



# **Criminal Code (Terrorist Organisation—Boko Haram) Regulation 2014**

**Select Legislative Instrument No. , 2014**

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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 regulation.

Dated 2014

Peter Cosgrove  
Governor-General

By His Excellency's Command

George Brandis QC  
Attorney-General

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## Contents

1	Name of regulation .....	i
2	Commencement.....	i
3	Authority .....	i
4	Terrorist organisation—Boko Haram .....	i

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Section 1

**1 Name of regulation**

This regulation is the *Criminal Code (Terrorist Organisation—Boko Haram) Regulation 2014*.

**2 Commencement**

This regulation commences on the day after it is registered.

**3 Authority**

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

**4 Terrorist organisation—Boko Haram**

- (1) For paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as Boko Haram is specified.
- (2) Boko Haram is also known by the following names:
  - (a) Group of the Followers of the Prophet for Propagation and Holy Struggle;
  - (b) Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad;
  - (c) Jama'atu ahlu-Sunnah Lidda' Awati Wal Jihad;
  - (d) Nigerian Mujahideen;
  - (e) Nigerian Taliban;
  - (f) People Committed to the Propagation of the Prophet's Teachings and Jihad;
  - (g) Western Education is Forbidden;
  - (h) Yusuffiya Movement;
  - (i) Yusuffiya Sect.

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 92, 2014**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014*

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; and being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Offences in Division 109 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.

A ‘terrorist organisation’ is defined in subsection 102.1(1) of the Code 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 102.1(1)(a)); or
- an organisation specified in the regulations (paragraph 102.1(1)(b)).

The purpose of the Regulation is to specify Boko Haram, also known as Group of the Followers of the Prophet for Propagation and Holy Struggle, Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad, Jama’atu ahlu- Sunna Lidda’ Awati Wal Jihad, Nigerian Mujahideen, Nigerian Taliban, People Committed to the Propagation of the Prophet’s Teachings and Jihad, Western Education is Forbidden, Yusuffiya Movement and Yusuffiya Sect, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

The Regulation enables the offence provisions in Division 102 of the Code to continue to apply to persons with links to Boko Haram. Details of the Regulation 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 an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation (ASIO) in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Boko Haram 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 making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, ASIO and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is 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 third anniversary of the day on which it takes effect.

## **Statement of Compatibility with Human Rights**

### ***Overview***

The *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit, train or receiving training, get funds to, from or for Boko Haram, and provide support or associate with Boko Haram.

The offence in subsection 102.8 of the Criminal Code of associating with a terrorist organisation is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or representation.

The object of the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

### *Human rights implications*

This instrument engages the following rights:

- Article 6
- Article 19, and
- Article 22.

This will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Whilst the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* may limit the right to freedom of association with Boko Haram, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Boko Haram 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, as detailed in the Statement of Reasons (at [Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons ([Attachment B](#)) supports the Attorney-General's decision made on reasonable grounds, that Boko Haram satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Criminal Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws*. The *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed regulation

- under subsection 102.1(3) the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) 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. The effect of the Minister’s declaration is that the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Act, and
- both Houses of Parliament may disallow the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4).

### **Conclusion**

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate to achieving a legitimate objective.

## Details of the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014*

### Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Boko Haram) Regulation 2014*.

### Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

### Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

### Section 4 – Terrorist organisation – Boko Haram

This section provides that for paragraph (b) of the definition of ‘*terrorist organisation*’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Boko Haram is specified.

Subsection 102.1(2) provides that Boko Haram is also known by the following names:

- (a) Group of the Followers of the Prophet for Propagation and Holy Struggle;
- (b) Jama’atu Ahlis Sunna Lidda’awati Wal-Jihad;
- (c) Jama’atu ahlu- Sunna Lidda’ Awati Wal Jihad;
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