

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022*

The purpose of the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2022* (the Regulations) is to specify the organisation known as Jemaah Islamiyah 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 Jemaah Islamiyah 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

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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.

- 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 Jemaah Islamiyah.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2019*, which would otherwise cease to have effect on 9 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures the organisation Jemaah Islamiyah 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 Jemaah Islamiyah 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—Jemaah Islamiyah) 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—Jemaah Islamiyah) Regulations 2022* (the Regulations) specify Jemaah Islamiyah 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 Jemaah Islamiyah 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 Jemaah Islamiyah.

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 Jemaah Islamiyah as a listed terrorist organisation.

Terrorist organisations, including Jemaah Islamiyah, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of **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 Jemaah Islamiyah. 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 Jemaah Islamiyah.

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 Jemaah Islamiyah, 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—Jemaah Islamiyah) Regulations 2022***

**Section 1 – Name**

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) 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—Jemaah Islamiyah) Regulations 2019*.

**Section 5 – Terrorist organisation—Jemaah Islamiyah**

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 Jemaah Islamiyah is specified.



10. The effect of specifying Jemaah Islamiyah 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 Jemaah Islamiyah.
11. Subsection 5(2) provides a list of names by which the organisation Jemaah Islamiyah is also known, at paragraphs 5(2)(a) to (e):
  - Al-Jama'ah Al-Islamiyah;
  - Islamic Congregation;
  - Jemaah Islamiah;
  - Jema'a Islamiyya;
  - Jemaa Islamiyyah.

#### Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Jemaah Islamiyah) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation Jemaah Islamiyah 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 9 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 Jemaah Islamiyah as a terrorist organisation under the *Criminal Code Act 1995***

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

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

Jemaah Islamiyah (JI)

#### **Known aliases**

- Al-Jama'ah al-Islamiyah
- Islamic Congregation
- Jama'ah Islamiya
- Jema'a Islamiyya
- Jemaa Islamiyyah
- Jemaah Islamiah

#### **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**

Jemaah Islamiyah was first listed as a terrorist organisation by the Australian Government on 27 October 2002. The organisation was re-listed on 1 September 2004, 26 August 2006, 9 August 2008, 22 July 2010, 12 July 2013, 28 June 2016 and 9 April 2019.

## Details of the organisation

Jemaah Islamiyah (JI) is a Sunni Islamist religiously-motivated violent extremist (RMVE) group, which is inspired by the anti-Western jihadist ideology of al-Qa'ida and supports the use of terrorism to advance its political objectives. JI seeks to revive a pure form of Islam, governed by the tenets of Sharia, and represents an evolutionary development of the Indonesian Islamist movement Darul Islam, which fought an insurgency to establish an Islamist state in Indonesia in the 1950s and 1960s.

JI's charter and operating manual, the *General Guide for the Struggle of the al-Jama'ah al-Islamiyah* (PUPJI) outlines the religious principles and administrative aspects underlying JI's primary objectives. These entail establishing a support base of followers and then, through armed struggle, creating an Islamist state in Indonesia and eventually a regional caliphate incorporating Malaysia, Singapore and the southern Philippines. The PUPJI has been complemented by a new doctrine (known as TAS-TOS) and strategy (*Tamkin*), which encourage JI members to engage in politics and institutional change in support of JU's strategic agenda, and outlines processes to maintain secrecy and avoid detection by authorities. While JI is willing to engage in politics as long as it aligns with its long-term strategy, the group continues to pursue the violent overthrow of the Indonesian Government and in line with the principles set out in PUPJI likely intends to return to large-scale attack planning in the future.

### Leadership

The most recent emir of JI, Para Wijayanto, was arrested by Indonesian authorities in June 2019 and sentenced to 7 years' imprisonment in July 2020. Although the group's leadership has been significantly degraded by law enforcement activities over the past decade, JI remains a distinct organisation with a highly compartmentalised structure.

### Membership

JI is estimated to have approximately 6,000 members – primarily in Indonesia, with a small number in Malaysia and the Philippines. Since 2002, hundreds of members have been arrested by Indonesian and Philippine authorities. The arrests of three influential ideologues in November 2021 for suspected involvement with JI indicates that the group may be actively positioning undeclared members within Indonesian politics and mainstream Islamic organisations.

JI also maintains a network of affiliated extremist religious schools (*pesantren*). These schools, many of which were founded by JI members, continue to inculcate young Indonesians with the group's extremist interpretation of Islam and legitimisation of violence, and are used by JI as a source of militant recruits for future terrorist activities.

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

JI has historical links to other RMVE groups in Indonesia, including Jamaah Anshurat Tauhid, Majelis Mujahidin Indonesia, and the Crisis Action Committee (KOMPAK). Indonesian extremists, including members of JI, have travelled to Syria and cultivated relationships with Hay'at Tahrir al-Sham and other regional militant groups. JI also has links to the Philippines-based Abu Sayyaf Group.

### **Terrorist activity**

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

JI has historically engaged in large-scale terrorist attacks in South East Asia, including attacks against regional governments, Christian communities, and Western interests. JI attacks have resulted in hundreds of deaths and have targeted hotels, bars, diplomatic premises, transport and military infrastructure, and churches.

Although JI has not been linked to a successful terrorist attack since 2009 and has recently prioritised political activities over the use of violence, available evidence supports a conclusion that the group continues to clandestinely prepare, plan and foster the doing of terrorist acts. The group's compartmentalised structure makes its activities difficult to detect, and JI could return to violence with limited warning.

- Despite JI's recent shift to building political and institutional influence, some JI cells have independently continued to engage in attack planning. Although these activities were likely not directed by JI's core leadership, they are in accordance with the group's doctrine as set out in PUPJI and were likely undertaken on behalf of the wider organisation.
  - In February and March 2021, Indonesian law enforcement arrested 22 suspected JI members in East Java. The cell, which was led by Usman bin Sef (also known as Fahim), allegedly trained and stockpiled weapons in preparation for an attack against police.
  - From April to August 2020, Indonesian law enforcement arrested 17 suspected JI members in Banten. The cell had stockpiled firearms and was allegedly planning attacks against Chinese-owned shops in Serang, Tasikmalaya and Surabaya.
- JI maintains paramilitary training capabilities, and conducted training as recently as 2020 across at least a dozen locations in Indonesia – including a villa in Semarang, Central Java, where members were trained in martial arts, use of firearms and bladed weapons, urban warfare tactics and bomb-making. Some training programs likely remain active. Given the group's continued support for the use of terrorism in pursuit of its long-term objectives, this training is likely intended to facilitate members engaging in future terrorist attacks.

- Between 2014 and 2018, JI sent foreign fighters to Syria to acquire combat experience alongside regional militant groups, including listed terrorist organisation Jabhat al-Nusra and its successor Hay'at Tahrir al-Sham. JI trained 96 foreign fighters across 12 training camps in Java – of which more than 60 travelled to Syria and some of which continue to fight in support of terrorist organisations in the region. JI likely plans to send further members to fight in the Syrian conflict, and returning foreign fighters have ongoing potential to increase JI's capability to engage in terrorism.
- In 2010, JI revived its 'military wing' to secretly promote and build up its capability to engage in terrorism – including through the acquisition of firearms and explosives for use in future attacks. JI maintains the capability to acquire and stockpile weapons and explosives should it choose to return to large-scale attack planning.
  - In November 2021, Indonesian law enforcement arrested a number of suspected JI members in Sulawesi and East Java, seizing firearms and detonators. The group was suspected to be storing weapons on behalf of JI, and participating in paramilitary training activities.
  - Between November 2020 and March 2021, Indonesian law enforcement arrested over a dozen suspected JI members, including fugitive bomb-maker Upik Lawanga. The group had constructed a bunker where they assembled and stored weapons and bomb-making components.

## **Other considerations**

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

JI's first successful anti-Western attack was the Bali bombings of 12 October 2002, which killed 202 people, including 88 Australians. This was followed by the bombing of the Australian embassy in Jakarta in 2004, and a further bombing in Bali in 2005, which killed four Australians. Three Australians were killed in simultaneous bombings against the JW Marriott Hotel and Ritz-Carlton Hotel in Jakarta in 2009.

Although JI has refrained from large-scale attack planning since 2009, the group has specifically identified Western countries as enemies and could return to violence, including against Australian interests, with limited warning.

No Australians are known to currently be involved with JI. JI has historically had a presence in Australia through its Mantiqi Four subgroup. Individuals associated with Mantiqi Four had previously considered undertaking an attack against Jewish interests in Australia, which did not eventuate.

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

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

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

JI is 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 Jemaah Islamiyah is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.