

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018

The purpose of the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018* (the Regulations) is to specify Kurdistan Workers’ Party for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹ Kurdistan Workers’ Party is currently specified for this purpose by the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulation 2015*, which is repealed by the Regulations.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 Minister for Home Affairs is satisfied on reasonable grounds that Kurdistan Workers’ Party 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 Minister for Home Affairs 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](#).

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

¹ 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.

- 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 Kurdistan Workers' Party. Regulations specifying Kurdistan Workers' Party as a terrorist organisation have been in effect since 2005.

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

The Regulations commence on the day after it is registered. 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 Department of Home Affairs (Home Affairs). Home Affairs also sought the advice of the AGS to inform the decision of the Minister for Home Affairs.

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 Minister for Home Affairs wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that Kurdistan Workers' Party 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 Minister for Home Affairs 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 Minister.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018* (the Regulations) 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 object of the Regulations is to identify Kurdistan Workers’ Party 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 Kurdistan Workers’ Party.

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 Kurdistan Workers’ Party.

Terrorist organisations, including Kurdistan Workers’ Party, 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 Kurdistan Workers' Party. 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 Kurdistan Workers' Party.

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 Kurdistan Workers' Party, 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) of the *Criminal Code*, the Regulations 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 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.

Details of the Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018

Section 1 – Name

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018*.

Section 2 – Commencement

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

Subsection (1) would provide 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) would clarify 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) would provide 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 would provide that the Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

This section would provide 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—Kurdistan Workers’ Party) Regulation 2015*.

Section 5 – Terrorist organisation — Kurdistan Workers’ Party

Subsection (1) would provide 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) would provide that Kurdistan Workers’ Party is also known by the following names:

- a) Freedom and Democratic Congress of Kurdistan;
- b) Hezan Parastina Gel;

- c) HPG;
- d) KADEK;
- e) Kongra Azadi u Demokrasiya Kurdistan;
- f) Kongra Gel;
- g) Kongra Gele Kurdistan;
- h) Kurdish Freedom Falcons;
- i) Kurdish Liberation Hawks;
- j) Kurdistan Freedom and Democracy Congress;
- k) Kurdistan Freedom Brigade;
- l) Kurdistan Freedom Hawks;
- m) Kurdistan Halk Kongresi;
- n) Kurdistan Labor Party;
- o) Kurdistan Ozgurluk Sahinleri;
- p) Kurdistan People's Congress;
- q) New PKK;
- r) Partiya Karkeren Kurdistan;
- s) People's Congress of Kurdistan;
- t) People's Defence Force;
- u) PKK;
- v) TAK;
- w) Teyrbazên Azadiya Kurdistan.

Schedule 1—Repeals

Schedule 1 would provide that *Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulation 2015* is repealed.

The *Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulation 2015* specifies 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*. The proposed clause would ensure there is no duplication where the new Regulations are made before the current Regulation ceases to have effect.

ATTACHMENT B

STATEMENT OF REASONS FOR KURDISTAN WORKERS' PARTY (PKK)

Also known as: Freedom and Democratic Congress of Kurdistan, Hezan Parastina Gel, HPG, KADEK, Kongra Azadi u Demokrasiya Kurdistan, 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, TAK, Teyrbazên Azadiya Kurdistan

This statement is based on publicly available information about the Kurdistan Workers' Party. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.

1. 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 Minister for Home Affairs 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.

For the purposes of listing a terrorist organisation under the *Criminal Code*, 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.

2. Background to this listing

The Australian Government first proscribed the Kurdistan Workers' Party (PKK) as a terrorist organisation under the *Criminal Code* on 17 December 2005. It was relisted on 28 September 2007, 8 September 2009, 18 August 2012 and 11 August 2015.

3. Terrorist activity of the organisation

Objectives

The PKK's objectives have changed over time, in line with Turkey's evolving political environment. Since its inception, the group has primarily been committed to the creation of an independent Kurdish state in south-eastern Turkey, Syria and Iraq. After the end of the Cold War, the PKK increasingly emphasised its role as a Kurdish nationalist movement. 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.

Directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of terrorist acts

The PKK has engaged in violence 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—including infrastructure, schools and civilians associated with the government.

Following the breakdown of the group’s most recent ceasefire in 2015, PKK’s terrorist activities have been largely concentrated in Turkey’s south and east, particularly the provinces of Diyarbakir, Hakkari, Sirnak, Mardin and Van. In 2016 the scale of PKK attacks increased when the group started using more vehicle-borne improvised explosive devices, and expanded their areas of operation to include urban centres in Turkey, including in Ankara and Istanbul. The PKK’s activities have mostly consisted of bombings, armed assaults and attacks against infrastructure.

While the volume of PKK’s attacks significantly reduced in 2017; sporadic attacks continue, particularly in Turkey’s south and east. The PKK continues preparing and planning terrorist attacks in Turkey. This is demonstrated by Turkish authorities’ disruptions of advanced-stage PKK attack plots and uncovering large quantities of explosives and firearms. These include:

- 13 December 2017, Turkish police disrupted a planned PKK attack on the Organisation of Islamic Cooperation summit in Istanbul. Police found a minibus filled with 60 kilograms of explosives in Istanbul and detained at least 11 suspects.
- 11 August 2017, Turkish police raided an address in Adana province disrupting a major PKK attack planned for 15 August 2017 in Ankara. Police confiscated 1.5 tonnes of ammonium nitrate, 300 kilograms of nails, 25 gas masks, more than 200 litres of gasoline, other bomb-making materials, 12 Kalashnikov rifles, 24 hand grenades, ammunition, and 12 assault vests and 12 police uniforms with ‘Ankara’ written on them.

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

- 21 March 2018, PKK claimed two Turkish soldiers were killed in a PKK operation in Hakkari province.
- 2 November 2017, six Turkish soldiers and two military security guards were killed, and two soldiers wounded, in clashes with the PKK in Hakkari province.
- 11 April 2017, PKK claimed responsibility for an improvised explosive device attack using two tonnes of explosives that killed three people at the police headquarters in Diyarbakir province.
- 13 September 2016, the PKK claimed a vehicle borne-improvised explosive device (VBIED) attack targeting the Justice and Development Party local government offices in Van province, which killed 18 police and security force personnel and wounded over 50 people.
- 26 August 2016, the PKK claimed a VBIED attack outside a police headquarters in the Cizre district, Sirnak province, which killed 11 police officers and wounded 78 people.
- 18 August 2016, the PKK claimed a VBIED attack on a police station in Turkey’s Elazig province, which killed three police officers and injured 217 people.

4. Details of the organisation

The PKK was formally established by Abdullah Ocalan in 1978. The group originally followed a Marxist-Leninist ideology and has been primarily committed to the creation of an independent Kurdish state in south-eastern Turkey, Syria and Iraq. In line with its objectives and associated ideology, the PKK primarily conducts attacks against Turkish Government and security force targets and has not directly targeted Western interests.

Leadership

Although PKK founder Ocalan, currently serving life imprisonment in Turkey, is still the group's leader and figurehead, day-to-day affairs are run by Murat Karayilan. The PKK's operational command has consisted of a three-man Executive Committee, including Murat Karayilan, Cemil Bayik and Fehman Husain, which has managed the organisation from the PKK's base in the Qandil Mountains in northern Iraq.

Membership

The precise strength of the PKK is unknown; however, the majority of militants are based in northern Iraq. 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 and funding

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 Iraq, Syria, Iran, and the Kurdish diaspora in Europe. Most recruitment in rural areas of Turkey occurs through personal acquaintance. The group recruits both men and women for all activities, and recent recruiting strategies have focused on youth. In urban areas and in Europe, a network of PKK members and sympathisers working in non-government organisations and pro-Kurdish political parties reportedly manage financing, propaganda and recruitment processes.

Financing for the group has historically been obtained through fundraising among Kurds in Turkey and the European Kurdish diaspora. Additional sources of funding include criminal activity, such as narcotics smuggling and extortion.

Links to other terrorist organisations

The PKK has maintained ties with other pro-Ocalan Kurdish groups across Turkey, Iraq, Syria and Iran. These are largely at an interpersonal level. Some of these groups are considered terrorist organisations by other countries, particularly Turkey and Iran; however, these groups are not proscribed terrorist organisations under the Australian *Criminal Code*.

Links to Australia

In July 2016, one Australian was charged with being a member of the PKK. The matter remains before the courts.

Threats to Australian interests

While the PKK directs attacks against Turkish Government and security force targets, attacks by the group have treated civilian bystanders as acceptable collateral. In late-2015 and 2016, there was an increase in the scale of PKK attacks, with an expansion of the group's areas of operation to include urban areas across Turkey, including metropolitan centres in the country's west, and cities popular with tourists on Turkey's Aegean and Mediterranean coast.

Listed by the United Nations or like-minded countries

The PKK is listed as a proscribed terrorist organisation by the United States, Canada, United Kingdom and New Zealand.

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 Security Council Resolution 1373 in relation to countering the financing of terrorism.

Engagement in peace or mediation processes

The PKK has engaged in ceasefires and peace talks with the Turkish Government at various stages throughout its history. While the PKK's terrorist activities slowed during its most recent ceasefire (2012-2015), its members continued to conduct attacks against civilian, military and other government targets in Turkey. During the ceasefire period, in addition to the hundreds killed in PKK attacks, the group is reported to have kidnapped more than 300 children (between December 2013 and May 2014). Following the breakdown of peace talks in June 2015, PKK attacks increased to pre-ceasefire rates.

5. Conclusion

On the basis of the above information, ASIO assesses that the PKK continues to be directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.

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

- a) cause, or could cause, death, serious harm to persons, serious damage to property, endangered 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 the PKK'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.