

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019* (the Regulations) is to specify Islamic State Sinai 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 Sinai Province is currently specified for this purpose by the *Criminal Code (Terrorist Organisation— Islamic State Sinai Province) Regulation 2016*, which is repealed by the Regulations.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*, which prescribes offences against humanity and related offences, and dangers to the community and national infrastructure.

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 Islamic State Sinai 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 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:

- (a) directing the activities of a terrorist organisation

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

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

- (b) being a member of a terrorist organisation
- (c) recruiting persons to a terrorist organisation
- (d) receiving training from, providing training to or participating in training with a terrorist organisation
- (e) getting funds to, from or for a terrorist organisation
- (f) providing support to a terrorist organisation, and
- (g) 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 Islamic State Sinai Province. Regulations specifying Islamic State Sinai Province as a terrorist organisation have been in effect since 2016.

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

The Regulations commence on 29 November 2019. 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 Islamic State Sinai 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 timeframe 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 timeframe nominated by the Minister.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2019* (the Regulations) specifies Islamic State Sinai 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 Sinai 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 Sinai 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 Sinai Province.

Terrorist organisations, including Islamic State Sinai 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 (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):

- (a) 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 Sinai 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 Sinai 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 Sinai 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 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 State Sinai Province) Regulations 2019

Section 1 – Name

- This section provides that the title of the Regulations is the *Error! Use the Home tab to apply ShortT to the text that you want to appear here.*

Section 2 – Commencement

- This section provides for the commencement of each paragraph in the instrument, as set out in the table.
- Subsection 2(1) provides that each provision in the instrument, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence on 29 November 2019.
- The note to subsection 2(1) clarifies that the table only relates to the provisions of this instrument as originally made, and will not be amended to deal with any subsequent amendments to the instrument.
- Subsection 2(2) provides that the 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 version of these Regulations.

Section 3 – Authority

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

Section 4 – Schedules

- This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule has effect according to its terms.
- Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulations 2016*.

Section 5 – Terrorist organisation—Islamic State Sinai Province

- Subsection 5(1) provides that for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic State Sinai Province is specified.

- The effect of specifying Islamic State Sinai Province as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Islamic State Sinai Province.
- Subsection 5(2) provides a list of names that Islamic State Sinai Province is also known as:
 - Aknaf Bayt al-Maqdis;
 - Aknaf Beit al-Maqdis;
 - Ansar Bayt al-Maqdes;
 - Ansar Bayt al-Maqdis (ABM);
 - Ansar Beit al-Maqdis;
 - Ansar Jerusalem;
 - ISIL-Sinai;
 - ISIL Sinai Province;
 - ISIS-Sinai;
 - ISIS-SP;
 - Islamic State in the Sinai;
 - Islamic State of Iraq and ash-Sham-Sinai;
 - Islamic State of Iraq and Syria Sinai Province;
 - Islamic State of Iraq and the Levant-Sinai;
 - Islamic State of Iraq and the Levant-Sinai Province;
 - Islamic State-Sinai Province;
 - IS-Sinai;
 - Jamaat Ansar Beit al-Maqdis;
 - Jamaat Ansar Beit al-Maqdis fi Sinaa;
 - Sinai Province;
 - Supporters of Jerusalem;
 - Supporters of the Holy Place;
 - The State of Sinai;
 - Wilayat Sinai.

Schedule 1 — Repeals

- Clause 1 of Schedule 1 repeals the *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulation 2016*.
- The *Criminal Code (Terrorist Organisation—Islamic State Sinai Province) Regulation 2016* specifies Islamic State Sinai Province as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. Clause 1 of Schedule 1 ensures 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 STATE SINAI PROVINCE

Also known as: **Islamic State of Iraq and the Levant-Sinai Province; Islamic State of Iraq and the Levant-Sinai; Islamic State of Iraq and ash-Sham – Sinai; Islamic State of Iraq and Syria Sinai Province; ISIL Sinai Province; Islamic State-Sinai Province; Islamic State in the Sinai; Wilayat Sinai; The State of Sinai; IS-Sinai; ISIS-Sinai; ISIS-SP; ISIL-Sinai; Sinai Province; Ansar Bayt al-Maqdis (ABM); Ansar Beit al-Maqdis; Ansar Bayt al-Maqdes; Aknaf Bayt al-Maqdis; Aknaf Beit al-Maqdis; Ansar Jerusalem; Supporters of Jerusalem; Jamaat Ansar Beit al-Maqdis; Jamaat Ansar Beit al-Maqdis fi Sinaa; Supporters of the Holy Place.**

This statement is based on publicly available information about Islamic State Sinai Province (IS-Sinai). 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 Act 1995* provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

2. Background to this listing

The Australian Government first proscribed IS-Sinai as a terrorist organisation under the *Criminal Code* on 28 November 2016.

3. Terrorist activity of the organisation (legislative requirements for listing)

Objectives

IS-Sinai is an officially-recognised Islamic State affiliate that adheres to the ISIL's global jihadist ideology and follows an extreme interpretation of Islam which is anti-Western, promotes sectarian violence and targets those that do not agree with its interpretations as infidels and apostates. IS-Sinai seeks to assist Islamic State establish an Islamic caliphate covering historic greater Syria (Iraq, Syria and other parts of the Levant). Islamic State has tasked IS-Sinai to help establish the caliphate in Egypt's Sinai and, over the longer-term, historic Palestine (Israel and the Palestinian Territories).

IS-Sinai 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

IS-Sinai directly engages in terrorist attacks and assassinations inside Egypt. IS-Sinai primarily targets Egyptian security forces, but has also targeted Israeli and Western interests. Attacks IS-Sinai has claimed responsibility for and is assessed to have undertaken include:

- 16 February 2019: IS-Sinai claimed responsibility for an attack against an Egyptian military barracks at al-Arish airport in the Sinai. The claim stated the group had killed 20 soldiers and included pictures from the clash, and of the victims.

- 14 April 2018: IS-Sinai claimed a suicide attack on an Egyptian military base in the central Sinai region, which killed at least eight soldiers, and wounded 15 others.
 - 26 August 2018: IS-Sinai claimed responsibility for an attack on a police checkpoint in northern Sinai, which likely killed at least four police officers.
 - 16 October 2017: IS-Sinai claimed to have conducted raids on military outposts in northern Sinai, and fired rockets at the Eshkol Complex in southern Israel, the previous day. Six Egyptian soldiers were killed, and at least 20 were injured.
 - 19 December 2017: IS-Sinai claimed a missile attack on al-Arish airport, targeting the Egyptian Defence and Interior Ministers. The attack killed one soldier, and damaged a helicopter.
 - 31 October 2015: IS-Sinai claimed responsibility for bombing of Russian Metrojet flight 9268, which exploded over the Sinai Peninsula, killing all 224 passengers and crew. IS-Sinai published pictures of an IED hidden in a can of soft drink which it claims brought down the plane.
- Further attacks for which IS-Sinai have not claimed responsibility but are assessed to have undertaken include:
- 24 November 2017: more than two dozen militants killed at least 305 people, and injured over 128, in an attack on the Al Rawdah mosque in Egypt's Sinai region. Militants detonated an improvised explosive device (IED) and shot at fleeing worshippers and ambulances. The mosque, located about 40 kilometres west of al-Arish, was frequented by Sufis. IS-Sinai was likely responsible for the attack, and Egyptian officials said the attackers carried ISIL flags.

4. Details of the organisation

IS-Sinai is a Sunni Islamist extremist group located in the Sinai Peninsula in Egypt. On 9 November 2014, Egypt-based extremist group Ansar Bayt al-Maqdis (ABM) pledged allegiance to the ISIL and its leader, Abu Bakr al Baghdadi. Following the pledge, the group adopted the name IS-Sinai and became a recognised ISIL affiliate.

Before pledging allegiance to ISIL, ABM mainly carried out attacks against Israeli and Egyptian Government interests, including Egypt's tourism industry. Since becoming an affiliate of Islamic State, IS-Sinai has also conducted attacks against Western and sectarian interests.

Leadership

Details of IS-Sinai's leadership structure are unclear. It is likely that some legacy members of the ABM leadership remain; however, a number of key members have been killed since that time:

- October 2018: the Islamic State announced the death of one of its Sinai-based leaders, Abu Hamza al Maqdisi, reportedly in charge of planning and training.
- In August 2016, the Egyptian military reported it had killed the IS-Sinai leader, Abu Du'a al-Ansari, in an airstrike.
- In November 2015, the Egyptian Interior Ministry reported security forces had killed Ashraf Ali Hassanein al-Gharabli, IS-Sinai's leader in Cairo.

It is likely IS-Sinai has a similar leadership structure to the Islamic State in Iraq and Syria, with an overall leader and a number of provincial or regional cells.

Membership

The majority of IS-Sinai members are Egyptian nationals, including from the marginalised, and underdeveloped North Sinai—many of whom are likely former members of ABM. The group also

likely comprises members from across mainland Egypt, and a number of foreigners including Palestinians.

Estimates from 2017 put the group's numbers at approximately 800-1200; however, Egyptian counter-terrorism operation 'Sinai 2018' may have reduced that number.

Recruitment and funding

IS-Sinai uses domestic issues in Egypt, propaganda, and its terrorist record to attract recruits. In the Sinai, the demilitarisation of the region following the 1979 Israel-Egypt Peace Treaty, difficult economic conditions and a perception of neglect from the mainland influences IS-Sinai recruitment.

IS-Sinai likely relies on income from its smuggling operations to and from northern Africa and the Gaza Strip, and other criminal enterprises, to fund terrorist operations. In addition, as a recognised affiliate, IS-Sinai likely receives some funding from Islamic State in Syria and Iraq.

Links to other terrorist organisations

IS-Sinai has had a fractious relationship with Hamas elements in Gaza. Previously the group is understood to have had engagement based on familial links, cross-border pragmatism, common interests, and arms smuggling; however, the relationship deteriorated on both sides, and in January 2018, ISIL-Sinai released a video which showed the execution of a member accused of smuggling weapons to Hamas' Izz al-Din al-Qassam Brigades.

Links to Australia

There are no known direct links between Islamic State-Sinai and Australia.

Threats to Australian interests

IS-Sinai has not made any explicit statements specifically threatening Australians or Australian interests. However, the group views the West, and the United States in particular, as supporters of Israel and Egypt and expresses anti-Western sentiment in its rhetoric.

Listed by the United Nations or like-minded countries

IS-Sinai is listed as a terrorist organisation by the governments of the US and Canada, and in New Zealand is a designated terrorist group pursuant to United Nations UNSC resolution 1373. It is also listed under its former name, ABM, by the government of the United Kingdom. The Islamic State, or, Islamic State of Iraq and the Levant, is listed under the United Nations Security Council resolution 2253 (2015) which expands on the United Nations Security Council resolution 1267 (1999) Sanctions Committee's consolidated list.

Engagement in peace or mediation processes

IS-Sinai is not engaged in any peace talks with the Egyptian Government.

5. Conclusion

On the basis of the above information, ASIO assesses that IS-Sinai is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts involving threats to human life and serious damage to property.

In the course of pursuing its objectives, IS-Sinai is known to have committed or threatened actions that:

- a) cause, or could cause, death, serious harm to persons, serious damage to property, endangered 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 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.