

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

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 2016*

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 *Criminal Code*).

Division 102 of the *Criminal 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; getting funds to, from or for a terrorist organisation; providing support to a terrorist organisation; and, associating with a terrorist organisation.

Section 102.9 of the *Criminal Code* provides that section 15.4 (extended geographical jurisdiction – category D) applies to an offence against Division 102 of the *Criminal Code*. The effect of applying section 15.4 is that offences in Division 102 of the *Criminal 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 *Criminal Code* as:

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph 102.1(1)(a)); or
- an organisation that is specified by the regulations for the purposes of this paragraph (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-Qaida fi bilad al-Maghreb al-Islamiya, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

The Regulation enables the offence provisions in Division 102 of the *Criminal Code* to continue to apply to persons in relation 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 *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 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.

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, or advocates 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 (DFAT), as well as advice from the Australian Government Solicitor (AGS). 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 *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.

Prior to making the Regulation, consultations were held with DFAT, ASIO and the AGS. 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 is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 28 June 2016. 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 it takes effect.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2016* (the Regulation) makes it an offence under Division 102 of the *Criminal Code*, to direct the activities, become a member of, recruit for, train, get funds to, from or for, provide support to, or associate with, al-Qa’ida in the Lands of the Islamic Maghreb.

The offence of associating with a terrorist organisation in subsection 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 practising 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.

The object of the Regulation is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

Human rights implications

This instrument engages the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6
- the right to freedom of expression in Article 19, and
- the right to freedom of association in Article 22.

The object of the Regulation is to protect national security, public safety and the rights and freedoms of persons within and outside Australia. This engages the inherent right to life expressed in Article 6 of the ICCPR.

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 Regulation may 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 al-Qa'ida in the Lands of the Islamic Maghreb. 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. This is in accordance with a legitimate purpose in Article 19(3) on the grounds of national security.

Article 22(1) of the ICCPR provides that everyone shall have the right to freedom of association with others. However, Article 22(2) provides that freedom of association may be limited if it is necessary to achieve a legitimate purpose, including the interests of national security or public safety. This Regulation, and more broadly the terrorist organisation listing regime, limits the right of freedom of association to prevent people engaging with and participating in terrorist organisations. Terrorist organisations, including al-Qa'ida in the Lands of the Islamic Maghreb, present a threat to the security of Australia and often seek to harm Australians and Australia's democratic institutions. The statutory definition of a 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code* requires that these organisations are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. A terrorist act includes the causing of serious harm or death to persons and serious damage to property. Due to the severity of the danger posed by terrorist organisations, including al-Qa'ida in the Lands of the Islamic Maghreb, it is reasonable, necessary and proportionate to limit the right of individuals who by their association with al-Qa'ida in the Lands of the Islamic Maghreb, pose a threat to Australians.

Whilst the Regulation may limit the right to freedom of expression and the right to freedom of association with al-Qa'ida in the Lands of the Islamic Maghreb, the Regulation is subject to the safeguards outlined below. The general 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, as detailed in the Statement of Reasons (Attachment B).

The information in the Statement of Reasons (Attachment B) supports the Minister'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 *Criminal Code* requiring prior consultation and enabling review of the Regulation. 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* of 25 June 2004, and the Regulation may only be made if a majority of the States and Territories do not object to the Regulation 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 to be briefed in relation to the proposed Regulation;
- under subsection 102.1(3) of the *Criminal Code*, the Regulation will cease to have effect on the third anniversary of the day on which it takes 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 that the Regulation listing the organisation ceases 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 Regulation 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 Regulation within the applicable disallowance period, which is 15 sitting days after the regulation was laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

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 achieve a legitimate purpose and are reasonable, necessary and proportionate.

ATTACHMENT A

Details of the Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2016

Section 1 – Name

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2016*.

Section 2 – Commencement

This section would provide for the commencement of each paragraph in the instrument, as set out in the table.

Subsection (1) would provide that each provision in the instrument 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 would provide that the Regulation commences on 28 June 2016.

The note to subsection (1) would clarify that the table only relates to the provisions of this instrument as originally made, and that it will not be amended to deal with any later amendments to the instrument.

Subsection (2) would provide that information in column 3 of the table is not part of the instrument. It is designed to assist readers, and may be updated or changed in any published version of this Regulation. Column 3 clarifies that the instrument would commence on 28 June 2016.

Section 3 – Authority

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

Section 4 – Schedules

This section would provide that the instrument specified in Schedule 1 is repealed as set out in Schedule 1.

Section 5 – Terrorist organisation—Al-Qa'ida in the Lands of the Islamic Maghreb

Subsection (1) would provide that for paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, the organisation known as Al-Qa'ida in the Lands of the Islamic Maghreb is specified.

Subsection (2) would provide 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-Qaida fi bilad al-Maghreb al-Islamiya.

Schedule 1—Repeals

Schedule 1 would provide that *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013* is repealed.

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2013* specifies Al-Qa’ida in the Lands of the Islamic Maghreb as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*. The proposed clause would ensure there is no duplication where the new Regulation is made before the current Regulation ceases to have effect.

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-Qaida 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. To the Australian Government's knowledge, this information is accurate, 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).

Background to this listing

The Australian Government first proscribed the organisation under its former name, the Salafist Group for Preaching and Combat (Le Groupe Salafiste Pour La Predication et Le Combat –GSPC), on 14 November 2002 and relisted under that name on 5 November 2004 and 3 November 2006. The organisation was listed as al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) on 9 August 2008 and relisted 22 July 2010 and 12 July 2013.

Terrorist activity of the organisation

Objectives

Al-Qa'ida in the Lands of the Islamic Maghreb's (AQIM) objective is to create an Islamist state based on Islamic law. AQIM aspires to expand its influence throughout North and West Africa.

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 has increasingly adhered to al-Qa'ida's extremist ideology and has declared war against foreigners and foreign interests throughout North and West Africa.

AQIM has called for the freeing of the Maghreb countries of North Africa from Spanish and French influences and for the restoration 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.

AQIM has undertaken the following to advance its ideology and achieve its objectives:

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

AQIM has engaged in terrorist attacks and kidnappings against a wide range of targets in North and West Africa. Attacks which AQIM has claimed responsibility for since it was last re-listed include:

- 5 February 2016: AQIM militants attacked a United Nations (UN) Multidimensional Integrated Stabilisation Mission (MINUSMA) base in Timbuktu, Mali. One Malian soldier was killed in the attack.
- 7 January 2016: AQIM militants kidnapped a Swiss national in Timbuktu, Mali. AQIM demanded the release of militants imprisoned in Mali in return for the release of the Swiss national.
- 20 November 2015: AQIM conducted a joint attack with al-Murabitun on a hotel frequented by foreigners, the Radisson Blu, in Bamako, Mali. Twenty people were killed in the attack.
- 3 August 2015: AQIM conducted an attack against a Malian military camp in Gourma Rharous, Mali, killing 13 soldiers.
- 20 April 2014: AQIM militants attacked an Algerian military convoy in the Tizi Ouzou region of Algeria, killing 14 soldiers.

AQIM has ongoing intent to undertake terrorist acts in North and West Africa. Following the military intervention of French and African forces in northern Mali in 2013, the leader of AQIM's Sahara Branch, Yahya Abu al-Hammam, stated that AQIM would engage in prolonged, mobile, guerrilla warfare against Malian, French and allied interests throughout the Sahel region.

AQIM has pursued alliances with other regional terrorist groups to achieve its objectives, strengthening the capability of those groups in the process.

- The attack on the Radisson Blu Hotel in Bamako, Mali, in November 2015, was a joint operation between AQIM and al-Murabitun.
- AQIM has also provided weapons, support and training to Nigeria-based terrorist group Boko Haram.

Advocating the doing of terrorist acts

AQIM leaders have publically advocated terrorist attacks in order to further its objectives. Public statements in which AQIM has advocated terrorist attacks since it was last re-listed include:

- 6 December 2015: AQIM released a speech from its deputy Shariah judge, Abu Abdul Rahman Ali al Sanhaji, inciting Muslims in Algeria, Burkina Faso, Mauritania, Niger and northern Mali to participate in violent jihad.
- 26 April 2015: AQIM released a speech from the head of its Council of Dignitaries, Abu Obeida Yusuf al 'Annabi, inciting Tunisians to wage jihad and to fight the government.

Details of the organisation

AQIM is an affiliate of al-Qaida and shares its core jihadist ideology, seeking to remove governments, through violent means if necessary, in Muslim countries that it deems are 'un Islamic' in order to establish an Islamic Caliphate. AQIM also espouses anti-Western ideals and has called on Muslims across North Africa to target Western interests. AQIM's alliance with al-Qa'ida in 2006 has proved to be largely ideological and AQIM appears to operate autonomously with limited contact and direction al-Qa'ida senior leadership.

- In 2014, AQIM reiterated its commitment and pledge of allegiance to the leader of al-Qa'ida, Ayman al Zawahiri.

Leadership

Since 2004, AQIM (known then as GSPC) has been led by Abdelmalek Droukdal (aka Abu Musab Abdel Wadoud). Although Droukdal reportedly commands AQIM's battalions from Algeria, the battalions also enjoy some operational autonomy.

Since 2013, Yahya Abu al-Hammam (aka Jemal Oukacha) has been the leader of AQIM's Sahara Branch which operates predominantly in northern Mali. Al-Hammam has played a key role in AQIM's ongoing terrorist activities, including the killing of United States' national Christopher Leggett in Mauritania in June 2009 and the killing of French national Michel Germaneau in Niger in July 2010.

Membership

AQIM's membership is estimated at several hundred. 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 and Pakistan. Security forces have also dismantled AQIM cells in several countries.

Recruitment and funding

AQIM exploits the instability and local grievances across much of the Sahel to recruit members. The inability of governments to provide jobs for a rapidly expanding young population provides a fertile ground for recruitment. AQIM also recruits from communities in

northern Mali through cooperation in transnational smuggling activities and intermarriage with local powerful families. AQIM continues to communicate with the wider extremist community through web-based propaganda and official statements issued through AQIM's media wing, Al Andalus Media Productions.

AQIM funds itself primarily through criminal activities and 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 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.

Links to other terrorist organisations

AQIM remains an affiliate of and ideologically aligned with al-Qa'ida. However, AQIM maintains a largely autonomous command structure and determines its own targeting strategy.

AQIM has current and historic ties to other regional terrorist groups.

- In November 2015, AQIM conducted a joint attack with al-Murabitun on a hotel frequented by foreigners in Bamako, Mali. Al-Murabitun was proscribed as a terrorist organisation by Australia in 2014.
- In 2010 and 2011, AQIM provided weapons, support and training to Nigeria-based terrorist group Boko Haram.
 - Boko Haram was proscribed as a terrorist organisation by Australia in 2014.

Links to Australia

Australians are not directly involved in the organisation.

Threats to Australian interests

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

Listed by the United Nations or like-minded countries

The United Nations Security Council ISIL (Da'esh) and al-Qaida Sanctions Committee (formerly the United Nations Security Council Al-Qaida Sanctions Committee) has designated AQIM for targeted financial sanctions and an arms embargo since 6 October 2001.

AQIM has been listed as a terrorist organisation by Canada, the United States and New Zealand. The United Kingdom lists the group as the Salafist Group for Call and Combat (GSPC).

Engagement in peace or mediation processes

AQIM did not participate in negotiations with the Malian Government over the Islamist occupation of northern Mali in 2012.

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

Conclusion

On the basis of the above information, ASIO assesses AQIM continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or 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 committed or threatened actions that:

- cause, or could cause, death, serious harm to persons, serious damage to property, endangered life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;
- are intended to have those effects;
- are done with the intention of advancing AQIM's political, religious or ideological causes;
- are done with the intention of intimidating, the government of one or more foreign countries; and
- are done with the intention of intimidating the public or sections of the public.