

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Neo-Jama’at Mujahideen Bangladesh) Regulations 2021*

The purpose of the *Criminal Code (Terrorist Organisation—Neo-Jama’at Mujahideen Bangladesh) Regulations 2021* (the Regulations) is to specify the organisation known as Neo-Jama’at Mujahideen Bangladesh for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup>

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 for Home Affairs 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 organisation Neo-Jama’at Mujahideen Bangladesh is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information (the Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

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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.

### *Effect of the instrument*

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- 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 Part 5.3 of the *Criminal Code* apply to conduct relating to Neo-Jama'at Mujahideen Bangladesh.

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

The Regulations commence on 9 June 2021. 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 advice from the Australian Government Solicitor (AGS) in relation to the unclassified information (the Statement of Reasons) at [Attachment C](#).

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 she was satisfied that Neo-Jama’at Mujahideen Bangladesh meets 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 paragraph (b) 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—Neo-Jama’at Mujahideen Bangladesh) Regulations 2021***

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—Neo-Jama’at Mujahideen Bangladesh) Regulations 2021* (the Regulations) specify Neo-Jama’at Mujahideen Bangladesh 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 specify Neo-Jama’at Mujahideen Bangladesh 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 that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to Neo-Jama’at Mujahideen Bangladesh.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 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 Neo-Jama’at Mujahideen Bangladesh as a listed terrorist organisation.

Terrorist organisations, including Neo-Jama’at Mujahideen Bangladesh, 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*

Under Article 6 of the ICCPR, 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 Neo-Jama'at Mujahideen Bangladesh. 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 Neo-Jama'at Mujahideen Bangladesh.

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 Neo-Jama’at Mujahideen Bangladesh, 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 in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister’s declaration being 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 and tables its report during the applicable disallowance period for that House.

### ***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 Karen Andrews MP**  
**Minister for Home Affairs**

**Details of the Criminal Code (Terrorist Organisation—Neo-Jama’at Mujahideen Bangladesh) Regulations 2021**

**Section 1 – Name**

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Neo-Jama’at Mujahideen Bangladesh) Regulations 2021*.

**Section 2 – Commencement**

2. This section provides 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, 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 proposed Regulations commence in their entirety on 9 June 2021.
4. The note to subsection 2(1) clarifies that the table only relates to the provisions of the proposed Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides 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 provides that the proposed Regulations are made under the *Criminal Code Act 1995*.

**Section 4 – Terrorist organisation—Neo-Jama’at Mujahideen Bangladesh**

7. Subsection 4(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 Neo-Jama’at Mujahideen Bangladesh is specified.
8. The effect of specifying Neo-Jama’at Mujahideen Bangladesh as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 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 Neo-Jama’at Mujahideen Bangladesh.
9. Subsection 4(2) provides a list of names by which the organisation Neo-Jama’at Mujahideen Bangladesh is also known:
  - (a) ISIL-B (paragraph (a))
  - (b) Islamic State-Bangladesh (paragraph (b))
  - (c) Islamic State-Banglar Caliphate (paragraph (c))



- (d) Islamic State-Bengal (paragraph (d))
- (e) Islamic State of Iraq and Levant Bangladesh (paragraph (e))
- (f) Islamic State of Iraq and Syria Bangladesh (paragraph (f)), and
- (g) Neo-JMB (paragraph (g)).

## Statement of Reasons

# Statement of Reasons

## Listing of Neo-Jama'at Mujahideen Bangladesh as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Neo-Jama'at Mujahideen Bangladesh. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

### Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (the *Criminal Code*) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister (the Minister for Home Affairs) must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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.

### Background to this listing

Neo-Jama'at Mujahideen Bangladesh was first listed as an alias of Jama'at Mujahideen Bangladesh under Division 102 of the *Criminal Code* on 9 June 2018. Following advice from Australian Government agencies, Neo-Jama'at Mujahideen Bangladesh is now considered to be an organisation that operates independently of Jama'at Mujahideen Bangladesh.

### Details of the organisation

#### *Name of the organisation*

Neo-Jama'at Mujahideen Bangladesh

#### *Known aliases*

- ISIL-B
- Islamic State of Iraq and Levant Bangladesh
- Islamic State of Iraq and Syria Bangladesh
- Islamic State-Bangladesh
- Islamic State-Banglar Caliphate
- Islamic State-Bengal
- Neo-JMB

#### *Organisational overview and objectives*

Neo-Jama'at Mujahideen Bangladesh first emerged in 2014, from formerly al-Qa'ida (AQ)-aligned Bangladesh-based extremists who redirected their support to Islamic State of Iraq and the

Levant (ISIL). This included a significant number of members of the Sunni violent extremist group Jama'at Mujahideen Bangladesh, many of whom were attracted to the ISIL-aligned group led by Shaykh Ibrahim al-Hanif.

Neo-Jama'at Mujahideen Bangladesh's overall goals are tied to the broader Islamic State aims of establishing Salafist-oriented Islamic states in the Syria/Iraq region and areas with majority Sunni-Muslim populations. Neo-Jama'at Mujahideen Bangladesh aims to conduct attacks in India and Bangladesh to destabilise the governments in the region and support the establishment of Islamic states in those areas.

Neo-Jama'at Mujahideen Bangladesh favours 'lone-wolf' or small group attacks, which is likely a reflection of the group's reliance on online engagement and organisation.

### ***Leadership***

Neo-Jama'at Mujahideen Bangladesh established its capability and commitment to extremist violence in Bangladesh through the 2016 Holey Artisan Bakery attack in the diplomatic area of Dhaka, Bangladesh. While this attack has been attributed to both Neo-Jama'at Mujahideen Bangladesh and Jama'at Mujahideen Bangladesh, the leading figure behind the attack, now-deceased dual Canadian/Bangladeshi citizen Tamim Chowdhury, was a key figure in establishing Neo-Jama'at Mujahideen Bangladesh.

### ***Membership***

Accurate figures for Neo-Jama'at Mujahideen Bangladesh's membership are unknown. A female Neo-Jama'at Mujahideen Bangladesh member detained by Bangladesh authorities in July 2020 revealed the group had approximately 1500 female members across Bangladesh who were also heavily involved in recruitment, but this is likely to be an overstated figure. Furthermore, given the group's reliance on social media to promote its ideology and recruit members, membership figures may fluctuate if they are recorded at all.

Since the 2016 Holey Artisan Bakery attack, Bangladesh counter-terrorism operations have significantly hampered the ability of extremist groups to operate in-country. Arrests have included the Neo-Jama'at Mujahideen Bangladesh Women's Wing leader, reportedly arrested in early February 2020, as well as hundreds of other militants including Neo-Jama'at Mujahideen Bangladesh members.

### ***Funding***

Funding of Neo-Jama'at Mujahideen Bangladesh activities is likely to rely on the group's membership. Reporting indicates some of Neo-Jama'at Mujahideen Bangladesh members—including Tamim Chowdhury—'donated' varying amounts between \$16,000 and \$117,000 to the group. Regardless of the method of fundraising, Neo-Jama'at Mujahideen Bangladesh attacks have continued to occur, indicating the group remains operational despite Bangladesh's increased counter-terrorism focus.

### ***Links to other terrorist organisations***

Neo-Jama'at Mujahideen Bangladesh is assessed to be an affiliate of ISIL's global network.

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

Since Neo-Jama'at Mujahideen Bangladesh was first listed on 9 June 2018 as an alias of Jama'at Mujahideen Bangladesh, Neo-Jama'at Mujahideen Bangladesh is assessed as responsible or can be reasonably assessed as responsible for the following terrorist attacks and actions:

- 16 August 2020 – Bangladeshi authorities disrupted five Neo-Jama'at Mujahideen Bangladesh members planning to attack the Shah Jalah shrine in Sylhet, Bangladesh.

- 26 July 2020 – Neo-Jama'at Mujahideen Bangladesh members planted a crude bomb in a bag on a policeman's motorcycle in Dhaka.
- 28 February 2020 – Neo-Jama'at Mujahideen Bangladesh conducted a remote controlled improvised explosive device blast at a traffic police box in Chittagong.
- 13 January 2020 – A Neo-Jama'at Mujahideen Bangladesh member was arrested in possession of a petrol bomb and bomb-making materials in Savar's Ashulia area.

Consistent with its established practice for regional affiliates, ISIL—through its official media outlet—has claimed responsibility for attacks assessed to have been conducted by Neo-Jama'at Mujahideen Bangladesh. For example, ISIL also claimed responsibility for two bombs placed near traffic police boxes at separate intersections in Dhaka on 23 July 2019. The bombs were defused. ISIL also claimed responsibility for a grenade attack on police in Gulistan, Dhaka on 29 April 2019.

## **Other considerations**

### ***Links to Australia and threats to Australian interests***

Neo-Jama'at Mujahideen Bangladesh subscribes to Islamic State's anti-Western ideology, and would consider Australians to be legitimate targets of attacks. Australians may also be incidentally targeted in indiscriminate attacks such as the 2016 Holey Artisan Bakery attack in Dhaka. The 9 February 2018 lone-actor stabbing attack in Melbourne was conducted by a Bangladeshi student who was reportedly a Neo-Jama'at Mujahideen Bangladesh member, although it is unclear the extent to which Neo-Jama'at Mujahideen Bangladesh was involved in the planning of this attack.

More broadly, Neo-Jama'at Mujahideen Bangladesh ideology and objectives have not resonated in the Australian Bangladeshi community.

### ***Listings by likeminded countries or the United Nations***

Neo-Jama'at Mujahideen Bangladesh is listed as a proscribed terrorist organisation by the governments of Canada and the United States under the name Islamic State-Bangladesh.

### ***Engagement in peace or mediation processes***

Neo-Jama'at Mujahideen Bangladesh is not engaged in any peace or mediation processes with the Bangladeshi or Indian governments.

## **Conclusion**

On the basis of the information above, the Australian Government assesses that Neo-Jama'at Mujahideen Bangladesh continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.