

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulations 2018*

The purpose of the *Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulations 2018* (the Regulations) is to specify Islamic Movement of Uzbekistan for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup> The Islamic Movement of Uzbekistan is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Islamic Movement of Uzbekistan) Regulation 2015*, which is repealed by the Regulations. 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 the Islamic Movement of Uzbekistan 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

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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.

- 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* continue to apply to conduct relating to the Islamic Movement of Uzbekistan. Regulations specifying Islamic Movement of Uzbekistan as a terrorist organisation have been in effect since 2003.

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, Attorney-General’s Department 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 Islamic Movement of Uzbekistan 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—Islamic Movement of Uzbekistan) Regulations 2018* (the Regulations) specifies Islamic Movement of Uzbekistan 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 Movement of Uzbekistan 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 Movement of Uzbekistan.

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 Movement of Uzbekistan.

Terrorist organisations, including Islamic Movement of Uzbekistan, 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 (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 Islamic Movement of Uzbekistan. 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 Movement of Uzbekistan.

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 Movement of Uzbekistan, 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.

**Details of the Criminal Code (Terrorist Organisation — Islamic Movement of Uzbekistan) Regulations 2018**

**Section 1 – Name**

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation — Islamic Movement of Uzbekistan) 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 – Schedules**

This section would provide each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule has effect according to its terms. Schedule 1 to the instrument would repeal the whole of the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015*.

**Section 5 – Terrorist organisation — Islamic Movement of Uzbekistan**

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 Islamic Movement of Uzbekistan is specified.

Subsection (2) would provide that Islamic Movement of Uzbekistan is also known by the following names:

- a) IMU
- b) Islamic Movement of Turkestan

c) Islamic Party of Turkestan

Schedule 1—Repeals

Schedule 1 would provide that *Criminal Code (Terrorist Organisation — Islamic Movement of Uzbekistan) Regulation 2015* is repealed.

The *Criminal Code (Terrorist Organisation — Islamic Movement of Uzbekistan) Regulation 2015* specifies Islamic Movement of Uzbekistan 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*. The proposed clause would ensure there is no duplication where the new Regulations are made before the current Regulation ceases to have effect.



## ATTACHMENT B

### STATEMENT OF REASONS FOR ISLAMIC MOVEMENT OF UZBEKISTAN

Also known as: IMU, Islamic Movement of Turkestan, Islamic Party of Turkestan

This statement is based on publicly available information about the Islamic Movement of Uzbekistan (IMU). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.

#### **1. Basis for listing a terrorist organisation**

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

- 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.

For the purposes of listing a terrorist organisation under the *Criminal Code*, 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.

#### **2. Background to this listing**

The Australian Government first proscribed the IMU as a terrorist organisation under the *Criminal Code* on 11 April 2003. The IMU was re-listed on 11 April 2005, 31 March 2007, 14 March, 2009, 14 March 2012 and 3 March 2015.

#### **3. Terrorist activity of the organisation**

##### Objectives

The IMU's stated goals are the 'establishment of an Islamic state with the application of the Shariah' in Uzbekistan.

The IMU has undertaken the following to advance its ideology and achieve its objectives:

##### Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts

The IMU is directly engaged in the doing of terrorist acts. Significant attacks for which responsibility has been claimed by, or attributed to, the IMU include:

- Throughout 2016, IMU fighters conducted attacks against Afghan security forces in Kunduz Province, Afghanistan.
- 30 March 2015: IMU released a video showing two of its fighters executing an Afghan soldier, who was one of 30 people IMU took hostage in February 2015.
- 8 June 2014: the attack at Jinnah International Airport, Karachi, Pakistan, which killed 36 including the 10 attackers. IMU claimed responsibility for the attack and later released a video that showed the 10 IMU fighters training to conduct the attack.

- 18 October 2013: a suicide bomb attack was conducted near Bagram Air Base, Parwan Province, Afghanistan, targeting an International Security Assistance Force (ISAF) convoy. The IMU claimed responsibility for the attack;
- 29 May 2013: in concert with the Taliban, the IMU attacked the Governor’s compound in Panjshir Province, Afghanistan. Two of the attackers and a policeman died in the attack;
- 12 May 2013: the director of the Police Department in Quetta, Pakistan, was murdered in an IMU suicide attack; and
- 5 April 2012: IMU fighters attacked Bannu Prison, Pakistan, freeing 384 prisoners—20 of which were described by a Pakistani government spokesman as “very dangerous”.

The IMU has indirectly fostered the doing of terrorist acts by releasing propaganda material of its militant activities through its media wing Jundallah Studio, which has produced and released propaganda video and audio statements.

- On 30 March 2015, IMU released a video two of its soldiers executing an Afghan soldier and demanding the release of their comrades from jail.
- On 12 February 2014, the IMU released a 32 minute video featuring scenes from Mir Ali, North Waziristan, filmed in December 2013, depicting IMU and other jihadi factions attacking Pakistani government forces.
- On 26 June 2012, the IMU released a video of two female fighters calling on Muslims to conduct terrorist acts and urging women to marry fighters and to prepare their children to undertake violent extremist activities.

#### 4. Details of the organisation

##### Leadership

The former chief and co-founder of the IMU, Tahir Yuldashev, was killed in a US drone strike in South Waziristan, Pakistan, on 27 August 2009. Yuldashev’s death was confirmed by the IMU in August 2010. His successor Usmon Odil, a long-time associate of Yuldashev was in turn killed by a US drone strike in North Waziristan on 29 April 2012. Odil’s death was confirmed by the IMU in August 2012. Odil was replaced by his deputy Usman Ghazi. Ghazi was killed by Taliban forces in December 2015. No replacement leader has been publicly named.

##### Membership

In December 2015, following the announcement by then-IMU leader Usman Ghazi that IMU had pledged allegiance to Islamic State, the Taliban conducted attacks on IMU cadres in Zabul Province, southern Afghanistan, killing approximately 90% of IMU fighters in the region.

It is estimated that, despite these losses, the IMU maintains 200–300 fighters—including foreign fighters from Africa, Pakistan, the Philippines, Bangladesh, China, Uzbekistan and Tajikistan—in the northern provinces of Afghanistan and fighting alongside Islamic State Khorasan Province (IS-KP).

##### Recruitment and funding

IMU members have previously fought alongside the Taliban, al-Qa’ida, and the Tehrik-e-Taliban Pakistan (TTP), and currently fight alongside IS-KP, against Coalition and Afghan government forces in Afghanistan and Pakistani forces in Pakistan. The Ferghana Valley, where the Uzbek, Kyrgyz and Tajik borders converge, has been a fertile recruiting ground for the IMU, which successfully

exploited the widespread poverty in the region in its recruitment strategy.

IMU's ability to draw recruits has increased following their allegiance with Islamic State. IMU also undertakes recruitment in Sar-e-Pul Province, northern Afghanistan and maintains training bases in Sar-e-Pul and Samangan Provinces.

The IMU has generated funds through drug trafficking, racketeering and solicitation of donations abroad. In May 2008, French, German and Dutch authorities detained ten individuals suspected of running a network to funnel money to the IMU in Uzbekistan, Afghanistan and Pakistan. On 8 January 2013, a French Court sentenced a Turkish/Dutch national, Irfan Demirtas, to eight years' incarceration for leading the network which French prosecutors said had raised at least 300 000 Euros, with 170 000 Euros specifically designated for jihad. Eight others belonging to the group received lesser sentences.

#### Links to other terrorist organisations

In August 2015 IMU pledged allegiance to Islamic State and is aligned to IS-KP and former elements of the TTP. The IMU previously had close historical ties with al-Qa'ida, the Taliban and other militant groups in the Afghanistan/Pakistan theatre and conducted operations with these groups against coalition forces between 2001 and 2015. The IMU may repair relations with such groups in the future.

IMU has enduring links with Afghanistan-based extremist group Jundullah, an armed militant group located in northern Afghanistan that splintered from the IMU in 2009. Jundullah shares the same objectives as the IMU and is sympathetic to its cause due to historical and ethnic ties; however, the full extent of these ties is unknown.

#### Links to Australia

There are no known direct links between the IMU and Australia.

#### Threats to Australian interests

The IMU has not directly threatened Australian interests. However, given its anti-Western ideology and alignment to IS-KP, IMU would consider Westerners—including Australians—to be legitimate targets for attack. Further, given the sometimes indiscriminate nature of IMU attacks and its disregard for loss of life, Australians could be caught up in IMU attacks directed at others in Afghanistan and Pakistan.

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

The IMU has been listed in the United Nations 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of the United Kingdom, United States and Canada.

#### Engagement in peace or mediation processes

The IMU is not involved in any peace or mediation processes.

**5. Conclusion**

On the basis of the above information, ASIO assesses that the IMU continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

In the course of pursuing its objectives, the IMU 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 the IMU'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.