

EXPLANATORY STATEMENT

Select Legislative Instrument No. 126, 2015

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulation 2015

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 Code (the Criminal Code).

Division 102 of the Criminal 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 for a terrorist organisation; getting funds to, from or for a terrorist organisation; providing support to a terrorist organisation; and associating with a terrorist organisation.

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

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

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph 102.1(1)(a)); or
- an organisation that is specified by the regulations for the purposes of this paragraph (paragraph 102.1(1)(b)).

Subsection 102.1(20) of the Criminal Code provides that a reference to the doing of a terrorist act includes a reference to the doing of a terrorist act, even if a terrorist act does not occur; a reference to the doing of a specific terrorist act; and a reference to the doing of more than one terrorist act.

The purpose of the *Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulation 2015* (the Regulation) is to specify Kurdistan Workers' Party, also known as Freedom and Democratic Congress of Kurdistan; Hezan Parastina Gel; Kongra Gel; Kongra Gele Kurdistan; Kurdish Freedom Falcons; Kurdish Liberation Hawks; Kurdistan Freedom and Democracy Congress; Kurdistan Freedom Brigade; Kurdistan Freedom Hawks; Kurdistan Halk Kongresi; Kurdistan Labor Party; Kurdistan Ozgurluk Sahinleri; Kurdistan People's Congress; New PKK; Partiya Karkeren Kurdistan; People's Congress of Kurdistan; People's Defence Force; PKK; and Teyrbazên Azadiya Kurdistan, for the purpose of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code.

The Regulation enables the offence provisions in Division 102 of the Criminal Code to apply to persons with links to Kurdistan Workers' Party. Details of the Regulation are set out in [Attachment A](#).

Subsection 102.1(2) 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 a 'terrorist organisation' in this section, 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.

In determining whether the Minister is 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 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 (DFAT), and advice from the Australian Government Solicitor (AGS). The Statement of Reasons in respect of Kurdistan Workers' Party is at [Attachment B](#).

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.

Prior to making the Regulation, consultations were held with DFAT, ASIO and AGS. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. The Attorney-General also offered the Leader of the Opposition a briefing in relation to the proposed re-listings.

The Regulation repeals existing Regulation 4W of the *Criminal Code Regulations 2002* which specifies Kurdistan Workers' Party, for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Criminal Code. The repeal of existing Regulation 4W ensured that there is no duplication, if the new Regulation was made before the existing Regulation ceased to have effect.

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 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.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulation 2015* (the Regulation) makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit for, train, receive or participate in training, get funds to, from or for Kurdistan Workers’ Party, and provide support to or associate with, Kurdistan Workers’ Party.

The offence of association with a terrorist organisation in subsection 102.8 of the Criminal Code is limited in its application 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 legal representation.

The object of the Regulation 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.

The Regulation 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 Regulation may limit the right to freedom of association with Kurdistan Workers’ Party, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Kurdistan Workers’ Party 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 ([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 Kurdistan Workers' Party 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 Criminal Code requiring prior consultation and enabling review of the Regulation specifying Kurdistan Workers' Party 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* of 25 June 2004, and the Regulation 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) of the Criminal Code the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulation;
- under subsection 102.1(3) of the Criminal Code, the Regulation will cease to have effect on the third anniversary of the day on which it takes 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 regulation listing the organisation ceases 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 Regulation 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 Regulation within the applicable disallowance period, which is 15 sitting days after the regulation was laid before that House, as provided for in subsection 102.1A(4) of the Criminal Code.

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.

Details of the Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulation 2015

Section 1 – Name

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulation 2015*.

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*.

Section 4 – Schedules

This schedule amends the *Criminal Code Regulations 2002*.

Section 5 – Terrorist organisation—Kurdistan Workers’ Party

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 Kurdistan Workers’ Party is specified.

Subsection (2) provides that Kurdistan Workers’ Party is also known by the following names:

- (a) Freedom and Democratic Congress of Kurdistan;
- (b) Hezan Parastina Gel;
- (c) Kongra Gel;
- (d) Kongra Gele Kurdistan;
- (e) Kurdish Freedom Falcons;
- (f) Kurdish Liberation Hawks;
- (g) Kurdistan Freedom and Democracy Congress;
- (h) Kurdistan Freedom Brigade;
- (i) Kurdistan Freedom Hawks;
- (j) Kurdistan Halk Kongresi;
- (k) Kurdistan Labor Party;
- (l) Kurdistan Ozgurluk Sahinleri;
- (m) Kurdistan People’s Congress;
- (n) New PKK;
- (o) Partiya Karkeren Kurdistan;
- (p) People’s Congress of Kurdistan;
- (q) People’s Defence Force;
- (r) PKK; and
- (s) Teyrbazên Azadiya Kurdistan.

Schedule 1—Amendments

Schedule 1 provides that regulation 4W of the *Criminal Code Regulations 2002* is repealed. Regulation 4W is the current regulation listing Kurdistan Workers' Party 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. This clause ensured that there was no duplication if the new Regulation was made before the current Regulation ceased to have effect.

Kurdistan Workers' Party

(Also known as: Freedom and Democratic Congress of Kurdistan, Hezan Parastina Gel, Kongra Gel, Kongra Gele Kurdistan, Kurdistan Freedom and Democracy Congress, Kurdistan Freedom Brigade, Kurdish Freedom Falcons, Kurdistan Freedom Hawks, Kurdistan Halk Kongresi, Kurdistan Labor Party, Kurdish Liberation Hawks, Kurdistan Ozgurluk Sahinleri, Kurdistan People's Congress, New PKK, Partiya Karkeren Kurdistan, People's Congress of Kurdistan, People's Defence Force, PKK Teyrbazên Azadiya Kurdistan)

This statement is based on publicly available details about the Kurdistan Workers' Party (PKK). 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 Act 1995* 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, or assisting in or fostering the doing of a terrorist act; or
- (b) advocates the doing of a terrorist act.

Details of the organisation

Objectives

The PKK was formally established by Abdullah Ocalan in 1978. The organisation adopted a communist ideology, but from its inception was primarily committed to the creation of an independent Kurdish state in south-eastern Turkey, Syria and Iraq. After the end of Cold War, the PKK increasingly emphasised its role as a Kurdish nationalist movement. The group has periodically sought to increase its popularity by exploiting the religious sentiment of the Kurdish community, but the organisation remains predominantly secular.

The PKK's objectives have changed over time, in line with Turkey's evolving political environment. The organisation now calls for autonomy for Kurds within Turkey and seeks to promote the rights of Kurds living in Turkey, specifically the right to maintain a Kurdish ethnic identity. It also aims to monopolise Kurdish political power, including by attacking the interests of rival Kurdish political parties.

The PKK announced a unilateral ceasefire in March 2013, and is involved in peace talks with the Turkish Government. Despite this, and calls by Ocalan for the group to disarm, the group has not renounced the use of violence, and sporadic terrorist attacks, attributable to certain elements within the PKK, continue. A ceasefire announced in 1999 was also marred by periodic attacks before the PKK resumed its terrorist campaign in 2004. Another ceasefire between 14 April 2009 and 3 June 2011 was similarly violated.

Leadership, membership and recruitment

Leadership

Although PKK's founder, Ocalan, is currently serving life imprisonment in Turkey, he is still the group's leader and figurehead. Day-to-day affairs are run by Murat Karayilan. Other key leaders include Nurettin Halef al-Muhammad, Cemil Bayak, Duran Kalkan, Remzi Kartal, Sabri Ok and Adem Uzun.

Membership

The precise strength of the PKK is not known; however, it is widely believed to number approximately 7000 militants, the majority of whom are based in northern Iraq. Additionally, the group draws on considerable logistical support from a large number of sympathisers among the Kurdish community in south-east Turkey, Syria and Iran. There are also thousands of PKK supporters outside the region, mostly in Germany, the Netherlands and Belgium.

Recruitment

Most PKK members are recruited from the main Kurdish areas in south-east Turkey, with some drawn from cities in the country's west. The group also recruits from the Kurdish population in Iran and Syria and the Kurdish diaspora in Europe. Most recruitment in rural areas of Turkey occurs through personal acquaintance, although the PKK has also forced kidnapped teenagers to join the group. In urban areas and in Europe, a network of PKK members and sympathisers working in non-governmental organisations and predominantly Kurdish political parties manage the recruitment process.

Terrorist activity of the organisation

Although the PKK's terrorist activities have slowed since its most recent ceasefire with the Turkish Government, its members have continued to conduct terrorist attacks against civilian, military and other government targets in Turkey. PKK militants continue to frequently attack military bases and police interests, kidnap civilians and military personnel and sabotage infrastructure projects, including dams, gas pipelines and power plants. Over 50 people have been killed in PKK attacks since 20 August 2012, and the group is reported to have kidnapped more than 300 children between December 2013 and May 2014.

Directly or indirectly engaged in the doing of terrorist acts

The PKK has engaged in terrorist acts since its foundation in 1978, including during periods covered by ceasefires with the Turkish Government. Its main targets are the Turkish military and police, along with other Turkish Government interests. These include infrastructure, schools and civilians associated with the government.

The group's terrorist activities have been largely concentrated in Turkey's south and east, particularly the provinces of Diyarbakir, Sirnak and Hakkari. The PKK has also conducted attacks outside of this region, including in Turkey's capital, Ankara, and in its largest city, Istanbul. Since 2012, the PKK's activities have mostly consisted of bombings, kidnappings, armed assaults and attacks against infrastructure. This includes setting up roadblocks and checkpoints and acts of sabotage against dams and other infrastructure.

Significant attacks for which responsibility has been claimed by or reliably attributed to the PKK since its last listing include:

- 29 June 2015: The PKK attacked Daglica military base in Hakkari province with mortar shells and machine guns.
- 25 June 2015: The PKK fired on a military base in Eruh district in Turkey's southeastern Siirt province.
- 19 June 2015: The PKK fired on a military base in Siirt in southeastern Turkey.
- 17 June 2015: The PKK attacked Daglica military base in Hakkari province with mortars and anti-aircraft weapons. A teenage girl was injured when PKK mortar fire hit the village near the base.
- 15 June 2015: The PKK attacked a dam construction site in Adiyaman province, setting fire to two trucks and three bulldozers.
- 6 June 2015: The PKK attacked the Daglica military base in Hakkari province with mortars.
- 2 June 2015: Two PKK members were arrested after allegedly kidnapping a teenage girl in Turkey's south-eastern Bitlis province.
- 18 May 2015: The PKK kidnapped a gendarmerie soldier on leave and a civilian in Baltas, a village in Erzurum province.
- 13 May 2015: The PKK abducted two construction workers in the south-eastern province of Diyarbakir.
- 11 April 2015: A PKK attack on Turkish military forces near Yukaritutek, Agri province, injured four soldiers.
- 25 March 2015: The PKK launched multiple attacks against Turkish military units in Daglica, Hakkari province, with mortars, machine guns and anti-aircraft guns.
- 15 March 2015: The PKK attacked a convoy of Turkish soldiers in Sirnak province and the Keri Tepe military base in Daglica, Hakkari province, in separate incidents.
- 14 January 2015: The PKK attacked a police station in Mardin province, injuring two police officers. PKK supporters also set up roadblocks in the area following the attack.
- 26 December 2014: The PKK attacked the homes of rival Kurdish party members in Cirze, Sirnak province, killing two people and injuring three others.
- 16 December 2014: The PKK's youth wing, the Patriotic Revolutionary Youth Movement (YDG-H), rioted in Cirze, Sirnak province. The group threw Molotov cocktails at police, the offices of the Turkish ruling political party, a school and a police station.
- 29 October 2014: The PKK shot and killed a Turkish soldier who was shopping with his wife in Diyarbakir.
- 25 October 2014: The PKK shot and killed three off-duty soldiers in Hakkari province. The Turkish military confirmed the PKK's responsibility for the attack through an intercepted radio call between local PKK leaders.
- 9 October 2014: The PKK opened fire on police during a demonstration in Bingol province, killing two police officers.
- 26 September 2014: A PKK ambush between Diyarbakir and Bitlis killed three police officers.
- 24 August 2014: The PKK attacked a power plant construction site in the town of Silopi and abducted three Chinese engineers working at the site. The engineers were later released.

- 20 August 2014: The PKK attacked a group of Turkish troops patrolling the border with Iran in Van province, killing one soldier.
- 23 April 2014: The PKK abducted 25 teenaged students in the Lice district of Diyarbakir. Although the PKK released several of the children following protests by their parents, the majority remain missing. The group is reported to have kidnapped more than 300 children between December 2013 and May 2014.
- 5 March 2014: A PKK ambush with a remote-controlled bomb and gunfire on a military unit near Sirnak killed one soldier.
- 19 October 2012: The PKK bombed a gas pipeline near Eleskirt in Agri province, also hitting a military vehicle and injuring 28 soldiers. On the same day, PKK militants attacked a guard post in Ortakapi, Bitlis province, killing three guards, and fired on a military convoy between Van and Hakkari provinces.
- 18 September 2012: The PKK attacked a Turkish military convoy near Bingol with a rocket and firearms, killing 10 soldiers. The attack occurred days after a weekend campaign by the PKK killed eight police officers and four soldiers in two separate ambushes in south-eastern Turkey.
- 23 August 2012: The PKK launched three attacks on military posts in the Semdinli district of Hakkari province, killing five military personnel and injuring four others.
- 20 August 2012: A PKK car bomb attack on a police station in Gaziantep killed eight officers.

Conclusion

On the basis of the above information, ASIO assesses that the PKK continues to directly and/or indirectly engage in, preparing, planning, assisting in, or fostering the doing of terrorist acts. This assessment is corroborated by information provided by reliable and credible intelligence sources. In the course of pursuing its objectives, the PKK is known to have committed or threatened actions that:

- cause serious damage to property, or the death of persons or endanger a person's life;
- are intended to have those effects;
- are done with the intention of advancing the PKK's political, religious or ideological causes;
- are done with the intention of coercing or influencing by intimidation the government of a foreign country; and
- are done with the intention of intimidating the public and sections of the public.

Other relevant information

Level of participation in peace negotiations

The PKK announced a unilateral cease fire in 2013 and has been engaged in peace talks with the Turkish Government. However, the group continues to kill and injure members of the Turkish military and police in sporadic attacks, and PKK leaders have threatened to end the ceasefire and resume attacks if the peace process fails.

Links to other terrorist groups or networks

The PKK maintains close links with its Iranian affiliate, the Kurdistan Free Life Party (PJAK). Like the PKK, the PJAK has training camps in northern Iraq. Iran and Turkey are reported to have conducted probable coordinated military operations against both groups in their shared border areas.

Other designations

The PKK is listed as a proscribed terrorist organisation by Turkey, the European Union, the United States, the United Kingdom, Canada, Austria, Azerbaijan, Iraq, France, Germany, the Netherlands, Kazakhstan, Moldova, New Zealand and the Philippines.

The PKK is also included in the Department of Foreign Affairs and Trade's Consolidated List maintained under the *Charter of the United Nations Act 1945*, which implements Australia's obligations under United Nations Council Resolution 1373 in relation to countering the financing of terrorism.