

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

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

Regulations 2019

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019* (the Regulations) is to specify al-Qa’ida in the Lands of the Islamic Maghreb for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Al-Qa’ida in the Lands of the Islamic Maghreb is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2016*, which is repealed by the Regulations. Details of the Regulations are set out in [Attachment A](#).

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*.

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 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 al-Qa’ida in the Lands of the Islamic Maghreb is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration an unclassified Statement of Reasons provided by the Director-General of Security, as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons is at [Attachment B](#).

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 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 the *Criminal Code* continue to apply to conduct relating to al-Qa'ida in the Lands of the Islamic Maghreb. Regulations specifying al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation have been in effect since 2002.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered. 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.

Consultation

The unclassified Statement of Reasons was prepared by the National Threat Assessment Centre in the Australian Security Intelligence Organisation, in consultation with the Department of Foreign Affairs and Trade and the Department of Home Affairs (Home Affairs). Home Affairs also sought the advice of the AGS to inform the decision of the Minister for Home Affairs.

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 he was satisfied that al-Qa'ida in the Lands of the Islamic Maghreb met 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 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 time frame 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 time frame nominated by the Minister.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019* (the Regulations) specifies al-Qa’ida in the Lands of the Islamic Maghreb 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 identify al-Qa’ida in the Lands of the Islamic Maghreb 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 which might constitute an offence under Division 102 of the *Criminal Code* in relation to al-Qa’ida in the Lands of the Islamic Maghreb.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 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 Regulations provide that the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with al-Qa’ida in the Lands of the Islamic Maghreb.

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 our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act which includes the causing of serious harm to persons or death and serious damage to property (refer to [Attachment B](#) for details).

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

Article 6 of the ICCPR provides that 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 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 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 al-Qa'ida in the Lands of the Islamic Maghreb.

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 al-Qa'ida in the Lands of the Islamic Maghreb, 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 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 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 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 the applicable disallowance period, which is 15 sitting days after the Regulations are laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

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

Details of the Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019

Section 1 – Name

This section would provide that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019*.

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 Regulations commence the day after the instrument is registered.

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 these Regulations. Column 3 is empty at the time of making the instrument.

Section 3 – Authority

This section would provide that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

This section would provide each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule has effect according to its terms. Schedule 1 to the instrument would repeal the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulation 2016*.

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
- 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 2016* is repealed.

The *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulation 2016* 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 Regulations are made before the current Regulation ceases to have effect.

STATEMENT OF REASONS FOR 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.

1. 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; 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.

2. 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, 12 July 2013 and 28 June 2016.

3. 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 Africa and Europe and expanded its ambition from establishing an Islamic State in Algeria to the wider region of 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, referred to 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 either claimed by, or reliably attributed to, AQIM since it was last re-listed include:

- On 9 July 2018, AQIM militants from the Uqba bin Nafi Battalion ambushed Tunisian police officers near Ghardimau in northwestern Tunisia, killing six people.
- On 3 March 2018, AQIM attacked the French embassy and an army headquarters in Ouagadougou, Burkina Faso, killing 16 people.
- On 18 January 2018, AQIM claimed an attack where a suicide-bomber from AQIM-linked group al-Murabitun attacked a camp housing Malian soldiers in the city of Gao, Mali, killing at least 50.
- On 13 March 2016, AQIM conducted a joint armed attack with al-Murabitun at tourist hotels in Grand Bassam, Cote, d'Ivoire killing 19 people and wounding 33.

AQIM has a declared intent to undertake terrorist acts in North and West Africa. On 9 May 2018, AQIM announced via its official al-Andalus Foundation media channel threats of attacks against Western companies and interests in North and West Africa. This is a continuation of previous threats issued by AQIM, including the 2013 announcement by the leader of AQIM's Sahara Branch, Yahya Abu al-Hammam, who stated that AQIM would engage in prolonged, mobile, guerrilla warfare against Malian, French and allied interests throughout the Sahel region.

Advocating the doing of terrorist acts

AQIM leaders have publicly 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:

- On 31 July 2018, AQIM released a speech from the head of its Council of Dignitaries, Abu Obeida Yusuf al-'Annabi, rallying Muslims in the Maghreb to fight against their respective governments.
- On 8 May 2018, AQIM released a speech via the al-Andalus Foundation for Media Productions calling for its fighters to target Western companies and institutions in Africa.

4. Details of the organisation

AQIM is an affiliate of al-Qa'ida 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. Since joining with al-Qa'ida in 2006, AQIM follows al-Qa'ida's ideological tenets, and in 2014, AQIM reiterated its commitment and pledge of allegiance to the leader of al-Qa'ida, Ayman al-Zawahiri. However, AQIM also still maintains a significant degree of autonomy independent of al-Qa'ida senior leadership.

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.

Membership

AQIM's membership is estimated at several hundred. AQIM members primarily originate from Algeria, Mali, and Mauritania but they also recruit from 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 other European countries.

Recruitment and funding

AQIM exploits the instability and local grievances across much of the Sahel and North Africa to recruit members. The inability of governments to provide employment for an expanding youth population provides an avenue for recruitment. AQIM also recruits from communities in northern Mali by cooperating 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 extortion, taxing local populations, 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. The complex of al-Qa'ida networks across north and west Africa is extensive and AQIM provides strategic leadership.

- In December 2015, AQIM splinter group al-Murabitun announced it had rejoined AQIM but has continued to function as a distinct unit. The two groups have since cooperated closely, conducting several joint attacks. Both al-Murabitun and AQIM have variously attributed attacks to al-Murabitun, to AQIM, or to al-Murabitun as a battalion of AQIM. The Australian Government re-listed al-Murabitun as a terrorist organisation on 2 November 2017.
- AQIM's Sahara Branch has also cooperated in attacks with other regional AQIM aligned groups

– namely al-Murabitun, Ansar al-Din, and the Macina Liberation Front. In March 2017, these four groups formed an alliance under the name Jama'at Nusrat al-Islam Wal Muslimin. AQIM's Sahara Branch also continues its activities under this alliance.

Links to Australia

There are no known direct links between AQIM and Australia.

Threats to Australian interests

AQIM has not made statements specifically threatening Australians or Australian interests. However, AQIM has issued statements threatening Westerners and Western interests in general and through its JNIM membership have claimed attacks against French and US forces.

Listed by the United Nations or like-minded countries

The United Nations Security Council ISIL (Da'esh) and al-Qa'ida 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.

5. Conclusion

On the basis of the above information, ASIO assesses AQIM continues to be directly and/or indirectly engaged in, preparing, planning, assisting in and fostering the doing of terrorist acts and advocates the doing of terrorist acts.

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

- a) cause, or could cause, serious damage to property, or the death of persons, or endanger a person's life or create a serious risk to a person's safety;
- b) are intended to have those effects;
- c) are done with the intention of advancing the al-Qa'ida in the Lands of the Islamic Maghreb political, religious or ideological causes;
- d) are done with the intention of coercing or intimidating the government of a foreign country; and
- e) are done with the intention of intimidating sections of the public globally.