

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2022* (the Regulations) is to specify the organisation known as Abu Sayyaf Group for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.¹

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 Abu Sayyaf Group 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](#)).

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

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 Part 5.3 of the *Criminal Code* apply to conduct relating to the Abu Sayyaf Group.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019*, which would otherwise cease to have effect on 10 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures the organisation Abu Sayyaf Group continues to be specified for the purposes of paragraph (b) of the definition of ***terrorist organisation***.

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 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 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 the Abu Sayyaf Group 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—Abu Sayyaf Group) 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—Abu Sayyaf Group) Regulations 2022* (the Regulations) specify the Abu Sayyaf Group 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 Abu Sayyaf Group 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 the Abu Sayyaf Group.

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 the Abu Sayyaf Group as a listed terrorist organisation.

Terrorist organisations, including the Abu Sayyaf Group, 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 the Abu Sayyaf Group. 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 the Abu Sayyaf Group.

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 the Abu Sayyaf Group, 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 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—Abu Sayyaf Group) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) 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. It is designed 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 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019*.

Section 5 – Terrorist organisation – Abu Sayyaf Group

9. 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 Abu Sayyaf Group is specified.

10. The effect of specifying the Abu Sayyaf Group 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 the Abu Sayyaf Group.
11. Subsection 5(2) provides a list of names by which the organisation Abu Sayyaf Group is also known, at paragraphs 5(2)(a) to (e):
 - Abou Sayaf Armed Band;
 - Abou Sayyef Group;
 - Al-Harakat al-Islamiya;
 - Al-Harakatul Islamia;
 - Mujahideen Commando Freedom Fighters.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Abu Sayyaf Group) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Abu Sayyaf Group for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 10 April 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

Statement of Reasons

Listing of Abu Sayyaf Group as a terrorist organisation under the *Criminal Code Act 1995*

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

Name of the organisation

Abu Sayyaf Group (ASG)

Known aliases

- Abou Sayaf Armed Band
- Abou Sayyef Group
- Al-Harakat al-Islamiya
- Al-Harakatul Islamia
- Mujahideen Commando Freedom Fighters

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

The Australian Government first listed Abu Sayyaf Group as a terrorist organisation under the Criminal Code on 14 November 2002. ASG was re-listed on 5 November 2004, 3 November 2006, 1 November 2008, 29 October 2010, 12 July 2013, 28 June 2016, and 10 April 2019.

Details of the organisation

Abu Sayyaf Group (ASG) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group, which was founded in 1991 after splintering from the Moro National Liberation Front (MNLF). ASG primarily operates in the southern Philippines, but maintains a presence in eastern Malaysia. ASG's objective is to establish an Islamic state in the southern Philippines, and the group has historically aligned itself with listed terrorist organisations al-Qa'ida and Jemaah Islamiyah.

Leadership

ASG's leadership has suffered significant losses over the past 12 months, leaving the group without a strong hierarchy. Rabdullah Sahiron remains the most senior active ASG leader.

Membership

Despite the recent deaths of senior leaders, as well as surrenders and arrests of lower-level or inactive members, ASG continues to recruit young Muslims, students and family of existing members. ASG has used online platforms and local issues, such as poor education and underdevelopment, to garner support.

ASG has approximately 100 active members, not including their extensive local support network. Its members and supporters are located throughout the Sulu archipelago, the Zamboanga peninsula, and Sabah, Malaysia – and comprise both local Filipinos and foreign nationals. Sub-groups of ASG include ASG Urban Terrorist Group, the Lucky Nine, and the Ajang-Ajang group.

Links to other groups

Although ASG has historically aligned itself with al-Qa'ida and Jemaah Islamiyah, some ASG sub-groups have pledged allegiance to Islamic State and aligned themselves with its Philippines-based affiliate, Islamic State East Asia (ISEA). ISEA is comprised of members who were previously aligned with other RMVE groups, including Dawlah Islamiyah, Maute Group, Bangsamoro Islamic Freedom Fighters, Ansharul Khilafah Philippines, and Jama'atul al-Muhajirin wal Ansar fil Filibin. Although elements of ISEA share close familial and ethnic links to ASG and the groups conduct joint operations, they maintain separate leadership structures. ISEA is listed as a terrorist organisation by the Australian Government.

Terrorist activity

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

ASG is currently focused on re-building its membership and influence in local communities, while continuing a low-level insurgency against Philippine security forces. ASG also continues to conduct kidnap-for-ransom activities – which, while conducted primarily for financial purposes, are used to fund the group's insurgent operations. Recent examples of ASG engaging in, preparing, planning or assisting in the doing of terrorist acts include:

- On 23 February 2021, Philippine law enforcement arrested nine women in Sulu Province for allegedly assembling explosives to be used in suicide bombings. Many of the women were relatives of senior ASG members.
- On 29 August 2020, ASG members engaged in a firefight with Philippine Army forces in Patikul, Sulu Province. One soldier was killed and seven were injured.
- On 24 August 2020, ASG carried out twin bombings at Paradise Food Plaza in Jolo, Sulu Province, killing 14 people and injuring 75. The attack was directed by ISEA but carried out by ASG members.
- On 13 August 2019, a Philippine Army soldier was injured in a bombing in Patikul, Sulu Province. Philippine law enforcement has attributed the attack to ASG.
- On 25 May 2019, pro-Islamic State insurgents, including approximately 30 ASG members, engaged in a firefight with Philippine Army forces in Jolo, Sulu Province. Two civilians and five soldiers were killed. Islamic State claimed responsibility for the attack.
- On 27 January 2019, 20 people were killed and 102 injured in twin suicide bombings at the Cathedral of our Lady of Mount Carmel in Jolo, Sulu Province. Although ISEA claimed responsibility for the attack, the Philippine military has attributed the bombings to the Ajang-Ajang faction of ASG. It is likely that ASG and ISEA collaborated in carrying out the attack.

Other considerations

Links to Australia and threats to Australian interests

Australians are not directly involved with ASG.

Although Australians are not the primary focus of ASG attacks in the southern Philippines, Australians could be opportunistically targeted in kidnappings and could be harmed in terrorist attacks carried out by ASG. Westerners – including Australians – are among a broad range of kidnap targets, primarily due to their ransom value but also for their value in Islamic State-inspired propaganda.

- ASG kidnapped an Australian national, Warren Rodwell, from his residence in western Mindanao in December 2011. Mr Rodwell was released in March 2013.

Listings by likeminded countries or the United Nations

The United Nations Security Council ISIL (Da'esh) and al-Qa'ida **Sanctions** Committee designates ASG for targeted financial sanctions. ASG is proscribed as a terrorist organisation by the United States, United Kingdom, Canada and New Zealand.

Engagement in peace or mediation processes

ASG is not involved in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as Abu Sayyaf Group is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.