

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 163

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013

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 (the Code).

Division 102 of the Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; receiving training from or providing training to a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Code. The effect of applying section 15.4 is that offences in Division 102 of the Code apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or the result) occurs in Australia.

Terrorist organisation is defined in subsection 102.1(1) of the Code as:

- an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs) (paragraph 102.1(1)(a)); or
- an organisation specified in the regulations (paragraph 102.1(1)(b)).

The purpose of the Regulation is to specify Al-Qa’ida in the Lands of the Islamic Maghreb, also known as Al Qaida au Maghreb Islamique, Al-Qa’ida in the Islamic Maghreb, Al-Qa’ida Organisation in the Lands of the Islamic Maghreb, AQIM, Le Groupe Salafiste Pour La Predication et Le Combat, Salafist Group for Call and Combat, Salafist Group for Preaching and Combat and Tanzim al-Qa’ida fi bilad al-Maghreb al-Islamiya, for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

The Regulation enables the offence provisions in Division 102 of the Code to continue to apply to persons with links to Al-Qa’ida in the Lands of the Islamic Maghreb. Details of the Regulation are set out in Attachment A.

Subsection 102.1(2) of the 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) of the Code, the Minister must be satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

In determining whether he is satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation (ASIO) in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Al-Qa'ida in the Lands of the Islamic Maghreb is at Attachment B.

Subsection 102.1(2A) of the 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 Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the regulation.

Prior to making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, ASIO and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation also repeals existing Regulation 4F of the *Criminal Code Regulations 2002* which had previously specified Al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code. The separate *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013* now specifies Al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation under subsection 102.1(1) of the Code.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the 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.

Statement of Compatibility with Human Rights

Objective

The object of the *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. This will

engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

The *Criminal Code (Terrorist Organisation – Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit, train or receiving training, get funds to, from or for Al-Qa’ida in the Lands of the Islamic Maghreb, and provide support or associate with Al-Qa’ida in the Lands of the Islamic Maghreb.

The offence in subsection 102.8 of the Criminal Code of associating with a terrorist organisation is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or representation.

Whilst the *Criminal Code (Terrorist Organisation – Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013* may limit the right to freedom of association with Al-Qa’ida in the Lands of the Islamic Maghreb, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Al-Qa’ida in the Lands of the Islamic Maghreb 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, as detailed in the Statement of Reasons (at [Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons ([Attachment B](#)) supports the Attorney-General’s decision made on reasonable grounds, that Al-Qa’ida in the Lands of the Islamic Maghreb satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Criminal Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation –*

Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013 specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws*. The *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) the Minister must arrange for the Leader of the Opposition to be briefed in relation to the regulation
- under subsection 102.1(3) the *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) 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. The effect of the Minister's declaration is that the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Act, and
- both Houses of Parliament may disallow the *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2013* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4).

Conclusion

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

ATTACHMENT A

Details of the Criminal Code (Terrorist Organisation – Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013

Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

Section 4 – Schedule(s)

This section provides that each instrument specified in a Schedule to this Regulation is amended or repealed as set out in the Schedule, and any other item in a Schedule to this Regulation has effect according to its terms.

Section 5 – Definition

This section provides that a reference in this Regulation to the word *Code* means the *Criminal Code*.

Section 6 – Terrorist organisation – Al-Qa’ida in the Lands of the Islamic Maghreb

This section provides that for paragraph (b) of the definition of ‘*terrorist organisation*’ in subsection 102.1(1) of the Code, the organisation known as Al-Qa’ida in the Lands of the Islamic Maghreb is specified.

Subsection (2) provides that Al-Qa’ida in the Lands of the Islamic Maghreb is also known by the following names:

- (a) Al Qaida au Maghreb Islamique;
- (b) Al-Qa’ida in the Islamic Maghreb;
- (c) Al-Qa’ida Organisation in the Lands of the Islamic Maghreb;
- (d) AQIM;
- (e) Le Groupe Salafiste Pour La Predication et Le Combat;
- (f) Salafist Group for Call and Combat;
- (g) Salafist Group for Preaching and Combat; and
- (h) Tanzim al-Qa’ida fi bilad al-Maghreb al-Islamiya.

Schedule 1 – Amendment

This schedule amends the *Criminal Code Regulations 2002*.

Clause 1 – Regulation 4F

This clause provides that Regulation 4F of the *Criminal Code Regulations 2002* is repealed. Regulation 4F was the previous regulation listing Al-Qa'ida in the Lands of the Islamic Maghreb, and this clause ensures there is no duplication if the new Regulation is made before the current Regulation ceases.

ATTACHMENT B

Al-Qa'ida in the Lands of the Islamic Maghreb

**(Also known as: Al Qaida au Maghreb Islamique;
Al-Qa'ida in the Islamic Maghreb;
Al-Qa'ida Organisation in the Lands of the Islamic Maghreb; AQIM;
Le Groupe Salafiste Pour La Predication et Le Combat;
Salafist Group for Call and Combat;
Salafist Group for Preaching and Combat;
Tanzim al-Qa'ida fi bilad al-Maghreb al-Islamiya)**

This statement is based on publicly available information about al-Qa'ida in the Lands of the Islamic Maghreb (AQIM). To the Australian Government's knowledge, this information is accurate and reliable and has been corroborated by classified information.

Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

- (a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

Details of the organisation

Formerly known as the Salafist Group for Preaching and Combat (Le Groupe Salafiste Pour La Predication et Le Combat—GSPC), AQIM is a Sunni Islamic extremist group with its senior leadership based in northern Algeria.

The GSPC was formed in 1998 as a splinter group of the Algerian Armed Islamic Group (GIA) to protest against the GIA's indiscriminate killing of civilians. The GSPC quickly became Algeria's largest and most dangerous terrorist group and by 2000, the external networks of the GIA across Europe and North Africa had been absorbed by the GSPC.

In June 2004, the GSPC released statements claiming that its jihad in Algeria was part of the international jihad led by Usama bin Laden and declaring war on all foreigners and foreign interests in Algeria. The culmination of this increasingly pro-al-Qa'ida stance was the GSPC's official alliance with al-Qa'ida and its subsequent name change.

- On 11 September 2006, al-Qa'ida announced an alliance between the GSPC and al-Qa'ida.
- On 26 January 2007, the GSPC announced it had changed its name to al-Qa'ida in the Lands of the Islamic Maghreb (AQIM).

Following the 2006 alliance, AQIM media statements took an increasingly anti-Western position and the group conducted its first attacks specifically targeting Western interests.

In March 2012, Tuareg insurgents launched a rebellion against the Government of Mali in northern Mali. AQIM's Mali-based battalions rapidly took control of the insurgency and with Ansar al-Din, an Islamist ally, established authority over northern Mali. The groups implemented Islamic (Sharia) law and established camps to train recruits. In December 2012, the United Nations Security Council (UNSC) issued a resolution which among other things specifically condemned AQIM as one of the terrorist groups which do not recognise the territorial integrity of Mali and sanctioned deployment of the African-led International Support Mission in Mali (AFISMA) against the Islamist occupation. In January 2013 the French Government initiated military intervention against AQIM and the other rebel groups occupying northern Mali at the request of the Government of Mali.

Objectives

AQIM's objective is to create an Islamist state based on Islamic law. AQIM aspires to expand its influence throughout North Africa and the Sahel/Sahara region and to conduct attacks in Europe.

As the GSPC, the group's main objective was to overthrow the Algerian Government and replace it with an Islamic government to rule Algeria under Islamic law. This remains one of AQIM's key aims. However, following GSPC's alliance with al-Qa'ida in late 2006, and name change to AQIM in early 2007, the group increasingly has adhered to al-Qa'ida's extremist ideology and has declared war against foreigners and foreign interests throughout North Africa and Europe.

AQIM has called for the freeing of the Maghreb countries of North Africa from Spanish and French influences and for the regaining of the lost Islamic regions of southern Spain, known as al-Andalus. AQIM has stated its support for Islamist extremist violence in Afghanistan and Pakistan, Iraq, Yemen, Somalia, Chechnya, and Palestine. It has also called on Muslims across North Africa to target Western interests.

Leadership and membership

Since 2004, the group has been led by Abdelmalek Droukdal (aka Abu Musab Abdel Wadoud). While Droukdal reportedly commands AQIM's battalions from Algeria, the battalions also enjoy some operational autonomy. The group's 2006 alliance with al-Qa'ida has proved to be largely ideological and AQIM appears to operate autonomously with limited contact and direction from al-Qa'ida senior leadership.

AQIM's membership is estimated at several hundred members. AQIM members primarily originate from Algeria, Mali, Mauritania and other North and West African countries.

Since 2000, individuals believed to be GSPC/AQIM members have been arrested in France, Italy, Spain, the Netherlands, the United Kingdom (UK) and Pakistan. Security forces also have dismantled AQIM cells in several European countries.

Recruitment and funding

In anticipation of United Nations-sanctioned military response to its occupation of northern Mali in 2012, AQIM has increased recruitment of new members. In addition to recruitment from African countries, recruits from Western nations including France have attempted to travel to Mali. AQIM continues to communicate with the wider extremist community through web-based propaganda and official statements issued through the Al-Fajr Media Centre website and AQIM's media wing Al Andalus Media Productions.

AQIM funds itself primarily through criminal activities, including the kidnapping of Westerners for ransom payments. Kidnapping operations in the Sahel/Sahara region of North Africa have been a key source of funding and have netted the group millions of Euros in ransoms since February 2008. AQIM has also used kidnapping to obtain political concessions such as the release of Islamist prisoners. Other funding sources include protection rackets, robbery, people and arms trafficking, money laundering and smuggling and increasingly, the facilitation of drug trafficking from South America into Europe.

Terrorist activity of al-Qa'ida in the Lands of the Islamic Maghreb

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

AQIM conducts attacks against Western interests in northern Algeria and increasingly in Mali, Mauritania and Niger. Its methods include suicide bomb attacks, remotely detonated roadside bombings, small arms attacks, kidnappings for ransom and assassinations. Attacks against Western interests reliably attributed to AQIM, or for which AQIM has claimed responsibility since the group was last re-listed include:

- AQIM killed a French aid worker during July 2010 following an unsuccessful raid to free him.
- 16 September 2010: seven employees including five French nationals, a Togolese national and a Malagasy national were kidnapped by AQIM militants in Niger.
- 5 January 2011: a former AQIM militant detonated an improvised explosive device (IED) targeting the French Embassy in Mali. After his arrest he told Mali security officials he conducted the attack to prove to AQIM that he could conduct an act of terrorism independently.
- 7 January 2011: two French nationals were kidnapped by AQIM militants in Niger. They were killed on 8 January during a rescue attempt.

- 2 February 2011: an Italian national was kidnapped in Algeria by AQIM militants.
- 24 November 2011: two French nationals were kidnapped from their hotel in Mali. AQIM claimed responsibility for the kidnapping. An AQIM spokesman announced the execution of one of these hostages on 10 March 2013.
- 25 November 2011: AQIM militants kidnapped a Swedish national, a Dutch national and a dual British-South African national from Timbuktu, Mali. A German national was killed during the kidnapping.
- 26 January 2012: AQIM claimed responsibility for kidnapping a German national in Kano, Nigeria. The German national was later killed by his captors during a counter-terrorism operation against the location in which he was held.
- 15 April 2012: a Swiss woman was kidnapped from her residence in Timbuktu after the town was captured by Islamist and Tuareg militants including AQIM. She was released on 26 April following negotiations facilitated by the President of Burkina Faso.
- 21 November 2012: a Portuguese-born French national was kidnapped by likely AQIM associates in Diema, southern Mali.
- As of May 2013, AQIM was holding nine Western nationals hostage.

In addition to targeting Western interests, AQIM routinely attacks military police and government interests of North and West African nations. Common tactics include ambushes, attacks at false roadblocks, raids on military, police and government convoys, armed assaults and vehicle-borne suicide bombings. Attacks of this nature reliably attributed to AQIM, or for which AQIM has claimed responsibility since the group was last re-listed include:

- 25 July 2010: AQIM claimed responsibility for an attack on a police building in Algeria, killing a municipal guard.
- 25 August 2010: Mauritanian security forces shot the suspected AQIM-linked driver of a suicide vehicle-borne improvised explosive device (SVBIED) before he could reach the gate of a military barracks in Mauritania. The device detonated prematurely causing damage to nearby buildings.
- 2 October 2010: AQIM militants killed five Algerian soldiers during an ambush in Tizi Ouzou province, Algeria.
- 2 February 2011: Mauritanian security forces disrupted an attempt to carry out an SVBIED attack in Nouakchott.
- 15 April 2011: AQIM militants attacked a checkpoint in Algeria killing 17 Algerian soldiers.
- 13 May 2011: Seven soldiers were killed when AQIM militants attacked a barracks in Algeria.
- 28 June 2011: an IED killed three civilians when it detonated on the Mali-Mauritanian border. AQIM militants are believed to be responsible as the attack occurred just two days after a counter-terrorism operation against AQIM.
- 16 July 2011: AQIM claimed responsibility for a suicide bomb which killed one person when it detonated outside a police station in northern Algeria.

- 14 August 2011: an AQIM militant detonated a SVBIED outside the police headquarters in the northern Algerian town of Tizi Ouzou wounding 33 people.
- 16 August 2011: one person was killed in an IED attack in northern Algeria by suspected AQIM militants.
- 26 August 2011: sixteen soldiers and two civilians were killed at a military academy in the northern Algerian town of Cherchell in a double suicide bombing attack.
- 16 January 2012: AQIM militants kidnapped the governor of Algeria's Illizi region in an attack on his convoy near the Algerian-Libyan border. The governor was rescued the following day by Libyan security forces.
- 1 April 2012: an Algerian soldier was killed during an exchange of fire with AQIM militants in northern Algeria.
- 25 May 2012: an AQIM militant killed a security guard in northern Algeria.
- 20 July 2012: an AQIM small arms attack killed a police officer in northern Algeria.
- 31 July 2012: AQIM claimed responsibility for an attack on a convoy protecting employees of a French construction company in Jijel, Algeria. Two guards were killed during the attack.

Advocating the doing of terrorist acts

AQIM leaders and senior al-Qa'ida members including Ayman al-Zawahiri, have stated publicly that AQIM should target United States (US), French and other Western interests in Algeria, across North Africa and into Western Europe.

AQIM issued a public statement praising the attack on the US Consulate in Benghazi on 11 September 2012 which resulted in the death of four Americans including the US Ambassador to Libya. The statement encouraged further attacks against US diplomatic missions in Africa and the killing of US ambassadors.

In May 2013, AQIM issued an audio statement calling for attacks targeting French interests across the world in response to French intervention in Mali.

Conclusion

On the basis of the above information, ASIO assesses AQIM is directly and indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts and advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, AQIM is known to have engaged in acts that:

- cause, or could cause, serious damage to property, the death of persons, endanger a person's life or create a serious risk to a person's safety;
- are intended to have those effects;
- are done with the intention of advancing AQIM's political, religious or ideological causes; and
- are done with the intention of intimidating sections of the public globally.

This assessment is corroborated by information provided by reliable intelligence sources.

Other relevant information

Proscription by the UN and other countries

AQIM is listed on the United Nations Security Council 1267 (al-Qa'ida) Sanctions Committee's consolidated list as an entity associated with al-Qa'ida. AQIM has been listed as a terrorist organisation by Canada, the US and New Zealand. The UK lists the group as the Salafist Group for Call and Combat (GSPC).

Links to other terrorist groups

Despite its 2006 merger with al-Qa'ida, AQIM maintains a largely autonomous command structure and determines its own targeting strategy. It remains ideologically aligned with al-Qa'ida.

Links to Australia

AQIM has not made statements specifically threatening Australians or Australian interests. However, AQIM has issued statements threatening Westerners and Western interests in general.

Peace and mediation processes

AQIM has not participated in negotiations with the Mali Government over the Islamist occupation of northern Mali. In contrast, AQIM's Islamist ally in northern Mali, Ansar al-Din, participated in mediation talks in the past.

AQIM has not participated in peace talks with the Algerian Government.