

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022*

The purpose of the *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022* (the Regulations) is to specify the organisation known as Hurras al-Din 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 **AFP Minister** (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 known as Hurras al-Din 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 provided by the Department of Home Affairs (the Statement of Reasons at [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 Hurras al-Din.

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

The Regulations commence on 9 April 2022. Subsection 102.1(3) of the *Criminal Code* provides that the Regulations will cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights 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 this Statement is at [Attachment A](#).

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

## Consultation

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.

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 Hurras al-Din meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

## **Statement of Compatibility with Human Rights**

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

### ***Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022***

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 of the Disallowable Legislative Instrument**

The *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022* (the Regulations) specify the organisation known as Hurras al-Din 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 Hurras al-Din as a terrorist organisation under Australian law, and to 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 Hurras al-Din.

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. In particular, the offence of associating with a **terrorist organisation** in section 102.8 of the *Criminal Code* applies in relation to associating with Hurras al-Din as a listed **terrorist organisation**.

Terrorist organisations, including Hurras al-Din, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

### 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, 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 Hurras al-Din. 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 Hurras al-Din.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 Hurras al-Din, 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) 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 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 Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits 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—Hurras al-Din) Regulations 2022***

**Section 1 – Name**

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Hurras al-Din) Regulations 2022*.

**Section 2 – Commencement**

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the 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 Regulations. Information in this column is intended to assist readers of the Regulations.

**Section 3 – Authority**

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

**Section 4 – Terrorist organisation□Hurras al-Din**

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 Hurras al-Din is specified.



8. The effect of specifying Hurras al-Din as a terrorist organisation is to ensure that offences under Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate in relation to conduct in connection with Hurras al-Din. In particular, the offences under section 102.8 (associating with terrorist organisations) apply only in relation to organisations that have been specified by regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1).
9. Subsection 4(2) provides that the organisation Hurras al-Din is also known by the names:
  - Al-Qa'ida in Syria;
  - Guardians of Religion;
  - Tanzim Hurras ad-Din.

## **Statement of Reasons**

### **Listing of Hurras al-Din as a terrorist organisation under the *Criminal Code Act 1995***

This Statement of Reasons is based on publicly available information about Hurras al-Din. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information where available.

#### **Name of the organisation**

Hurras al-Din (HaD)

#### **Known aliases**

- Al-Qa'ida in Syria
- Guardians of Religion
- Tanzim Hurras ad-Din

#### **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**

Hurras al-Din has not previously been listed under the Criminal Code.

#### **Details of the organisation**

Hurras al-Din (HaD) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group which was established in Idlib, Syria in early 2018 as part of al-Qa'ida's global network. HaD adheres to a violent jihadist ideology that encourages violence as a key tactic for pursuing religious and political outcomes aligned with al-Qa'ida's objectives.

HaD is likely at its weakest point since its formation, following conflict with Syria-based RMVE group Hay'at Tahrir al-Sham (HTS) and operations by United States-led coalition forces. HaD has likely expanded its focus from the Idlib region in an effort to evade pressure from HTS and Syrian security forces.

### ***Leadership***

HaD's current leader, Faruq al-Suri (also known as Abu Hamman al-Shami / Sami Hijazi), is a veteran member of al-Qa'ida who was the military commander of defunct RMVE group Jabhat al-Nusra (also known as Jabhat Fatah al-Sham) until he left the group in 2016. Much of HaD's leadership have been killed or imprisoned, and the remainder have largely been in hiding since early 2021.

### ***Membership***

In mid-2019, HaD was estimated to have between 700 and 2,500 fighters – half of which were foreign fighters – but this has likely decreased due to recent losses. Many of HaD's members are former members of Jabhat al-Nusra.

### ***Links to other groups***

HaD is an affiliate of al-Qa'ida and has maintained close integration with al-Qa'ida's central leadership. HaD maintains ties to other Syrian militant groups, including Ansar al-Tawhid and remaining elements of Ansar al-Islam. The group's predecessor, Jabhat al-Nusra, was listed as a terrorist organisation by the Australian Government in 2013.

## **Terrorist activity**

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

HaD is engaged in ongoing hostilities against Syrian Government forces and rival militant groups in pursuit of its political objectives. Recent terrorist attacks which can be reliably attributed to HaD include:

- On 4 August 2021, HaD conducted a bombing against a bus in Damascus, killing at least four people.
- On 1 January 2021, HaD conducted a vehicle-borne improvised explosive device and small arms attack against a Russian military base in Raqqah Province. Two Russian soldiers were injured.
- On 10 May 2020, HaD fighters attacked the town of Tanjarah in Sahl al-Gahb. More than 30 Syrian Army soldiers and pro-government fighters were reportedly killed in the engagement. HaD conducted a second attack on Tanjarah on 10 June 2020, temporarily seizing control of the town.

### ***Advocates the doing of a terrorist act***

HaD advocates terrorism through its media foundation, Sham al-Ribat Media, including attacks against Western interests. Recent examples include:

- In October 2021, HaD issued a statement addressing the United States and all ‘enemies of Islam’, stating “*we will wage jihad and not surrender and not go back.*” In this context, ‘jihad’ likely refers to undertaking terrorist acts.
- On 16 May 2021, HaD encouraged attacks on Israeli interests in response to recent events in Israel, stating “*These events have proven that there is no way to liberate al-Aqsa Mosque and the holy sites and countries of the Muslims except through advocacy, reparation and jihad.*”
- On 7 March 2020, HaD leader al-Suri encouraged the group’s fighters to attack Syrian Government forces, saying “*So horrify them by infiltrating, and terrorise them with raids, and intensify upon them attack after attack, and raid after raid. Stifle their breath with commandos and martyrdom-seekers, and booby-trap the earth from under them, and place traps in the trees and rocks, and turn their night into day and their day into fire.*”

## **Other considerations**

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

No Australians are known to be involved with HaD.

Although HaD has not specifically threatened attacks against Australian interests, the group adheres to al-Qa’ida’s violent anti-Western ideology and poses an ongoing threat to Western, including Australian, interests.

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

The United States specifies HaD as Specially Designated Global Terrorists.

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

HaD has not engaged in any peace or mediation processes.

## **Conclusion**

On the basis of the information above, the Australian Government assesses that the organisation known as Hurras al-Din is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.