

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

*Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin)
Regulations 2020*

The purpose of the *Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2020* (the Regulations) is to specify Jama’at Nusrat al-Islam wal-Muslimin for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Jama’at Nusrat al-Islam wal-Muslimin is also known by the name of al-Murabitun. Al-Murabitun is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—al-Murabitun) Regulations 2017*, which are repealed by the Regulations.

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 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 Jama’at Nusrat al-Islam wal-Muslimin is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration unclassified information (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 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* apply to conduct relating to Jama'at Nusrat al-Islam wal-Muslimin.

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

The Regulations commence on 3 November 2020. 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 the advice of the Australian Government Solicitor (AGS) in relation to the unclassified information (Statement of Reasons).

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 Jama’at Nusrat al-Islam wal-Muslimin 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 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 Nusrat al-Islam wal-Muslimin) Regulations 2020

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 Nusrat al-Islam wal-Muslimin) Regulations 2020* (the Regulations) specify Jama’at Nusrat al-Islam wal-Muslimin 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 Jama’at Nusrat al-Islam wal-Muslimin 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 Jama’at Nusrat al-Islam wal-Muslimin.

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 offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Jama’at Nusrat al-Islam wal-Muslimin as a listed terrorist organisation.

Terrorist organisations, including Jama’at Nusrat al-Islam wal-Muslimin, 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 Nusrat al-Islam wal-Muslimin. 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 Nusrat al-Islam wal-Muslimin.

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 Nusrat al-Islam wal-Muslimin, 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 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 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.

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 Peter Dutton MP
Minister for Home Affairs

Details of the Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2020

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2020*.

Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) would provide 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 would provide that the proposed Regulations commence in their entirety on 3 November 2020.
4. The note to subsection 2(1) would clarify 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 to the instrument.
5. Subsection 2(2) would provide 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 would provide that the proposed Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section would provide that each instrument that is specified in a Schedule to the proposed Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule would have effect according to its terms.
8. Schedule 1 to the Regulations would repeal the whole of the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017*.

Section 5 – Terrorist organisation—Jama’at Nusrat al-Islam wal-Muslimin

9. Subsection 5(1) would provide 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 Nusrat al-Islam wal-Muslimin is specified.

10. The effect of specifying Jama'at Nusrat al-Islam wal-Muslimin as a terrorist organisation would be to ensure that offences in Subdivision B of Division 102 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 Nusrat al-Islam wal-Muslimin.
11. Subsection 5(2) would provide a list of names that Jama'at Nusrat al-Islam wal-Muslimin is also known as:
 - (a) al-Moulathamoun Battalion (paragraph (a))
 - (b) al-Mulathamun Battalion (paragraph (b))
 - (c) al-Murabitoun (paragraph (c))
 - (d) al-Murabitun (paragraph (d))
 - (e) Ansar al-Din (paragraph (e))
 - (f) Ansar Dine (paragraph (f))
 - (g) Force de Libération du Macina (paragraph (g))
 - (h) Group for the Support of Islam and Muslims (paragraph (h))
 - (i) JNIM (paragraph (i))
 - (j) Katibat Macina (paragraph (j))
 - (k) Macina Liberation Front (paragraph (k))
 - (l) Nusrat al-Islam (paragraph (l))
 - (m) Sahara Emirate (paragraph (m)), and
 - (n) the Sentinels (paragraph (n)).

Schedule 1 – Repeals

12. Clause 1 of Schedule 1 would repeal the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017* (the al-Murabitun Regulations).
13. The al-Murabitun Regulations specify al-Murabitun 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*, commencing on 3 November 2017. Pursuant to subsection 102.1(3) of the *Criminal Code*, 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. Clause 1 of Schedule 1 would ensure there is no duplication where the Regulations are made before the al-Murabitun Regulations cease to have effect.

STATEMENT OF REASONS FOR JAMA'AT NUSRAT AL-ISLAM WAL-MUSLIMIN	
Also known as: JNIM; Group for the Support of Islam and Muslims; Nusrat al-Islam; Ansar al-Din; Ansar Dine; al-Murabitun; al-Murabitoun; al-Mulathamun Battalion; al-Moulathamoun Battalion; the Sentinels; Sahara Emirate; Macina Liberation Front; Katibat Macina; Force de Libération du Macina.	
This statement is based on publicly available information about Jama'at Nusrat al-Islam wal-Muslimin (JNIM). 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 <i>Criminal Code Act 1995</i> provides that for an organisation to be listed as a terrorist organisation, the AFP Minister 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 <i>Criminal Code</i> , 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 JNIM has not previously been listed as a terrorist organisation by the Australian Government. Al-Murabitun (since merged into JNIM) was listed on 5 November 2014 and re-listed on 3 November 2017.
3.	Terrorist activity of the organisation <u>Objectives</u> JNIM is a Sunni Islamist extremist organisation based in Mali and active in West Africa. Its declared aims are to incite Muslims to oppose oppression and expel foreign and non-Muslim occupying powers – including through violence – and implement Islamic governance. The group's leader has declared JNIM's ultimate enemy to be 'the enemy of the Muslims from among the Jews and the Christians', and identified France and Western countries assisting France as more immediate adversaries. JNIM has undertaken the following to advance its ideology and achieve its objectives: <u>Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts</u> JNIM has engaged in terrorist acts in Mali and neighbouring countries. Significant attacks for which JNIM has claimed responsibility, and is assessed to have undertaken, include:

	<ul style="list-style-type: none"> • 6 April 2020: JNIM attacked a Malian military base in Bamba, Mali, killing over 20 soldiers. • 20 January 2019: JNIM attacked a United Nations base in Aguelhok, Mali, killing ten peacekeepers and wounding around 25 others. • 29 June 2018: JNIM conducted a suicide car bomb, rocket and armed attack against the Malian headquarters of Sahel G5 Joint Force in Sevare, Mali, killing two soldiers. • 18 June 2017: JNIM gunmen attacked a resort popular with foreigners near Bamako, Mali, killing five people.
4.	<p>Details of the organisation</p> <p>JNIM was created on 2 March 2017, when three al-Qa’ida-aligned groups – Ansar al-Din, al-Murabitun and the Sahara Emirate subgroup of al-Qa’ida in the Lands of the Islamic Maghreb (AQIM) – announced they had merged into one entity under one emir, formalising the longstanding alliance between the member groups. The merger also included the Macina Liberation Front, an affiliate of Ansar al-Din at that time. During the announcement, the leader of JNIM, Iyad ag Ghali, renewed the groups’ pledges of allegiance to the emir of AQIM, the emir of al-Qa’ida, and to the leader of the Taliban.</p> <p><u>Leadership</u></p> <p>Iyad ag Ghali has led JNIM since its formation in 2017. In accordance with its pledge of allegiance, JNIM is under the command of AQIM and al-Qa’ida core. However, it retains some operational autonomy, as do its subgroups, which have their own commanders and operate in different regions of northern and central Mali and neighbouring regions.</p> <p><u>Membership</u></p> <p>JNIM’s total membership is estimated at 1,000 to 2,000 fighters.</p> <p><u>Recruitment and funding</u></p> <p>JNIM exploits poor governance, economic and social conditions in northern and central Mali and neighbouring regions to attract members. It uses issues such as ethnic and social divisions, insecurity, and dissatisfaction with government oppression, corruption and inability to provide services as avenues for recruitment. JNIM funds itself through kidnap-for-ransom operations, extortion and taxation of locals, smugglers and traffickers.</p> <p><u>Links to other terrorist organisations</u></p> <p>JNIM is affiliated with, and under the command of, al-Qa’ida and AQIM. JNIM has also cooperated with Islamic State affiliate Islamic State of the Greater Sahara, which separated from al-Murabitun in 2015.</p> <p><u>Threats to Australian interests</u></p> <p>JNIM has not made statements specifically threatening Australians or Australian interests, but it has issued statements threatening Westerners and Western interests in general, and has attacked</p>

	<p>locations known to be frequented by Westerners. JNIM is unlikely to differentiate Australians from the citizens of other Western countries.</p> <p><u>Listed by the United Nations or like-minded countries</u></p> <p>The United Nations Security Council includes JNIM in the ISIL (Da'esh) and al-Qa'ida Sanctions List. JNIM was designated as a foreign terrorist organisation by the United States in 2018, and was listed as a proscribed terrorist organisation by the United Kingdom in 2019.</p> <p><u>Engagement in peace or mediation processes</u></p> <p>JNIM is not involved in any peace or mediation processes.</p>
5.	<p>Conclusion</p> <p>On the basis of the above information, the Australian Government assesses that JNIM is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, involving threats to human life and serious damage to property.</p> <p>In the course of pursuing its objectives, JNIM is known to have committed actions that:</p> <ul style="list-style-type: none"> • cause, or could cause, death, serious harm to persons, serious damage to property, endanger 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 a political, religious or ideological cause; and • are done with the intention of: <ul style="list-style-type: none"> ○ coercing, or influencing through intimidation, the government of one or more countries; or ○ intimidating the public or a section of the public.