

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 221**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code Amendment Regulations 2010 (No. 3)*

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the Criminal Code (the Code).

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

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

Paragraphs (a) and (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code define a ‘terrorist organisation’ as:

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

The purpose of the Regulations is to amend the *Criminal Code Regulations 2002* to specify Al-Qa’ida in the Islamic Maghreb and its aliases Al-Qa’ida in the Lands of the Islamic Maghreb (AQLIM), Le Groupe Salafiste Pour La Predication et le Combat, Salafist Group for Call and Combat, Salafist Group for Preaching and Combat (GSPC) and Tanzim al-Qa’ida fi bilad al-Maghreb al-Islamiya, for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

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

Subsection 102.1(2) of the Code provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code, the Minister must be satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

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

Subsection 102.1(2A) of the Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

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

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

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Code provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the second anniversary of the day on which they take effect.

**ATTACHMENT A**

**Details of the Criminal Code Amendment Regulations 2010 (No. 3)**

**Regulation 1- Name of Regulations**

This regulation provides that the title of the Regulations is the *Criminal Code Amendment Regulations 2010 (No. 3)*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered.

**Regulation 3 – Amendment of Criminal Code Regulations 2002**

This regulation provides that Schedule 1 amends the *Criminal Code Regulations 2002*.

**Schedule 1 – Amendments**

**Item [1] – Regulation 4F**

This item substitutes the existing regulation with a new regulation 4F to provide that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code Act 1995* (the Code), the organisation known as Al-Qa’ida in the Islamic Maghreb is specified.

Subregulation 4F(1) provides that Al-Qa’ida in the Islamic Maghreb is specified as a terrorist organisation under subsection 102.1(1) of the Code.

Subregulation 4F(2) provides that for the purposes of subregulation (1), Al-Qa’ida in the Islamic Maghreb is also known by the following names:

- (a) Al-Qa’ida in the Lands of the Islamic Maghreb (AQLIM);
- (b) Le Groupe Salafist Pour La Predication et le Combat;
- (c) Salafist Group for Call and Combat;
- (d) Salafist Group for Preaching and Combat (GSPC);
- (e) Tanzim al-Qa’ida fi bilad al-Maghreb al-Islamiya.

## **ATTACHMENT B**

### **Al-Qa'ida in the Islamic Maghreb (AQIM)**

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

The following information is based on publicly available details about al-Qa'ida in the Islamic Maghreb. To the Australian Government's knowledge, these details are accurate and reliable and have 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, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

#### **Details of al-Qa'ida in the Islamic Maghreb**

##### *Objectives*

Formerly known as the Salafist Group for Preaching and Combat (GSPC), al-Qa'ida in the Islamic Maghreb (AQIM) is a Sunni Islamic extremist group with its headquarters in northern Algeria. The group operates mainly in Algeria and the Sahel region of northern Mali. From its bases in northern Mali, AQIM also conducts regular attacks in Mauritania with some forays into Niger. AQIM does not appear to have established a strong foothold in the Maghreb countries of Morocco, Tunisia or Libya at this stage but aspires to expand its influence throughout North Africa and the Sahel/Sahara region and to conduct attacks in Europe.

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

AQIM has called for the freeing of the Maghreb countries of North Africa from Spanish and French influences and for the regaining of the lost Islamic regions of southern Spain, known as al-Andalus. AQIM also has stated its support for the Palestinians and called on Muslims across North Africa to target Jewish and Christian

interests. Since 2000, Algerians believed to be GSPC/AQIM members have been arrested in France, Italy, Spain, the Netherlands, the UK and Pakistan. Security forces also have dismantled AQIM support cells in several European countries. While an AQIM attack in Europe is possible; the threat appears to have receded in the past few years.

Concerted counter-terrorism campaigns by Algerian security forces have put AQIM on the defensive in northern Algeria. Algerian authorities reportedly neutralised hundreds of AQIM militants in 2009 and believe that the group's national emir, Abdelmalek Droukdal, is losing control of the organisation. As a result of these pressures, the group's focus appears to be moving southwards into the Sahel region, boosting the relevance of the group's Mali-based battalions for training and recruitment and fundraising operations. These battalions are currently able to operate in relative safety in the vast, ungoverned north of the country and AQIM is launching an increasing number of attacks in Mali and Mauritania, including against Westerners, with some forays into Niger. As a result, international and regional calls for the Malian Government to drive AQIM out of Mali are becoming louder.

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

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

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

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

### *Leadership*

Since 2004, the group has been led by Abdelmalek Droukdal (aka Abu Musab Abdel Wadoud). Other central figures include the leaders of two semi-autonomous and increasingly active AQIM battalions based in Northern Mali - Abdal Hamid Abu Zayd aka Abid Hamadou (Tariq Ibn Ziyad Battalion) and Mokhtar Belmokhtar (Al Moulathamine Battalion). The group's 2006 merger with al-Qa'ida has proved to be largely ideological and AQIM appears to operate autonomously with limited contact and direction from its parent organisation.

### *Membership*

AQIM's membership currently is estimated at between 500 and 800 members, about a third of whom operate in the Sahel regions of northern Mali and Mauritania. AQIM members are recruited from the Maghreb countries (Algeria, Libya, Mauritania, Morocco and Tunisia), the Sahel region (extending across northern Mali, southern Mauritania, northern Senegal, southern and central Niger central Chad, central Sudan and Eritrea) and from other West African countries.

### *Recruitment and funding*

Following substantial losses in its northern Algerian strongholds in the past two years, AQIM has stepped up its efforts to recruit new members. The group released a video entitled 'Join the Caravan' on 1 January 2010, maintains web-based propaganda and issues on-line updates of its activities under the title 'Series of the Swords' Shadows', disseminated by the Al-Fajr Media Centre website. In October 2009, the website announced that AQIM had formed a new media outlet called 'Al Andalus Media Productions', in reference to an area of Spain regarded by AQIM as occupied Islamic territory.

AQIM funds itself primarily through criminal activities, including the kidnapping of Westerners for ransom payments. Kidnapping operations in the Sahel/Sahara region of North Africa have been a key source of funding in the past two years and have netted the group millions of Euros in ransoms since February 2008. Other funding sources include protection rackets, people and arms trafficking, money laundering and muggings and increasingly, the facilitation of drug trafficking from South America into Europe.

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

#### *Directly or indirectly engaged in the doing of terrorist acts*

AQIM conducts attacks against Western interests in northern Algeria and increasingly in Mali, Mauritania and Niger. Its methods include suicide bomb attacks, remotely detonated roadside bombings, small arms attacks, kidnappings for ransoms and assassinations.

- AQIM's most significant attack on Western interests in Algeria was the 11 December 2007 suicide bombing attack on the UN Office in Algiers which killed 17 people.
- AQIM's most significant attack on Western interests in Mali was the assassination of a British tourist in northern Mali on 31 May 2009 following the UK Government's failure to meet AQIM's political demands.
- In Mauritania, AQIM was behind the kidnap of four Westerners in November and December 2009, the killing of a US citizen in the capital Nouakchott on 23 June 2009 and a suicide attack on the French Embassy in Nouakchott on 8 August 2009.
- In Niger, AQIM associates kidnapped two Canadian diplomats in December 2008 and held them in northern Mali until April 2009 when they were freed following the release of four AQIM prisoners held in Mali. Four European

tourists were also taken hostage in Niger in January 2009 and held in northern Mali. Three were released after ransom payment while the fourth was killed.

- A further seven Westerners were kidnapped in four separate incidents in Mauritania, Mali and Niger between November 2009 and April 2010.
- As of May 2010, AQIM was holding three Western nationals hostage in northern Mali.

In addition to targeting Western interests, AQIM routinely attacks Algerian military, police and government interests. Common tactics include ambushes, attacks at false roadblocks, raids on military, police and government convoys, armed assaults and vehicle-borne suicide bombings.

#### *List of attacks*

AQIM can also be reliably attributed to, or has claimed responsibility for numerous attacks including:

- 10 December 2006 – AQIM claimed responsibility for a roadside bomb attack on a bus carrying Western oil workers near Algiers. One Algerian died and nine others were injured in the attack, including four Britons, one American, one Canadian and one Algerian.
- 3 March 2007- AQIM claimed responsibility for a roadside bomb attack on a bus carrying Russian gas workers, south-west of Algiers. Three Algerians and one Russian died in the attack.
- 29 August 2007 – AQIM placed a homemade bomb between two railway tracks, derailing a freight train near Algiers and injuring three people
- 6 September 2007 – an AQIM suicide bomber blew himself up shortly before a scheduled visit by the Algerian President in the town of Batna, killing 11 people
- 13 September 2007 – authorities defused a bomb placed by AQIM in a market in the city of Chemora (440km southeast of Algiers). The bomb was intended to explode in the midst of the crowd on the first day of Ramadan 2007.
- 14 September 2007 - Three people were killed and five wounded when a homemade bomb exploded outside a police residence east of Algiers. AQIM later claimed responsibility for the attack.
- 24 September 2007 - three municipal guards were the target of a lethal ambush perpetrated by an armed group of AQIM militants in Stah, 360km east of Algiers.
- 25 September 2007 – AQIM militants killed two police officers in a roadside bomb attack on a police patrol in Les Issers.
- 27 September 2007 - AQIM was responsible for the deaths of two soldiers in a bomb attack in Sidi Ali Bounab, in the Bourmedes Province, 135km east of Algiers.
- 9 October 2007 – three Algerian military personnel died when two roadside bombs placed by AQIM targeted an army convoy in Boumerdes.

- 8 November 2007 – AQIM claimed responsibility for an attack on an aircraft, possibly an Algerian Air Force cargo or transport jet, which was the target of an RPG attack at Djanet airport in the south of Algeria.
- 11 December 2007 - two car bombs exploded in Algiers, killing at least 62 people. The attacks targeted the Constitutional Court building and a UN office. AQIM later claimed responsibility for the attacks.
- 3 January 2008 – an AQIM militant carried out a suicide truck bomb attack in Naciria, 70km east of Algiers, killing four people and injuring 20.
- 1 February 2008 – AQIM associates launched a firearm and grenade attack on the Israeli Embassy in Nouakchott, Mauritania.

**Attacks in the past two years include:**

- 29 January 2008 – a lorry laden with 635 kg of explosives and driven by an AQIM supporter was detonated outside a police barracks in the town of Thenia, east of Algiers, killing four people and injuring 23 others.
- 10 March 2008 – AQIM issued a statement claiming responsibility for the abduction of two Austrian tourists in Tunisia.
- 6 August 2008 – AQIM claimed responsibility for a suicide bombing in Tizi Ouzou province, east of Algiers, on 3 August that reportedly injured 24 people.
- 9 August 2008 – an AQIM suicide bomber driving a vehicle laden with up to 300 kg of explosives attacked the Coast Guard barracks and the gendarmerie in Zemmouri el-Bahri in Boumerdes province, east of Algiers, reportedly killing six and injuring 18.
- 17 August 2008 – AQIM militants ambushed a military convoy between the provinces of Skikda and Jijel, east of Algiers, killing 11 soldiers with roadside bombs and small arms fire.
- 19 August 2008 – AQIM claimed responsibility for a large car bomb explosion outside a police training school in Issers near Boumerdes province, east of Algiers, killing 48 and injuring 45.
- 20 August 2008 – AQIM militants carried out attacks against a hotel and a police barracks in Bouira, south-east of Algiers, killing 11 and injuring 38.
- 17 February 2009 – AQIM claimed responsibility for the 14 December 2008 kidnappings of Canadian UN envoy Robert Fowler and his aide in Niger as well as the 23 January 2009 kidnappings of four European tourists – two Swiss, one German and one British – in Mali.
- 26 May 2009 – 10 Algerian soldiers were killed and six other injured when their patrol was ambushed by AQIM militants in Biskra province south-east of Algiers.
- 3 June 2009 – AQIM released an internet statement claiming to have killed British hostage Edwin Dyer, one of four European tourists kidnapped by the group in late January 2009. It was later confirmed that Dyer had been beheaded by the group in May 2009.



- 17 June 2009 – 20 police officers and a civilian were killed by AQIM militants during an attack on a security convoy in the Mansourah area of northern Algeria's Bordj Bou Arreridj province.
- 23 June 2009 – AQIM militants shot dead a US national in the Mauritanian capital Nouakchott.
- 29 July 2009 – 20 Algerian soldiers were killed when AQIM militants ambushed their convoy with IEDs and small arms in Tipaza province west of Algiers.
- 8 August 2009 – two security guards were wounded when a suicide bomber detonated himself outside the French embassy in the Mauritanian capital Nouakchott. Local authorities attributed the attack to AQIM.
- 9 November 2009 – a senior army officer was killed and two soldiers were wounded when AQIM militants detonated an IED in the Cap Djenet area of Boumerdes province, east of Algiers.
- 18 December 2009 - kidnapping of two Italian citizens by suspected AQIM militants in the Mneyssiratt area of Mauritania.
- 25 November 2009 – AQIM associates kidnapped a French civilian from the town of Menaka in Mali, near the border with Niger.
- 29 November 2009 – AQIM associates kidnapped three Spanish aid workers 170km north of Nouakchott in Mauritania.
- 20 April 2010 – AQIM members kidnapped a French tourist and his Algerian driver in northern Niger.

#### *Advocating the doing of terrorist acts*

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

#### **Conclusion**

On the basis of the above information, ASIO assesses that AQIM is directly and indirectly engaged in, preparing, planning, assisting in and fostering the doing of terrorist acts and advocating the doing of terrorist acts. It is submitted the acts attributable to the AQIM are terrorist acts as they:

- (i) are done with the intention of advancing a political cause, namely the overthrow of the Algerian Government and the establishment of an Islamic state ruled by Sharia law; and advancement of al-Qa'ida's political and religious causes.
- (ii) are intended to coerce or influence by intimidation, the governments of foreign countries including Mauritania, Morocco, Tunisia and Libya.
- (iii) constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

## **Other relevant information**

### *Proscription by the UN and other countries*

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