

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 2022*

The purpose of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022* (the Regulations) is to specify the organisation known as 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

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 **AFP Minister** (the Minister for Home Affairs) must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act.

The Minister for Home Affairs is satisfied on reasonable grounds that the organisation Al-Qa’ida in the Lands of the Islamic Maghreb is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (the Statement of Reasons at Attachment C).

¹ A **terrorist organisation** is defined in subsection 102.1(1) of the *Criminal Code* as:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- (b) an organisation that is specified by the regulations for the purposes of this paragraph.

Effect of the instrument

Division 102 of Part 5.3 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation
- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of Part 5.3 of the *Criminal Code* apply to conduct relating to Al-Qa'ida in the Lands of the Islamic Maghreb.

The Regulations repeal the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulations 2019*, which would otherwise cease to have effect on 10 April 2022 by operation of subsection 102.1(3) of the *Criminal Code*. Making new Regulations ensures that the organisation Al-Qa'ida in the Lands of the Islamic Maghreb continues to be specified for the purposes of paragraph (b) of the definition of **terrorist organisation**.

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

The Regulations commence on 9 April 2022. 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 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 this Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of the States and Territories did not object to the making of the Regulations, within the timeframe nominated by the Minister.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition, enclosing the information upon which she was satisfied that Al-Qa'ida in the Lands of the Islamic Maghreb meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at [Attachment C](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022* (the Regulations) 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*.

The object of the Regulations is to specify 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 that might constitute an offence under Division 102 of Part 5.3 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 Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons. In particular, 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 as a listed terrorist organisation.

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 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)

- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Detering 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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 in the House of Representatives to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) of the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration being that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003*, and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

Details of the Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the Regulations, as specified in column 1 of the table, commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 provide that the Regulations commence in their entirety on 9 April 2022.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. It is designed to assist readers of the Regulations.

Section 3 – Authority

6. This section provides that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Al-Qa’ida in the Lands of the Islamic Maghreb) Regulations 2019*.

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

9. Subsection 5(1) provides that, for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the Criminal Code, the organisation known as Al-Qa’ida in the Lands of the Islamic Maghreb is specified.

10. The effect of specifying Al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 of the Criminal Code that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Al-Qa'ida in the Lands of the Islamic Maghreb.
11. Subsection 5(2) provides a list of names by which the organisation Al-Qa'ida in the Lands of the Islamic Maghreb is also known, at paragraphs 5(2)(a) to (g):
 - Al-Qaida au Maghreb Islamique;
 - Al-Qa'ida in the Islamic Maghreb;
 - Al Qa'ida Organisation in the Lands of the Islamic Maghreb;
 - 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.

Schedule 1—Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Al-Qa'ida in the Lands of the Islamic Maghreb) Regulations 2019* (the 2019 Regulations).
13. The 2019 Regulations specify the organisation 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*. Subsection 102.1(3) of the *Criminal Code* provides that the 2019 Regulations cease to have effect on 10 April 2022, being the third anniversary of the day on which they took effect.
14. While the 2019 Regulations would otherwise have ceased to have effect on this date, repealing the 2019 Regulations provides clarity and ensures there is no duplication where the new Regulations are made before the 2019 Regulations cease to have effect.

Statement of Reasons

Listing of al-Qa'ida in the Lands of the Islamic Maghreb as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons 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 where available.

Name of the organisation

Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM)

Known aliases

- Al Qaida au Maghreb Islamique
- Al-Qa'ida in the Islamic Maghreb
- Al-Qa'ida Organisation in the Lands of the Islamic Maghreb
- Le Groupe Salafiste pour la Predication et la Combat (GSPC)
- Salafist Group for Call and Combat
- Salafist Group for Preaching and Combat
- Tanzim al-Qa'ida fi bilad al-Maghreb al-Islamiya

Legislative basis for listing a terrorist organisation

Division 102 of the *Criminal Code Act 1995* (the Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister (the Minister for Home Affairs) must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- b) advocates the doing of a terrorist act.

For the purposes of listing a terrorist organisation under the Criminal Code, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.

Background to this listing

The Australian Government first listed this organisation under its former name, the Salafist Group for Preaching and Combat (GSPC), on 14 November 2002 and re-listed it 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 re-listed on 22 July 2010, 12 July 2013, 28 June 2016, and 10 April 2019.

Details of the organisation

Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) is an affiliate of al-Qa'ida and shares its Sunni Islamist religiously-motivated violent extremist (RMVE) ideology, seeking to create an Islamist state in North and West Africa ruled by Sharia law. To this end, AQIM has declared war against foreigners and foreign interests through North and West Africa and Europe, and used violence to bring about its objectives.

AQIM espouses an anti-Western ideology and has called on Muslims across North Africa to target Western interests. As GSPC, the group's primary objective was to overthrow the Algerian Government and replace it with an Islamist government. Since becoming allied with al-Qa'ida in late 2006 and changing its name from to AQIM in early 2007, the group has followed al-Qa'ida's ideological tenets. Although AQIM has pledged allegiance to al-Qa'ida leader Ayman al-Zawahiri, it maintains a significant degree of autonomy from al-Qa'ida's senior leadership.

AQIM has called for the expulsion of Spanish and French influence from North African Maghreb countries- Algeria, Libya, Mauritania, Morocco and Tunisia – as well as the restoration of former Islamic regions in southern Spain (termed *as-Andalus*). AQIM has declared its support for religiously motivated violent extremist (RMVE) activities in Afghanistan, Pakistan, Iraq, Yemen, Somalia, Chechnya and Palestine.

Leadership

Since November 2020, AQIM has been led by Abu Ubaidah Youssef al-Annabi. His predecessor, Abdelmalek Droukdal, was killed in June 2020 during French military operations. Although al-Annabi reportedly commands AQIM from Algeria, subordinate 'battalion' commanders also exercise some operational autonomy.

Membership

AQIM's membership is estimated at approximately 1,000 fighters across Algeria, northern Mali, southwest Libya, and Niger. AQIM members are predominantly from Algeria, Mali and Mauritania – although the group recruits from several other North and West African countries. Since 2000, individuals believed to be AQIM/GSPC members have been arrested in France, Spain, Italy, the Netherlands, the United Kingdom, and Pakistan.

Links to other groups

AQIM is an affiliate of, and is ideologically aligned with, al-Qa'ida- from which it receives strategic guidance. However, AQIM maintains a largely autonomous command structure and determines its own targeting strategy across North and West Africa.

Mali-based terrorist organisation Jama'at Nusrat al-Islam wal-Muslimin (JNIM) has pledged allegiance to AQIM. JNIM was formed in 2017 from a merger of Ansar al-Din, al-Murabitun and the Sahara Emirate sub-group of AQIM. JNIM is listed separately under the Criminal Code.

Terrorist activity

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

AQIM continues to engage in terrorist attacks and kidnappings against a wide range of targets in North and West Africa in order to further the group's objectives. Recent attacks which can be attributed to AQIM include:

- On 27 June 2020, two Algerian Army personnel were killed by an improvised explosive device (IED) in Ain Dalia, northern Algeria. An al-Qa'ida-aligned media agency claimed that AQIM was responsible for the attack.
- On 20 June 2020, militants ambushed an Algerian Army detachment in Ain Defla, northern Algeria, killing one soldier. An al-Qa'ida-aligned media agency claimed that AQIM was responsible for the attack.
- On 26 April 2019, a Tunisian Army soldier was killed and three were injured in an IED attack in Chaambi Mountains National Park, north-western Tunisia. AQIM claimed the attack was undertaken by militants from its Uqba bin Nafi Battalion.

Advocates the doing of a terrorist act

AQIM leaders have publicly advocated terrorism in order to further the group's objectives. Recent examples include:

- On 12 May 2021, AQIM released a statement urging Palestinians to attack Jewish people to “*cause pain and exhaustion to the Jews.*”
- On 3 November 2020, AQIM released a statement which instructed Muslims to kill any person who insults the Prophet Mohammed. The statement also praised a lone-actor attack in Conflans Sainte-Honorine, France, on 16 October 2020 for perceived insults the victim had made against the Prophet Mohammed. There is a substantial risk that the glorification of the 16 October 2020 attack could inspire others to undertake similar attacks.
- On 7 February 2020, AQIM released a statement advising Muslims to support existing ‘jihad operations’ and target US interests as a means of ending US support to Israel. In this context, ‘jihad’ likely refers to undertaking terrorist acts.
- On 5 May 2019, AQIM released a statement urging Palestinians to undertake ‘jihad and martyrdom operations’ targeting Jewish people. In this context, ‘jihad’ likely refers to undertaking terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

AQIM has not made statements specifically threatening Australians or Australian interests. However, AQIM adheres to al-Qa'ida's anti-Western ideology, and Australians may be harmed in attacks carried out by AQIM.

Listings by likeminded countries or the United Nations

The United Nations Security Council ISIL (Da'esh) and al-Qa'ida Sanctions Committee designates AQIM for targeted financial sanctions. AQIM is proscribed as a terrorist organisation by the United States, Canada and New Zealand, and is proscribed by the United Kingdom under the name Salafist Group for Call and Combat (GSPC).

Engagement in peace or mediation processes

AQIM is not engaged in any peace or mediation processes.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as al-Qa'ida in the Lands of the Islamic Maghreb is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.