

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Sonnenkrieg Division) Regulations 2021

The purpose of the *Criminal Code (Terrorist Organisation—Sonnenkrieg Division) Regulations 2021* (the Regulations) is to specify Sonnenkrieg Division for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.¹

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*, which prescribes offences against humanity and related offences, and dangers to the community and national infrastructure.

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 Sonnenkrieg Division advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration unclassified information (Statement of Reasons) provided by the Department of Home Affairs ([Attachment C](#)).

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* apply to conduct relating to Sonnenkrieg Division.

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

The Regulations commence on the day after the last day on which a resolution disallowing this instrument could be passed by either House of the Parliament under the *Legislation Act 2003*. 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.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

The Department of Home Affairs sought the advice of the Australian Government Solicitor (AGS) in relation to the unclassified information (Statement of Reasons).

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 Sonnenkrieg Division 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 timeframe 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 timeframe nominated by the Minister.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation—Sonnenkrieg Division) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Criminal Code (Terrorist Organisation—Sonnenkrieg Division) Regulations 2021* (the Regulations) specify Sonnenkrieg Division 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 Sonnenkrieg Division 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 Sonnenkrieg Division.

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 offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Sonnenkrieg Division as a listed terrorist organisation.

Terrorist organisations, including Sonnenkrieg Division, 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 an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

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

Under Article 6 of the ICCPR, 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 Sonnenkrieg Division. 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 Sonnenkrieg Division.

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 Sonnenkrieg Division, 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 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003* and noting that this period may be extended by operation of subsection 102.1A(4) of the *Criminal Code* if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations.

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 are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Peter Dutton MP
Minister for Home Affairs

Details of the *Criminal Code (Terrorist Organisation—Sonnenkrieg Division) Regulations 2021*

Section 1 – Name

1. This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Sonnenkrieg Division) Regulations 2021*.

Section 2 – Commencement

2. This section would provide for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) would provide that each provision in the proposed Regulations, as 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 proposed Regulations commence in their entirety on the day after the last day on which a resolution disallowing this instrument could be passed by either House of the Parliament under the *Legislation Act 2003*.
4. The note to subsection 2(1) would clarify that the table only relates to the provisions of the proposed Regulations as originally made, and will not be amended to deal with any subsequent amendments to the instrument.
5. Subsection 2(2) would provide that the information in column 3 of the table is not part of the proposed Regulations. It is designed to assist readers of the proposed Regulations.

Section 3 – Authority

6. This section would provide that the proposed Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation—Sonnenkrieg Division

7. Subsection 4(1) would provide that, 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 Sonnenkrieg Division is specified.
8. The effect of specifying Sonnenkrieg Division as a terrorist organisation would be to ensure that offences in Subdivision B of Division 102 of the *Criminal Code* that relate to terrorist organisations are able to operate, where the appropriate elements are satisfied, in relation to conduct in connection with Sonnenkrieg Division.

Statement of Reasons

Listing of Sonnenkrieg Division as a terrorist organisation under the *Criminal Code Act 1995*

This Statement of Reasons is based on publicly available information about Sonnenkrieg Division. To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.

Name of the organisation

Sonnenkrieg Division (SKD; 'Sun War Division')

Legislative basis for listing a terrorist organisation

Division 102 of the Criminal Code Act 1995 (the Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister (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.

Background to this listing

SKD has not previously been listed as a terrorist organisation under the Criminal Code.

Details of the organisation

Organisational overview and objectives

SKD is a United Kingdom (UK)-based extreme right-wing organisation which adheres to a violent white-supremacist ideology inspired both by the historical National Socialist German Worker's Party (Nazi Party) and by the Satanic 'Order of Nine Angles' movement. SKD seeks to encourage lone-actor terrorist attacks against its political, racial and ethnic enemies, in order to bring about an apocalyptic 'race war' and the creation of a global 'white' ethno-state.

SKD was formed in March 2018 as a splinter group of System Resistance Network (SRN), which is proscribed by the UK Government as an alias of extreme right-wing terrorist organisation National Action.

Leadership

Although SKD maintains a decentralised structure, its nominal leader is co-founder Andrew Dymock.

Membership

SKD exists primarily through online communication channels, and the total number of members and supporters is unknown. In the UK, membership is punishable by imprisonment due to the group being proscribed.

Funding

SKD's activities are likely self-funded by members due to its decentralised structure.

Links to other terrorist organisations

Some SKD members are former members of SRN and National Action, which are proscribed by the UK.

SKD is ideologically aligned with the United States (US)-based white-supremacist organisation Atomwaffen Division (AWD), and SKD members have previously had contact with members of AWD. AWD was officially disbanded in March 2020.

Terrorist activity

Advocates the doing of a terrorist act

SKD members, acting on behalf of the organisation, have encouraged, promoted and glorified terrorist acts through online propaganda.

- In June 2019, two SKD members were convicted and sentenced to imprisonment for encouraging terrorism. The offenders publicly advocated violence, including sexual violence, against their enemies and called for attacks against people with non-‘white’ sexual partners. This included publication of an image depicting Prince Harry, Duke of Sussex, being shot in the head alongside the words “see you later, race traitor”.
- In December 2019, SKD leader Andrew Dymock was arrested and charged with encouraging terrorism, disseminating terrorist publications and publishing material to stir up hatred based on race and sexual orientation. Dymock allegedly posted articles advocating for terrorism and the extermination of Jews.

- SKD members have encouraged, promoted and glorified terrorist acts through online channels, including through online publication of the following material branded with the SKD logo:
 - An image of a person performing a Nazi salute alongside a declaration that “terror is the only thing they understand”
 - An image of a person attacking a female police officer, alongside a direction to “rape the cops”
 - An image of a woman being hanged, alongside a declaration that “race-mixing whores” should be executed
 - An image glorifying convicted Norwegian terrorist Anders Breivik, who murdered 77 people in the 2011 Oslo/Utoya attacks.

SKD’s encouragement, promotion and glorification of terrorism has inspired UK-based extremists. This includes two convicted terrorist offenders who are assessed to have been inspired by SKD.

- In September 2019, an SKD supporter was convicted and sentenced to imprisonment for possession of terrorist material. The material included manuals for creating homemade weapons and explosives, and was likely intended by the offender to be used in planning terrorist acts.
- In January 2020, a Durham teenager was convicted and sentenced to imprisonment for preparation for a terrorist act and dissemination of a terrorist publication. The offender had identified potential targets for a terrorist attack, including places associated with ‘the Jewish system’, and had sought to purchase an explosive precursor.

Other considerations

Links to Australia

Australians are not directly involved in SKD. However, SKD’s encouragement, promotion and glorification of lone-actor attacks could inspire some Australian extremists, and the availability of SKD propaganda online has potential to contribute to the radicalisation of others.

Threats to Australian interests

SKD has not made statements specifically threatening Australians or Australian interests, but adheres to an ideology that is violently opposed to multi-ethnic Western societies. The UK has a high population of Australians, and Australians have been killed and injured in previous terrorist attacks in the UK. There is a possibility that a lone-actor attack directed or inspired by SKD could result in harm to Australians.

Listings by likeminded countries or the United Nations

SKD was proscribed as a terrorist organisation by the UK Government in February 2020.

Engagement in peace or mediation processes

SKD is not involved in any peace or mediation processes.

Conclusion

The Australian Government assesses that the organisation known as Sonnenkrieg Division advocates the doing of a terrorist act.