

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

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

The purpose of the *Criminal Code (Terrorist Organisation—Jama’at Mujahideen Bangladesh) Regulations 2021* (the Regulations) is to specify the organisation known as 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*.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 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 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](#)).

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.

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 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 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—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—Jama’at Mujahideen Bangladesh) Regulations 2021* (the Regulations) specify 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 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 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 Jama’at Mujahideen Bangladesh as a listed terrorist organisation.

Terrorist organisations, including 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 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 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 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—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—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 – 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—Jama'at Mujahideen Bangladesh) Regulations 2018*.

Section 5 – Terrorist organisation— Jama'at Mujahideen Bangladesh

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 Jama'at Mujahideen Bangladesh is specified.

10. The effect of specifying 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 Jama'at Mujahideen Bangladesh.
11. Subsection 5(2) provides a list of names by which the organisation Jama'at Mujahideen Bangladesh is also known:
 - (a) Jamaat Mujahideen Bangladesh (paragraph (a))
 - (b) Jama'atul Mujahideen Bangladesh (paragraph (b))
 - (c) Jamaat ul Mujahideen Bangladesh (paragraph (c))
 - (d) Jamayetul Mujahideen Bangladesh (paragraph (d)), and
 - (e) JMB (paragraph (e)).

Schedule 1 — Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh) Regulations 2018* (the repealed Regulations).
13. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations would cease to have effect on 9 June 2021, being the third anniversary of the day on which they took effect. Item 1 of this Schedule ensures there is no duplication where the Regulations are made before the repealed Regulations would have otherwise ceased to have effect, if not repealed. The repeal provides certainty in relation to the specification by the Regulations of the organisation of Jama'at Mujahideen Bangladesh as a terrorist organisation.
14. The repealed Regulations also refer at paragraph 4(2)(i) to Neo-JMB as another name for the organisation Jama'at Mujahideen Bangladesh. The repeal therefore also provides clarity in the relationship between the Regulations and the *Criminal Code (Terrorist Organisation—Neo-Jama'at Mujahideen Bangladesh) Regulations 2021* (the Neo-JMB Regulations), which also commence on 9 June 2021. The Neo-JMB Regulations specify the organisation Neo-Jama'at Mujahideen Bangladesh (Neo-JMB) for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1 of the *Criminal Code*, separate from the organisation Jama'at Mujahideen Bangladesh.

Statement of Reasons

Statement of Reasons

Listing of 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 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

Jama'at Mujahideen Bangladesh was first listed as a terrorist organisation under the *Criminal Code* on 9 June 2018.

Details of the organisation

Name of the organisation

Jama'at Mujahideen Bangladesh

Known aliases

- Jamaat Mujahideen Bangladesh
- Jama'atul Mujahideen Bangladesh
- Jamaat ul Mujahideen Bangladesh
- Jamayetul Mujahideen Bangladesh
- JMB

Organisational overview and objectives

Jama'at Mujahideen Bangladesh is a Bangladeshi Sunni violent extremist group established in 1998 which aims to remove democracy, liberalism, socialism and secularism and institute an Islamic state in Bangladesh. Jama'at Mujahideen Bangladesh's ideology broadly aligns with al-Qa'ida (AQ)'s global jihadist ideals, and the group has previously claimed responsibility for an attack via an online forum affiliated with alQa'ida in the Indian Subcontinent (AQIS). Jama'at Mujahideen Bangladesh has also at times claimed their actions to be on behalf of the Muslim Rohingya minority of Myanmar, of which large numbers reside in refugee camps along Bangladesh's eastern border.

Jama'at Mujahideen Bangladesh operates across Bangladesh and in parts of India with a presence in the border areas between the two countries, particularly in the West Bengal and Assam states of India. The group's presence in India is symbolically important to its goal of developing a regional profile focused on a 'prophesied war of India.'

The most prominent attack attributed to Jama'at Mujahideen Bangladesh occurred on 17 August 2005 with 459 coordinated explosions across 63 of the 64 districts in Bangladesh, almost all occurring within a 30 minute period in the morning. Jama'at Mujahideen Bangladesh members were also charged in India for the attack at the Bodhi Gaya Buddhist temple in Bihar state, India on 20 January 2018. Timed to coincide with a Dalai Lama visit and protest the treatment of Rohingya in Myanmar, Jama'at Mujahideen Bangladesh members constructed improvised explosive devices and placed them in locations around the temple—one device exploded and two were defused.

Leadership

Jama'at Mujahideen Bangladesh's founding leader Sheikh Abdur Rahman was executed by Bangladeshi security forces in 2007, after which leadership passed to Maulana Saidur Rahman, who was imprisoned in 2010. In February 2020, Jama'at Mujahideen Bangladesh announced a new leader, Salahuddin Ahmed, alias Salehin, reportedly located in West Bengal, India.

Membership and funding

Following a high profile series of explosive attacks across Bangladesh in 2005, local authorities arrested 656 Jama'at Mujahideen Bangladesh members, laying charges against 356 of those by 2011. The current overall Jama'at Mujahideen Bangladesh membership is unclear, but these counter-terrorism operations are likely to have significantly impacted their numbers through deaths (either during disruption operations, or by executions) or imprisonments.

India has been used by Jama'at Mujahideen Bangladesh for fundraising and preparations for attacks. Jama'at Mujahideen Bangladesh recruit from both Bangladesh and India and sympathise with the Rohingya cause; however, there has not been large-scale adoption of Jama'at Mujahideen Bangladesh's ideology by Rohingya refugees in Bangladesh. In addition to exploiting community dissatisfaction with government policy to recruit from potentially dissatisfied Muslim groups, Jama'at Mujahideen Bangladesh has also used cultural events for both recruitment and fundraising. Crime is also reported to be a source of fundraising for Jama'at Mujahideen Bangladesh, as is raising funds via hundi—a type of remittance system.

Links to other terrorist organisations

Although Jama'at Mujahideen Bangladesh is not reported to be an official AQ-affiliate organisation, it is likely to be linked to AQIS. Jama'at Mujahideen Bangladesh's use of an online forum affiliated with AQIS to claim responsibility for an attack—and the inclusion of the AQIS logo as part of that claim—also indicates a broad alignment with AQ-ideology.

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

Since Jama'at Mujahideen Bangladesh was first listed on 9 June 2018, Jama'at Mujahideen Bangladesh has continued to conduct terrorist attacks, and is assessed as responsible or can reasonably be assessed as responsible for the following terrorist attacks and actions:

- 29 April 2019 – Two Jama'at Mujahideen Bangladesh militants were killed when their improvised explosive devices detonated during a standoff with police at a house in Bosila, Bangladesh.
- 12 December 2018 – Three Jama'at Mujahideen Bangladesh members arrested in Dhaka were reportedly planning targeted killings and terror attacks during New Year celebrations. The three men were arrested with 30 commando knives and 1.5 kilograms of explosives.

- 5 October 2018 – Two Jama'at Mujahideen Bangladesh members were killed when they detonated an improvised explosive device in an apparent suicide attack during a stand-off with Bangladeshi Rapid Action Battalion (RAB) members in Chittagong, Bangladesh.
- 24 July 2018 – Two Jama'at Mujahideen Bangladesh militants arrested were reportedly planning to undertake an attack in the national capital area in New Delhi, India.
- 1 July 2018 – Jama'at Mujahideen Bangladesh claimed responsibility for the 11 June 2018 murder of Shahjahan Bachchu, a secular blogger in Bangladesh.

On the basis of these examples, Jama'at Mujahideen Bangladesh is responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

There are no known direct links between Jama'at Mujahideen Bangladesh and Australia. Jama'at Mujahideen Bangladesh targets the secular Bangladeshi state and non-Muslim religious symbols. Australians may be incidentally harmed in attacks undertaken at tourist sites, but Australians are unlikely to be directly targeted by Jama'at Mujahideen Bangladesh. Jama'at Mujahideen Bangladesh is assessed not to have reach into Australia.

Listings by likeminded countries or the United Nations

Jama'at Mujahideen Bangladesh is listed as a proscribed terrorist organisation by the government of the United Kingdom.

Engagement in peace or mediation processes

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 Jama'at Mujahideen Bangladesh is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.