

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020

The purpose of the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020* (the Regulations) is to specify Islamic State for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Islamic State is currently specified for this purpose by the *Criminal Code (Terrorist Organisation— Islamic State) Regulation 2017*, which is repealed by the Regulations.

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 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 unclassified information (Statement of Reasons) provided by the Australian Security Intelligence Organisation ([Attachment C](#)).

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* continue to apply to conduct relating to Islamic State. Regulations specifying Islamic State as a terrorist organisation, including under previous names, have been in effect since 2005.

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

The Regulations commence on 1 July 2020. 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.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

The Department of Home Affairs sought the advice of the AGS in relation to the unclassified information (Statement of Reasons) provided by the Australian Security Intelligence Organisation.

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 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

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020* (the Regulations) specify Islamic State 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 that Islamic State is 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.

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 offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Islamic State as a listed terrorist organisation.

Terrorist organisations, including Islamic State, 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 an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

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. 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.

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, 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 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003* and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations.

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 are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Peter Dutton MP
Minister for Home Affairs

Details of the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020*

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2020*

Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the proposed Regulations, as specified in column 1 of the table, would commence 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 proposed Regulations commence on 1 July 2020.
4. The note to subsection 2(1) would clarify 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 proposed Regulations.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

Section 3 – Authority

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

Section 4 – Schedules

7. This section would provide 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.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2017*.

Section 5 – Terrorist organisation—Islamic State

9. Subsection 5(1) would provide 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 is specified.

10. The effect of specifying Islamic State 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.
11. Subsection 5(2) provides a list of 31 names that Islamic State is also known as:
- (a) Al-Qa'ida in Iraq (paragraph (a))
 - (b) Al-Qa'ida in Iraq – Zarqawi (paragraph (b))
 - (c) Al-Qa'ida of Jihad in the Land of the Two Rivers (paragraph (c))
 - (d) Al-Qa'ida of Jihad Organization in the Land of the Two Rivers (paragraph (d))
 - (e) Al-Tawhid (paragraph (e))
 - (f) Al-Tawhid and al-Jihad (paragraph (f))
 - (g) Brigades of Tawhid (paragraph (g))
 - (h) Islamic State of Iraq (paragraph (h))
 - (i) Dawla al-Islamiya (paragraph (i))
 - (j) Dawla al-Islamiya fi al-Iraq wa as-Sham (paragraph (j))
 - (k) Islamic State of Iraq and al-Sham (paragraph (k))
 - (l) Jama'at al-Tawhid wa'al-Jihad (paragraph (l))
 - (m) Kateab al-Tawhid (paragraph (m))
 - (n) Mujahidin Shura Council (paragraph (n))
 - (o) Qaida of the Jihad in the Land of the Two Rivers (paragraph (o))
 - (p) Tanzeem Qa'idat al Jihad Bilad al Raafidaini (paragraph (p))
 - (q) Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (paragraph (q))
 - (r) The al-Zarqawi network (paragraph (r))
 - (s) The Islamic State of Iraq and the Levant (paragraph (s))
 - (t) The Islamic State of Iraq and al-Sham (paragraph (t))
 - (u) The Islamic State of Iraq and Syria (paragraph (u))
 - (v) The Islamic Caliphate (paragraph (v))
 - (w) The Islamic Caliphate State (paragraph (w))
 - (x) The Islamic State of Iraq and Greater Syria (paragraph (x))
 - (y) The Monotheism and Jihad Group (paragraph (y))
 - (z) The Organisation Base of Jihad Country of the Two Rivers (paragraph (z))
 - (za) The Organisation Base of Jihad Mesopotamia (paragraph (za))
 - (zb) The Organisation of Jihad's Base in the Country of the Two Rivers (paragraph (zb))
 - (zc) Unity and Holy Struggle (paragraph (zc))
 - (zd) Unity and Holy War (paragraph (zd)), and
 - (ze) Unity and Jihad Group (paragraph (ze)).

Schedule 1— Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Islamic State) Regulations 2017* (the Current Regulations).

13. The Current Regulations specify Islamic State 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*, commencing on 1 July 2017. Pursuant to subsection 102.1(3) of the *Criminal Code*, 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. Clause 1 of Schedule 1 ensures there is no duplication where the proposed Regulations are made before the Current Regulations cease to have effect.

STATEMENT OF REASONS FOR ISLAMIC STATE

Also known as: Al-Qa'ida in Iraq; Al-Qa'ida in Iraq – Zarqawi; Al-Qa'ida of Jihad in the Land of the Two Rivers; Al-Qa'ida of Jihad Organization in the Land of the Two Rivers; Al-Tawhid; Al-Tawhid and al-Jihad; Brigades of Tawhid; Islamic State of Iraq; Dawla al-Islamiya; Dawla al-Islamiya fi al-Iraq wa as-Sham; Islamic State of Iraq and al-Sham; Jama'at al-Tawhid wa'al-Jihad; Kateab al-Tawhid; Mujahidin Shura Council; Qaida of the Jihad in the Land of the Two Rivers; Tanzeem Qa'idat al Jihad Bilad al Raafidaini; Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn; The al-Zarqawi network; The Islamic State of Iraq and the Levant; The Islamic State of Iraq and al-Sham; The Islamic State of Iraq and Syria; The Islamic Caliphate; The Islamic Caliphate State; The Islamic State of Iraq and Greater Syria; The Monotheism and Jihad Group; The Organisation Base of Jihad Country of the Two Rivers; The Organisation Base of Jihad Mesopotamia; The Organisation of Jihad's Base in the Country of the Two Rivers; Unity and Holy Struggle; Unity and Holy War; Unity and Jihad Group.

This statement is based on publicly available information about Islamic State. 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 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 first listing of this group for proscription purposes was under the Arabic name it formerly used, *Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn*, in 2005. The group was re-listed under this name on 17 February 2007.

The group was formerly listed as al-Qa'ida in Iraq on 1 November 2008; and re-listed on 29 October 2010 and 12 July 2013.

The group was formerly listed as Islamic State of Iraq and the Levant (ISIL) on 14 December 2013.

On 11 July 2014, the group was listed as Islamic State to reflect the expansion of its operating area and its announcement of an Islamic caliphate on 29 June 2014. The group was relisted as Islamic State on 1 July 2017. This statement has been prepared to support its continued listing.

3. Terrorist activity of the organisation

Objectives

Islamic State is an Iraq and Syria-based Sunni extremist group and former al-Qa'ida affiliate that adheres to a global jihadist ideology. Islamic State 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. Islamic State's announcement of a caliphate claimed the

land from Aleppo in Syria to Diyala in Iraq, the Sunni-dominated areas of both countries. It aims to establish a Salafist-orientated Islamist state spanning Iraq, Syria and other parts of the Levant. Islamic State has also accepted pledges of allegiance from a number of like-minded groups elsewhere in the world to further its influence globally.

Since the group's formation, Islamic State focussed on capturing and consolidating its control over areas of Iraq and Syria by stoking sectarian tensions between, and within, Sunni and Shia—capitalising on Sunni disenfranchisement. By late 2015, Islamic State had captured significant territory in Iraq and Syria. In Iraq, the group controlled Fallujah in Anbar Province and most of Ninewa Province, including Mosul, Iraq's second largest city. In Syria, Islamic State controlled the cities of Raqqah, Dayr az-Zawr, and Palmyra.

Since its loss of territory in Iraq and Syria in March 2019, Islamic State has reverted to a clandestine insurgency in these countries and retains the allegiance of like-minded groups elsewhere in the world.

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

Despite no longer controlling territory in Iraq and Syria, Islamic State remains one of the world's deadliest and most active terrorist organisations, conducting regular attacks on security forces and civilians. Islamic State also inspires, encourages, enables and directs attacks internationally; ranging from low-capability attacks with knives, vehicles or small arms through to complex, coordinated mixed-mode attacks with firearms and explosives. Its attacks often aim to maximise casualties and publicity by targeting crowds and gatherings at festivals and religious events; choosing targets such as churches, nightclubs, music venues and national commemorations for symbolic value. Islamic State also targets police and military personnel, both within and outside Iraq and Syria. Furthermore, the group incites and conducts violence against Muslims and non-Muslim religious minorities within the region and globally.

Islamic State's operations in Iraq and Syria consist of terrorist attacks including arson, bombings, suicide bombings, suicide car bombs, armed attacks including sniper attacks and hit and run attacks using bombs and firearms.

In Iraq, attacks are mostly in the provinces to the north and west. Attacks in the Kurdish-majority northern provinces and the Shia-majority provinces in the south are less common but do occur. Islamic State's primary targets in Iraq are security forces, Shia civilians in public areas, including cafes, mosques and markets, political figures, community and tribal leaders and anti-Islamic State militias. By attacking these targets, the group hopes to undermine security force efforts to contain the group, destroy public confidence in the security forces and provoke a widespread revolt against the government.

In Syria, attacks are predominately against the Syrian regime of Bashar al-Assad and the Kurdish Syrian Democratic Forces, but Islamic State also attacks some other Syrian armed opposition groups, which it considers apostates and infidels as well as on occasion directly targeting civilians. Islamic State has targeted Turkish forces, Turkish, Kurdish and Shia militants in northern Syria, Syrian refugees and Kurdish organisations in Turkey. The group has also targeted US forces present

in Syria. In the Middle East, Islamic State has conducted a range of attacks in Egypt, Lebanon, Jordan and Saudi Arabia and also threatened attacks against the Governments of Turkey and Saudi Arabia.

Significant attacks for which Islamic State has claimed responsibility and is assessed to have undertaken since the group was last proscribed (in July 2017) include:

- In a video message released by Islamic State’s media arm al-Furqan on 29 April 2019, Islamic State’s now deceased leader, Abu Bakr al-Baghdadi, praised the Easter bombings in Sri Lanka and labelled them as revenge for operations against the Islamic State in Baghouz.
- Islamic State claimed responsibility for a Roman Catholic church bombing in the Philippines on 27 January 2019 that killed at least 20 people.
- Islamic State claimed responsibility for the shooting and stabbing attack at the Strasbourg Christmas market on 11 December 2018 that killed five people and injured at least 11 others. Media reporting indicated the perpetrator had recorded a video pledging allegiance to ISIL.
- Islamic State claimed responsibility for a knife attack in Paris on 12 May 2018 that killed one person and injured a dozen more. Islamic State later published a video reportedly showing the perpetrator pledging allegiance to ISIL.

Advocating the doing of terrorist acts

Since the group was last proscribed, several media statements have been issued by the group’s official media arm, al-Furqan, that advocate the doing of terrorist acts, including:

- On 27 January 2020, in an audio message, Islamic State spokesman Abu Hamza al-Qurayshi stated the group was expanding its war across the globe and instructed sympathisers to attack Jewish communities, particularly in Israel and Palestine.
- On 29 April 2019, in a video message, Islamic State leader, Abu Bakr al-Baghdadi encouraged sympathisers to intensify attacks globally.
- On 17 September 2019, in an audio message Abu Bakr al-Baghdadi stated Islamic State continued to conduct daily operations and urged supporters to free Islamic State members held in prisons and internally displaced person camps in Syria by ‘destroy[ing] the gates that imprison them’, insinuating a call to conduct violent attacks to free Islamic State fighters who are likely to re-engage in terrorist acts of behalf of the group if released.
- On 31 October 2019, Islamic State, urged followers to conduct revenge attacks in retaliation for the death of its leader.
- On 9 November 2018, via its Amaq news agency, Islamic State praised a knife attack in Melbourne in which two men died (including the perpetrator) and two were wounded, and claimed the attack was carried out by one of its fighters.

4. Details of the organisation

Islamic State is an Iraq and Syria-based Sunni extremist group and former al-Qa’ida affiliate that adheres to a global jihadist ideology. Islamic State 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.

The group became an al-Qa'ida affiliate in October 2004 when its former leader, Abu Musab al-Zarqawi, pledged allegiance to Usama bin Laden. In late 2011, the group established operations in Syria through its former subordinate organisation, Jabhat al-Nusra (now known as Jabhat Fatah al-Sham). In April 2013, then Islamic State leader, Abu Bakr al-Baghdadi, announced the creation of ISIL to subsume the then-Jabhat al-Nusra and consolidate operations across Iraq and Syria.

The then-Jabhat al-Nusra (and now Jabhat Fatah al-Sham) leader Abu-Muhammad al-Jawlani attempted to annul the announcement by pledging allegiance to al-Qa'ida leader Ayman al-Zawahiri. In June 2013, al-Zawahiri ruled that the then Jabhat al-Nusra was the only al-Qa'ida affiliate in Syria and annulled the creation of ISIL. However, al-Baghdadi refused to follow this ruling and confirmed the creation of ISIL, later announcing the formation of Islamic State with himself as the Caliph in June 2014.

Despite now not controlling territory in Iraq or Syria, the group continues to operate in parts of both countries as a terrorist group, and retains the allegiance of like-minded groups elsewhere in the world, including IS-Libya, IS-Sinai, IS-Khorasan Province, IS-East Asia, ISIL-Somalia, Boko Haram and the Abu Sayyaf Group, which are all listed terrorist organisations in Australia under the Criminal Code.

Leadership

Islamic State's current leader and Caliph is Abu Ibrahim al-Hashimi al-Qurayshi. While Islamic State has kept the identity of al-Qurayshi hidden, many believe al-Qurayshi may be a kunya for Hajji Abdullah, whom al-Baghdadi named as his successor in August 2019. Al-Qurayshi became leader following the death of former Islamic State leader and self-proclaimed Caliph Abu Bakr al-Baghdadi in a US military operation on 27 October 2019.

The official spokesman of Islamic State, Abu Hamzah al-Qurayshi, assumed this role following the death of Abu al-Hassan al-Muhajir, who was killed in a near simultaneous US military operation that killed al-Baghdadi. Abu Hamzah al-Qurayshi's first speech as Islamic State spokesman was released on 31 October 2019; an audio message acknowledging the death of al-Baghdadi and al-Muhajir and announcing that Abu Ibrahim al-Hashimi al-Qurayshi had been appointed as the new Caliph.

Islamic State's hierarchical structure was decentralised following the group's loss of territory, to allow the group to preserve its leadership cadre and more effectively transition to an insurgency. However, Islamic State's core leadership still retained general strategic direction for the group. Furthermore, while Islamic State's global affiliates adhered to its jihadist ideology, they were able to act semi-autonomously from the organisation's leadership in Iraq and Syria.

Membership

At the height of its powers, Islamic State's membership was believed to have reached over 65 000, including approximately 40 000 foreign fighters from over 120 countries. Following ISIL's complete loss of territory in 2019, membership numbers are difficult to determine, but are estimated to

range between 14000 and 18000 across Syria and Iraq, including foreign fighters. There are also around 1200 Islamic State fighters detained in prisons across Iraq and Syria.

Recruitment and funding

Since its establishment, Islamic State has used a combination of threats, incentives and ideology to recruit new members, including through a sophisticated social media campaign in several languages. It has mostly targeted young Sunni men worldwide, exploiting anger at the perceived mistreatment of Sunni Muslims and encouraging them to join in restoring an Islamic caliphate. Islamic State also targets young women and children. However, since 2017, the Islamic State's media and propaganda capabilities have suffered significantly, limiting its global reach for recruitment. Islamic State forcefully recruited from areas under its control and is known to have run schools to indoctrinate children into its extremist ideology at a young age. It also aims to recruit Iraqi security force members to gather intelligence and undermine the performance of those who oppose the group.

Islamic State attracted a large number of foreign fighters, including Westerners, following the announcement of the caliphate in June 2014. Foreign fighter numbers joining Islamic State in Iraq and Syria decreased significantly from 2016 due to the group's territorial losses and the increasing difficulty in travelling to the region. During this period, the group began encouraging potential recruits to go directly to other Islamic State outposts, or stay in their home countries to launch attacks as part of its global campaign.

Following the appointment of Islamic State's new leader, Abu Ibrahim al-Hashimi al-Qurayshi, the group requested members re-pledge allegiance to the new caliph—with many responding to the request globally. These pledges can be made from any location, publicly or privately, and demonstrate support for Islamic State's ideology and acceptance of its brand of violence without the need to travel to Syria and Iraq. Pledging allegiance also demonstrates an intent by the individual to join Islamic State.

Islamic State initially relied on funds donated for operations in Syria to also fund its activities in Iraq and transfers weapons, fighters and resources between the two countries. As Islamic State expanded, it began seizing assets from areas under its control, particularly oil refineries and banks. While oil was a major source of revenue, Islamic State also taxed and extorted those living in areas under its control. Since its loss of territory, Islamic State's ability to raise revenue has been reduced; however, the group was likely able to move cash reserves out of Iraq and Syria prior to their territorial defeat to ensure it had sufficient funds to maintain an insurgency. Islamic State has also been able to diversify its funding through criminal activity, including but not limited to extortion, kidnapping for ransom and theft. Furthermore, the group has significant funds invested in legitimate businesses globally. As operating costs for an insurgency is considerably less than running a caliphate, Islamic State are likely to have sufficient funds to continue attacks in Iraq and Syria.

Links to other terrorist organisations

Islamic State's success in Iraq, particularly in 2014, attracted the support of other terrorist groups around the world with a number of Islamist militant organisations declaring allegiance or support to Islamic State; particularly from the Middle East, West Africa, Central Asia and Southeast Asia.

While some of these groups were created as a response to Islamic State’s call for Muslim support, others were already in existence. Islamic State has accepted a number of pledges of allegiance; however, this does not always indicate a working relationship or operational ties. Islamic State continues to have contentious relationships with various Syrian opposition groups which have included cooperation where tactically useful.

Seven groups currently listed as terrorist organisations under the Criminal Code are either official Islamic State affiliates or have publicly pledged support for the group. They include the Abu Sayyaf Group, Boko Haram, Islamic State–Libya, Islamic State–Sinai, Islamic State–East Asia, Islamic State–Khorasan, and Islamic State–Somalia.

Links to Australia

Islamic State’s coordinated and effective propaganda campaign exposed susceptible Australians to an extremist ideology and influenced some toward radicalisation. Around 80 Australians and former Australians are currently in Syria/Iraq and have fought with, or were otherwise associated with Islamist extremist groups—the majority with Islamic State. Australians fighting with Islamic State have been involved in acts of violence including suicide bombings and holding the decapitated head of a Syrian soldier following Islamic State beheadings, incidents subsequently used in Islamic State’s propaganda campaign.

In addition to those who have travelled, Australia-based individuals can pledge allegiance to Islamic State, affirming their support for the group without the need to travel to Iraq or Syria, and their intent to be a member of the group.

Threats to Australian interests

Islamic State has openly called for attacks against Australia and its interests, both because of Australia’s support to military operations against Islamic State in Iraq and Syria, and because of the group’s anti-Western ideology. Islamic State promotes its opposition to Australia through propaganda material, foreign fighter videos and speeches by senior leadership.

Islamic State has promoted terrorist attacks in Australia and has openly praised terrorist incidents in Australia, including:

- the 9 February 2018 stabbing of a man in Melbourne, Victoria; and
- the 9 November 2018 mixed mode attack in Melbourne, Victoria using a vehicle that contained gas bottles and a knife resulting in two deaths, including the perpetrator.

Listed by the United Nations or like-minded countries

Islamic State is listed as Islamic State of Iraq and the Levant 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. It is also listed as a proscribed terrorist organisation by the United States, Canada, United Kingdom and New Zealand.

Engagement in peace or mediation processes

Islamic State is not engaged in any peace or mediation process.

5. Conclusion

On the basis of the above information, ASIO assesses that Islamic State 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, Islamic State 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 Islamic State'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.