Islamic State East Asia banner. It is comprised of members of extremist organisations including the Maute Group, a faction of the Bangsamoro Islamic Freedom Fighters under Esmail Abubakar (AKA Commander Bungos), Ansharul Khilafah Philippines, Dawlatul Islamiyah Waliyatul Masrik and Jama’atu al-Muhajirin wal Ansar fil Filibin. All of these groups adhere to a violent jihadist ideology that predated Islamic State’s</p>

existence. All of these groups previously publically pledged allegiance together to Islamic State in December 2015, and have since undertaken terrorist acts that Islamic State claimed responsibility for.

Since undertaking bay'ah to Islamic State, these groups have conducted increasingly violent acts to achieve its goals, including beheadings that mimic those conducted by Islamic State in Syria and Iraq. This culminated with the large-scale attack on Marawi City on 23 May 2017, conducted under the name Islamic State East Asia. Based on Isnlon Hapilon's move from Basilan Province to Lanao del Sur Province in January 2017, Marawi city's description as an Islamic city and the group's reconnaissance of Marawi it is likely their objective was to overthrow, by force or violence, the Philippine Government presence in Marawi and replace it through the declaration of a caliphate.

Leadership

The leader of Islamic State East Asia is Isnlon Hapilon (AKA Abu Abdallah, Abu Abdillah al-Muhajir). While Hapilon has been named by Islamic State as the group's leader, a number of other individuals such as Abdullah Maute, Omar Maute, Amin Baco, Esmail Abubakar (AKA Commander Bungos) and Mahmud bin Ahmad also hold senior leadership positions in Islamic State East Asia. This has resulted in a centralised leadership structure, which retains its allegiance to Islamic State and shares its ideology and objectives.

Membership

Islamic State East Asia total membership is uncertain, but is estimated to be upwards of 300 individuals. This number could fluctuate quickly, as Islamic State East Asia members could be recruited quickly from other militant groups. While most members are native to Western Mindanao and Sulu Archipelago, there are also members from other parts of the Philippines, as well as Indonesia and Malaysia.

Recruitment and funding

Islamic State East Asia exploits poor economic and social conditions in the Philippines, particularly Mindanao and neighbouring regions to attract members. Local and regional recruits are drawn by Islamic State East Asia's ability to provide economic prospects for its members and to avoid persecution by the group. Some individuals have also joined due to their ideological support for the organisation's objectives, including violently establishing an Islamic State under Shariah law.

Islamic State has provided money to Islamic State East Asia to fund its terrorist activities, including money which was used to fund the attack on Marawi City on 23 May 2017.

Links to other terrorist organisations

Islamic State East Asia is affiliated with Islamic State.

Islamic State East Asia is comprised of members who were previously aligned with other Islamist extremist groups, including Maute Group, Bangsamoro Islamic Freedom Fighters, Ansharul Khilafah Philippines, Dawlatul Islamiyah Waliyatul Masrik and Jama'atu al-Muhajirin wal Ansar fil Filibin.

Links to Australia

While there are no known links between Islamic State East Asia and Australia, there have previously been links between Australians and terrorist groups in the Philippines.

	<p><u>Threats to Australian interests</u></p> <p>Islamic State East Asia has not made statements specifically threatening Australians or Australian interests; however, the group has issued statements threatening Westerners and Western interests in general. It is probable Australians could be harmed in the group's future attacks, due to the considerable Australian business interests and the number of Australian travellers in the Philippines.</p> <p><u>Listed by the United Nations or like-minded countries</u></p> <p>Islamic State East Asia is not listed by the United Nations or like-minded countries.</p> <p><u>Engagement in peace or mediation processes</u></p> <p>Islamic State East Asia is not engaged in any peace or mediation processes with the Philippine Government.</p>
5.	<p>Conclusion</p> <p>On the basis of the above information, ASIO assesses that Islamic State East Asia is 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.</p> <p>In the course of pursuing its objectives, Islamic State East Asia is known to have committed or threatened actions that:</p> <ol style="list-style-type: none">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 Islamic State East Asia's political, religious or ideological causes;are done with the intention of intimidating the government of one or more foreign countries; andare done with the intention of intimidating the public or sections of the public.