



## **Criminal Code (Terrorist Organisation— Al-Murabitun) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

George Brandis QC  
Attorney-General

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Section 1

## 1 Name

This instrument is the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Criminal Code Act 1995*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 5 Terrorist organisation—Al-Murabitun

- (1) 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-Murabitun is specified.
- (2) Al-Murabitun is also known by the following names:
- (a) al-Moulathamoun;
  - (b) al-Mulathamun Battalion;
  - (c) al-Murabitoun;
  - (d) the Sentinels.

## **Schedule 1—Repeals**

### ***Criminal Code (Terrorist Organisation—Al-Murabitun) Regulation 2014***

#### **1 The whole of the regulation**

Repeal the regulation.

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2017 No.**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017*

The purpose of the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017* (the Regulations) is to specify al-Murabitun for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup> Al-Murabitun is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulation 2014*, which is repealed by the Regulations. Details of the Regulations are set out in Attachment A.

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

Paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code* provides that regulations can specify organisations for the purposes of the definition of ‘terrorist organisation’.

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act or advocates the doing of a terrorist act.

The Attorney-General is satisfied on reasonable grounds that al-Murabitun is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Attorney-General has taken into consideration an unclassified Statement of Reasons provided by the Director-General of Security, as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons is at Attachment B.

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<sup>1</sup> A ‘terrorist organisation’ is defined in subsection 102.1(1) of the *Criminal Code* as:

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

### *Effect of the instrument*

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

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

The Regulations ensure that the offences in Division 102 of the *Criminal Code* continue to apply to conduct relating to al-Murabitun. Regulations specifying al-Murabitun as a terrorist organisation have been in effect since 2014.

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

The Regulations commence on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

### *Consultation*

The unclassified Statement of Reasons was prepared by the National Threat Assessment Centre in the Australian Security Intelligence Organisation, in consultation with the Department of Foreign Affairs and Trade and the Attorney-General’s Department (AGD). AGD also consulted the Centre for Counter-Terrorism Coordination in the Department of the Prime Minister and Cabinet and sought the advice of the AGS to inform the decision of the Attorney-General.

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 Attorney-General wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that al-Murabitun met the legislative criteria for listing.

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

The Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the states and territories. A majority of the states and territories did not object to the making of the Regulations within the time frame nominated by the Attorney-General.

## Statement of Compatibility with Human Rights

### Overview

The *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017* (the Regulations) specifies al-Murabitun for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to identify al-Murabitun as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the *Criminal Code* in relation to al-Murabitun.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the Regulations provide that the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with al-Murabitun.

Terrorist organisations, including al-Murabitun, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act which includes the causing of serious harm to persons or death and serious damage to property (refer to [Attachment B](#) for details).

### Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

The Regulations limit the following human rights contained in the ICCPR:

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

#### *The inherent right to life in Article 6*

Article 6 of the ICCPR provides that countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.



### *The right to freedom of expression in Article 19*

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including al-Murabitun. 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-Murabitun.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of 'terrorist organisation' in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

### *General safeguards and accountability mechanisms*

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with al-Murabitun, 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 the applicable disallowance period, which is 15 sitting days after the Regulations are laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

### ***Conclusion***

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations achieve a legitimate purpose and are reasonable, necessary and proportionate.

## ATTACHMENT A

### Details of the Criminal Code (Terrorist Organisation— Al-Murabitun) Regulations 2017

#### Section 1 – Name

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Al-Murabitun) Regulations 2017*.

#### Section 2 – Commencement

This section provides for the commencement of each paragraph in the instrument, as set out in the table.

Subsection (1) provides that each provision in the instrument specified in column 1 of the table commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the Regulations commence the day after the instrument is registered.

The note to subsection (1) clarifies that the table only relates to the provisions of this instrument as originally made, and that it will not be amended to deal with any later amendments to the instrument.

Subsection (2) provides that information in column 3 of the table is not part of the instrument. It is designed to assist readers, and may be updated or changed in any published version of these Regulations. Column 3 is empty at the time of making the instrument.

#### Section 3 – Authority

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

#### Section 4 – Schedules

This section provides each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule has effect according to its terms. Schedule 1 to the instrument would repeal the whole of the *Criminal Code (Terrorist Organisation– Al-Murabitun) Regulation 2014*.

#### Section 5 – Terrorist organisation — Al-Murabitun

Subsection (1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as al-Murabitun is specified.

Subsection (2) provides that al-Murabitun is also known by the following names:

- (a) al-Moulathamoun
- (b) al-Mulathamun Battalion
- (c) al-Murabitoun
- (d) the Sentinels.

Schedule 1—Repeals

Schedule 1 provides that *Criminal Code (Terrorist Organisation— Al-Murabitun) Regulation 2014* is repealed.

The *Criminal Code (Terrorist Organisation — Al-Murabitun) Regulation 2014* specifies 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*. The proposed clause ensures there is no duplication where the new Regulations are made before the current Regulation ceases to have effect.

ATTACHMENT B

<b>STATEMENT OF REASONS FOR AL-MURABITUN</b>	
Also known as: al-Moulathamoun; al-Mulathamun Battalion; al-Murabitoun; the Sentinels	
This statement is based on publicly available information about al-Murabitun. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.	
<b>1.</b>	<p><b>Basis for listing a terrorist organisation</b></p> <p>Division 102 of the <i>Criminal Code</i> provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:</p> <ol style="list-style-type: none"> <li>a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or</li> <li>b) advocates the doing of a terrorist act.</li> </ol> <p>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.</p>
<b>2.</b>	<p><b>Background to this listing</b></p> <p>The Australian Government first proscribed the organisation on 5 November 2014.</p>
<b>3.</b>	<p><b>Terrorist activity of the organisation</b></p> <p><u>Objectives</u> Al-Murabitun is an al-Qa`ida aligned Sunni Islamic extremist organisation with the intent of implementing Shariah law in West Africa and uniting Muslim and Islamic movements across Africa against secular and non-Muslim influences, by using violent means.</p> <p><u>Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts</u> To achieve its aims, al-Murabitun continues to conduct attacks in West Africa. Tactics employed include armed attacks, bombings, and kidnappings. The group primarily targets facilities belonging to Malian, French and United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA) military forces, and public venues frequented by foreign nationals.</p> <p>Examples of attacks and actions by al-Murabitun since it was last listed include:</p> <ul style="list-style-type: none"> <li>• 18 January 2017: a suicide car bomb attack against a military base in Gao, Mali, killing 60 people and wounding 115.</li> <li>• 29 November 2016: a car bomb attack targeting MINUSMA forces at Gao airport, Mali.</li> <li>• 13 March 2016: a joint armed attack with al-Qa`ida in the Lands of the Islamic Maghreb (AQIM) at tourist hotels in Grand Bassam, Cote, d'Ivoire, killing 19 people and wounding 33.</li> <li>• 15 January 2016: the kidnap of Australian nationals Kenneth and Jocelyn Elliott from their home in Djibo, Burkina Faso. Jocelyn Elliott was subsequently released but Kenneth Elliot has not yet been recovered.</li> </ul>

- 15 January 2016: a joint armed attack with AQIM at the Splendid Hotel in Ouagadougou, Burkina Faso killing 29 people and wounding 56.
- 20 November 2015: a joint armed attack with AQIM at the Radisson Blu hotel - a hotel frequented by foreigners in Bamako, Mali killing 19 people and wounding seven.
- 15 April 2015: a suicide car bomb attack against a MINUSMA camp in Ansongo, Mali, killing three people and wounding 16.
- 4 April 2015: the kidnap of Romanian national Iulian Ghergut from a mining facility in Tambao, Burkina Faso. Mr Ghergut has not yet been recovered.
- 7 March 2015: an armed attack at a nightclub popular with expatriates in Bamako, Mali, killing five people and wounding nine.

#### Advocating the doing of terrorist acts

Al-Murabitun periodically releases public statements claiming responsibility for attacks and pledging to continue to resist secular and non-Muslim influences. These include:

- A claim of responsibility for an attack in January 2017, vowing continued opposition against French and allied Malian counter-terrorism operations.
- A declaration of unity with AQIM in December 2015 to oppose occupying Western forces.
- A call published in January 2014 for violent retaliation against France and its allies, including the complicit Malian Government for perceived misdeeds against Islam.

#### **4. Details of the organisation**

Al-Murabitun was formed in August 2013 through the merger of two AQIM splinter groups and shares AQIM's core jihadist ideology. Al-Murabitun follows an extreme interpretation of Islam which is anti-Western and anti-secular. It opposes elected governments, seeking to remove them through violence if necessary. The group operates primarily in Mali and the bordering regions of neighbouring countries, but it has some capability to conduct attacks further afield in West Africa.

#### Leadership

The current leadership of al-Murabitun is uncertain, following the reported death of leader Mokhtar Belmokhtar in November 2016.

#### Membership

The current membership of al-Murabitun is unknown, but a 2014 estimate placed it at around 100 people. Many members are former AQIM fighters.

#### Recruitment and funding

Al-Murabitun recruits members from northern and western Africa, in particular Mali, Niger, Algeria and Mauritania. Its activities are financed through kidnapping for ransom, criminal activities, smuggling and connections with other terrorist organisations.

#### Links to other terrorist organisations

At the time of formation in August 2013, the al-Murabitun leader Belmokhtar pledged the group's allegiance to al-Qa'ida leaders in Afghanistan and al-Qa'ida leader Sheikh Ayman al-Zawahiri. He stated that al-Murabitun adhered to the intellectual and moral methodology promoted by al-Qa'ida and its founder Usama bin Laden. Belmokhtar reaffirmed al-Murabitun's allegiance to

al-Qa'ida in May 2015 following an internal rift with an element seeking to pledge allegiance to Islamic State.

Al-Murabitun has links with several al-Qa'ida-aligned groups based in North and West Africa.

- In December 2015, al-Murabitun announced it had rejoined AQIM but continues to function as a distinct unit. The two groups have since cooperated closely, conducting several joint attacks. Both al-Murabitun and AQIM have variously attributed attacks to al-Murabitun, to AQIM, or to al-Murabitun as a battalion of AQIM.
- Al-Murabitun has also cooperated in attacks with other regional AQIM aligned groups – namely Ansar al-Din, AQIM's Sahara Branch, and the Macina Liberation Front. In March 2017, all four groups formed an alliance under the name Jama'at Nusrat al-Islam Wal Muslimin. Al-Murabitun also continues its activities under this alliance.

#### Links to Australia

There are no known direct links between al-Murabitun and Australia.

#### Threats to Australian interests

Al-Murabitun has not made statements specifically threatening Australians or Australian interests; however, al-Murabitun has issued statements threatening Westerners and Western interests in general and has attacked locations known to be popular with Westerners including hotels in Cote d'Ivoire, Burkina Faso and Mali. Australian nationals are a visible Western presence residing, working or travelling in regions in which al-Murabitun may operate. There are also publicly listed Australian mining and business interests in these regions.

Al-Murabitun has kidnapped Westerners, including Australian nationals, in the region. In January 2016, the group kidnapped Australian nationals Kenneth and Jocelyn Elliott from Djibo, Burkina Faso. The group claimed the primary motive for the kidnapping was to gain the release of their captives "who sit behind bars and suffer the pain of imprisonment, as well as being deprived of their basic rights". Jocelyn Elliott was released on 6 February 2016; Kenneth Elliott has not yet been recovered.

#### Listed by the United Nations or like-minded countries

- In December 2013, the United States listed al-Murabitun as an alias of the al-Moulathamoune battalion.
- In April 2014, the United Kingdom proscribed al-Murabitun.
- On 2 June 2014, Canada first proscribed al-Murabitun and relisted the group on 20 November 2016.
- On 2 June 2014, the United Nations listed al-Murabitun under the United Nations Security Council 1267 (al-Qa'ida) Sanctions Committee's consolidated list as an entity associated with al-Qa'ida.
- In June 2014, New Zealand designated al-Murabitun a terrorist entity.

#### Engagement in peace or mediation processes

Since it was last listed, al-Murabitun is not known to have participated in peace or mediation processes.

**5. Conclusion**

On the basis of the above information, ASIO assesses that al-Murabitun continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts, involving threats to human life and serious damage to property.

In the course of pursuing its objectives, al-Murabitun is known to have committed or threatened actions that:

- a) 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;
- b) are intended to have those effects;
- c) are done with the intention of advancing al-Murabitun's political, religious or ideological causes;
- d) are done with the intention of intimidating the government of one or more foreign countries;  
and
- e) are done with the intention of intimidating the public or sections of the public.