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The Parliament of the Commonwealth of Australia

# **Review of the listing of Al-Murabitun**

**Parliamentary Joint Committee on Intelligence and Security**

December 2014  
Canberra

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## Membership of the Committee

**Chair** Mr Dan Tehan MP

**Deputy Chair** Hon Anthony Byrne MP

**Members**

Hon Jason Clare MP (from 25/11/14)	Senator David Bushby
Hon Mark Dreyfus QC, MP (from 25/11/14)	Senator the Hon Stephen Conroy
Mr Andrew Nikolic AM, CSC, MP	Senator the Hon John Faulkner
Hon Tanya Plibersek MP (to 24/11/14)	Senator David Fawcett
Hon Philip Ruddock MP	Senator John Williams (from 25/11/14)
Hon Bruce Scott MP (to 24/11/14)	Senator the Hon Penny Wong (to 25/11/14)





## **Terms of reference**

This inquiry and report is conducted under the following powers:

*Criminal Code Act 1995*

### **Section 102.1A Reviews by Parliamentary Joint Committee on Intelligence and Security**

*Review of listing regulation*

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1, the Parliamentary Joint Committee on Intelligence and Security may:
  - (a) review the regulation as soon as possible after the making of the regulation; and
  - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period.

and

*Criminal Code (Terrorist Organisation – Al Murabitun) Regulation 2014, Registered 4 November 2014 (FRLI: F2014L01476)*



## List of abbreviations

AMBD	al-Muwaqi' in Bid-Dam
ASIO	Australian Security Intelligence Organisation
Criminal Code	<i>Criminal Code Act 1995</i>
MUJWA	Movement for Unity and Jihad in West Africa





# List of recommendations

## 1 Al-Murabitun

### Recommendation 1

The Committee recommends that the regulation, made under the Criminal Code section 102.1, to list al-Murabitun as a terrorist organisation not be disallowed.



## Al-Murabitun

### Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code).
- 1.2 Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security may review a regulation specifying an organisation as a terrorist organisation for the purpose of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.3 On 6 November 2014, the Attorney-General advised the Committee that al-Murabitun would be listed as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code
- 1.4 The regulation for the listing of al-Murabitun was made by the Federal Executive Council on 30 October 2014 and came into effect on 5 November 2014, the day after it was registered on the Federal Register of Legislative Instruments. This was contrary to usual practice for new listings.<sup>1</sup> In his letter to the Committee, the Attorney-General stated that:

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<sup>1</sup> In 2007, the Government agreed in response to a recommendation by the Committee that when an organisation is listed for the first time, commencement of regulations would be delayed until after the Parliamentary disallowance period had expired. Flexibility was maintained, however, so that in circumstances where the Attorney-General considered a listing should commence immediately, this could occur. Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, available at: [www.aph.gov.au/pjcis](http://www.aph.gov.au/pjcis).

The Regulation has been drafted to commence the day after it is registered on Federal Register of Legislative Instruments. This was done in light of the few remaining Parliamentary sitting days in 2014, the listing of this group by key allies, and in the current climate of heightened terrorist activity in various hot spots around the world.<sup>2</sup>

- 1.5 The regulation was tabled in the House of Representatives on 14 November 2014 and the Senate on 17 November 2014. The disallowance period of 15 sitting days will expire in both houses on 23 February 2015.

## The Committee's review

- 1.6 The Attorney-General's letter, which included a statement of reasons for the listing and the process of listing undertaken by the Attorney-General's Department, was accepted as a submission to the review and can be found on the Committee's website.
- 1.7 Notice of the review was placed on the Committee website and a media release was issued on 12 November 2014. No public submissions were received.
- 1.8 A private hearing with representatives of the Attorney-General's Department and the Australian Security Intelligence Organisation was held in Canberra on 27 November 2014.
- 1.9 It is the practice of the Committee to conduct classified hearings with agencies so that evidence presented can be interrogated in more detail, as required. Some unclassified statements from the hearing may be included in this report to support the Committee's findings.
- 1.10 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee established procedures for reviewing terrorist listings. It also decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits.<sup>3</sup> The Committee has again adopted this approach in this report.
- 1.11 Where an organisation is to be listed for the first time, the Committee will assess the adequacy and appropriateness of the evidence presented in the

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2 Attorney-General, *Submission 1*, p. 2.

3 Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of listing of the Palestinian Islamic Jihad (PIJ) as a Terrorist Organisation under the Criminal Code Amendment Act 2004*, June 2004.

statement of reasons as well as the procedures followed by the Government. Where an organisation is to be relisted, the Committee expects the evidence presented to demonstrate a continuation of activities.

- 1.12 The remainder of this chapter will examine the Government's procedures for listing of al-Murabitun as a terrorist organisation, followed by the merits of the listing, based on the evidence provided to the Committee.

## The Government's procedures

- 1.13 The Attorney-General's letter of 6 November 2014 outlined the procedures followed by the Attorney-General's Department, with input from other agencies, for the listing of al-Murabitun. These procedures were as follows:

1. An unclassified Statement of Reasons was prepared by ASIO, and endorsed by the Department of Foreign Affairs and Trade, detailing the case for listing Al-Murabitun.
2. On 17 July 2014, the Australian Government Solicitor provided written advice with respect to the Statement of Reasons for Al-Murabitun, stating that the Attorney-General could, on the basis of the statement, be satisfied on reasonable grounds that the matters specified in section 102.1(2) of the Criminal Code have been met.
3. On 14 August 2014, the Director-General of Security wrote to the Attorney-General outlining the background, training activities, terrorist activities, and relevant statements of Al-Murabitun.
4. On 27 August 2014, the Department provided a submission to the Attorney-General containing a copy of the following documents:
  - the Statement of Reasons with respect to Al-Murabitun and
  - legal advice from the Australian Government Solicitor.
5. On 4 September 2014, having considered the information provided in the submission, the Attorney-General approved and signed a Statement that he is satisfied on reasonable grounds that Al-Murabitun is directly or indirectly engaged in, preparing, planning, assisting in, fostering or advocates the

- doing of a terrorist act (whether or not the act has occurred or will occur).
6. On 4 September 2014, the Attorney-General wrote to the Prime Minister advising of his decision to list Al-Murabitun as a terrorist organisation.
  7. On 4 September 2014, the Attorney-General wrote to the Leader of the Opposition on the proposed listing of Al-Murabitun as a terrorist organisation, and offered a briefing in relation to the listing.
  8. On 4 September 2014, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers of the States and Chief Ministers of the Territories, advising them of his decision to list Al-Murabitun as a terrorist organisation and requested their comments on the proposed listing by 30 September 2014.
  9. On 5 September 2014, State and Territory officials were also advised of the proposed listing by email.
  10. The Premiers of the States and Chief Ministers of the Territories responded on the dates recorded below:
    - New South Wales – response dated 29 September 2014
    - Victoria – response dated 22 September 2014
    - Queensland – response dated 29 September 2014
    - Western Australia – response dated 26 September 2014
    - South Australia – response dated 1 October 2014
    - Tasmania – response dated 22 September 2014
    - Northern Territory – response dated 24 September 2014 and
    - ACT – response dated 25 September 2014.
  11. State and Territory responses did not object to the proposed listing of Al-Murabitun.
  12. On 21 October 2014, the Attorney-General signed the Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014 and approved associated Federal Executive Council (ExCo) documentation, including an ExCo Minute, Explanatory Memorandum and Explanatory Statement in preparation for the ExCo meeting on 30 October 2014.
  13. On 29 October 2014, the Leader of the Opposition was briefed in relation to the listing in accordance with subsection 102.1(2A) of the Criminal Code.

14. On 30 October 2014, ExCo made the Regulation.
15. On 2 November 2014, the Attorney-General issued a Media Release announcing the listing of Al-Murabitun and attaching a copy of the Statement of Reasons.
16. On 4 November 2014, the Regulation was registered on the Federal Register of Legislative Instruments (FRLI) (reference: F2014L01476).
17. The Regulation came into effect on 5 November 2014, the day after it was registered on FRLI.
18. On 5 November 2014, the Australian Government's National Security website was updated to reflect the listing of Al-Murabitun.<sup>4</sup>

## Committee comment

- 1.14 The Committee reviewed the process of listing and was satisfied with the appropriateness of the procedures undertaken by the Government. However, noting that the United Nations and other countries had listed al-Murabitun between December 2013 and June 2014, the Committee questioned government representatives about the timeframe for this listing, including possible delays. The Committee notes the advice provided by agencies on this matter during the private hearing. While the Committee accepts that Australia's legislative processes for listing are different to other countries and that time is required to establish the case for listing, it also states its view that there should be no unnecessary delay in the proscription of terrorist organisations.

## The listing of al-Murabitun

### The criteria for listing an organisation

- 1.15 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Minister must be satisfied on reasonable grounds that the organisation:

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4 Attorney-General, *Submission 1*, pp. 16–17.

- 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
  - advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).<sup>5</sup>
- 1.16 In addition to these legislative criteria, ASIO may also have regard to non-legislative factors, including:
- engagement in terrorism
  - ideology and links to other terrorist groups or networks
  - links to Australia
  - threats to Australian interests
  - proscription by the UN or like-minded countries, and
  - engagement in peace/mediation processes.
- 1.17 The Committee was first advised of ASIO's evaluation process, including its use of these non-legislative factors, at a private hearing in 2005. Since then, the Committee has used these criteria as the basis for its reviews of listings of terrorist organisations under the Criminal Code.
- 1.18 The Committee has again used these criteria to assess the appropriateness and adequacy of evidence provided to it in this review.
- 1.19 In reviewing the listings, the Committee has taken into account the Attorney-General's statement of reasons, evidence provided at a private hearing, and other publicly available information. The Committee's evaluation of the appropriateness and adequacy of the evidence it has received is then considered against the criteria listed in paragraph 1.16.

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5 Subsection 102.1(2) of Division 102, Subdivision A of the Criminal Code. A full list of proscribed terrorist organisations is available at the Australian Government's National Security website at:  
<[www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx](http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx)>.



## Al-Murabitun

- 1.20 This is the initial listing of al-Murabitun, a Sunni Islamic extremist group with leadership based in northern Mali.<sup>6</sup>
- 1.21 The group was formed in August 2013 by the amalgamation of two regional extremist groups, the Movement for Unity and Jihad in West Africa (MUJWA) and al-Muwaqi'in Bid-Dam (AMBD). Both groups had originated as splinter groups of al-Qa'ida in the Lands of the Islamic Maghreb.<sup>7</sup>
- 1.22 Al-Murabitun's objective is to unite Muslims and other Islamic movements across Africa against non-Muslim and secular influences.<sup>8</sup> The group has advocated attacks on France, its allies and French interests.<sup>9</sup> In a statement released in January 2014:
- Al-Murabitun said it intended to continue targeting French allies with raids, car bombs, explosive devices and rockets. The statement indicated these attacks were motivated by the opposition of France and its allies to the implementation of Islamic law.<sup>10</sup>
- 1.23 The statement of reasons lists a number of attacks claimed by al-Murabitun between January and November 2013, including attacks by MUJWA and AMBD before al-Murabitun's formation.<sup>11</sup> In 2013, AMBD (and now al-Murabitun) members were responsible for attacks on Western civilian targets, including a siege at a gas processing facility in Algeria, in which 39 hostages and one security guard were killed. MUJWA and AMBD also co-operated to conduct twin attacks in Niger that simultaneously targeted a Nigerian military post and a French-operated uranium-processing plant.<sup>12</sup>
- 1.24 Al-Murabitun has pledged allegiance to al-Qa'ida senior leadership, including Sheikh Ayman al-Zawahiri and stated its adherence to the 'intellectual and moral methodology' promoted by al-Qa'ida.<sup>13</sup>

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6 Also known as al-Murabitoun. Al-Murabitun translates from Arabic into English as 'the Sentinels'.

7 Attorney-General, *Submission 1*, p. 17.

8 *Classified transcript*, 27 November 2014, p. 1.

9 Attorney-General, *Submission 1*, p. 14.

10 Attorney-General, *Submission 1*, p. 14.

11 Attorney-General, *Submission 1*, p. 14.

12 Attorney-General, *Submission 1*, pp. 12-13; *Classified transcript*, 27 November 2014, p. 1.

13 Attorney-General, *Submission 1*, p. 15.

- 1.25 There are no known links between al-Murabitun and Australia.<sup>14</sup> However, the Committee notes that the Government has moved to list the group at this time due to the threat al-Murabitun poses to Australians and Australia's expanding interests in Africa:
- ... especially commercial interests and especially around the resources industry, given the extent of, particularly, small to medium enterprises that have activities there and are likely to have activities there.<sup>15</sup>
- 1.26 Al-Murabitun is listed on the United Nations Security Council 1267 (al-Qa'ida) Sanctions Committee's consolidated list and as a proscribed terrorist organisation by the United States, United Kingdom, Canada and New Zealand.<sup>16</sup>
- 1.27 Al-Murabitun is not engaged in any peace or mediation processes.<sup>17</sup>

### **Committee comment**

- 1.28 The Committee has used ASIO's criteria as outlined in paragraph 1.16 to assess the information provided to support the listing of al-Murabitun as a terrorist organisation. The Committee notes that the group has claimed responsibility for a number of terrorist attacks, including attacks against Western civilian targets, and that it advocates terrorist acts against France and its allies.
- 1.29 The group originated from splinter groups of al-Qa'ida in the Lands of the Islamic Maghreb and has pledged allegiance to al-Qa'ida's senior leadership. It has been listed by the United Nations and a number of other countries as noted above.
- 1.30 The Committee is satisfied that al-Murabitun engages in and advocates terrorist activities, and therefore supports the listing of al-Murabitun as a terrorist organisation under section 102.1 of the Criminal Code.

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14 Attorney-General, *Submission 1*, p. 15.

15 *Classified transcript*, 27 November 2014, p. 1.

16 Attorney-General, *Submission 1*, p. 15.

17 Attorney-General, *Submission 1*, p. 15.

### **Recommendation 1**

**The Committee recommends that the regulation, made under the Criminal Code section 102.1, to list al-Murabitun as a terrorist organisation not be disallowed.**

**Dan Tehan MP**  
Chair

December 2014





## **Appendix A – List of submissions and witnesses appearing at private hearing**

### **Submissions**

1. Attorney-General

### **Witnesses appearing at private hearing**

**Canberra – Thursday, 27 November 2014**

#### ***Attorney-General's Department***

Ms Jamie Lowe, First Assistant Secretary, National Security Law and Policy Division

Ms Anna Harmer, Assistant Secretary, National Security Legal Policy Branch

Ms Laura Munsie, Principal Legal Officer, National Security Legal Policy Branch

#### ***Australian Security Intelligence Organisation***

Ms Kerri Hartland, Deputy Director-General

First Assistant Director-General, Security Advice and Assessments

Assistant Director-General, National Threat Assessment Centre