

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022

The purpose of the *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022* (the Regulations) is to specify the organisation known as National Socialist Order 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 **AFP Minister** (the Minister for Home Affairs) 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 the organisation known as National Socialist Order is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; and advocates the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information provided by the Department of Home Affairs (the Statement of Reasons at [Attachment C](#)).

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.

Effect of the instrument

Division 102 of Part 5.3 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 Part 5.3 of the *Criminal Code* apply to conduct relating to National Socialist Order.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislation. Subsection 102.1(3) of the *Criminal Code* provides that the Regulations will cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights 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 this Statement is at [Attachment A](#).

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

Consultation

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 paragraph (b) 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.

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 she was satisfied that National Socialist Order meets the legislative requirements for listing.

The Department of Home Affairs obtained advice from the Australian Government Solicitor in relation to the Statement of Reasons at Attachment C.

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022

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 of the Disallowable Legislative Instrument

The *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022* (the Regulations) specify the organisation known as National Socialist Order 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 specify National Socialist Order as a terrorist organisation under Australian law, and to put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to National Socialist Order.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 of Part 5.3 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons. In particular, the offence of associating with a ***terrorist organisation*** in section 102.8 of the *Criminal Code* applies in relation to associating with National Socialist Order as a listed ***terrorist organisation***.

Terrorist organisations, including National Socialist Order, 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 engage the following rights:

- the inherent right to life in Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to freedom of expression in Article 19 of the ICCPR, and
- the right to freedom of association in Article 22 of the ICCPR.

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, 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 National Socialist Order. 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 National Socialist Order.

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 paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) 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 National Socialist Order, 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 in the House of Representatives 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 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 being 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 and tables its report during the applicable disallowance period for that House.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to life. To the extent that it limits human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Hon Karen Andrews MP
Minister for Home Affairs

Details of the *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Criminal Code (Terrorist Organisation—National Socialist Order) Regulations 2022*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the Regulations, as set out in the table.
3. Subsection 2(1) provides that each provision in the 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 provide that the Regulations commence in their entirety on the day after the Regulations are registered on the Federal Register of Legislation.
4. The note below subsection 2(1) clarifies that the table only relates to the provisions of the Regulations as originally made, and will not be amended to deal with any subsequent amendments of the instrument.
5. Subsection 2(2) provides that the information in column 3 of the table is not part of the Regulations. Information in this column is intended to assist readers of the Regulations.

Section 3 – Authority

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

Section 4 – Terrorist organisation □ National Socialist Order

7. Subsection 4(1) provides 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 National Socialist Order is specified.

8. The effect of specifying National Socialist Order as a terrorist organisation is to ensure that offences under Subdivision B of Division 102 of Part 5.3 of the *Criminal Code* that relate to terrorist organisations are able to operate in relation to conduct in connection with National Socialist Order. In particular, the offences under section 102.8 (associating with terrorist organisations) apply only in relation to organisations that have been specified by regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code*.
9. Subsection 4(2) provides that the organisation National Socialist Order is also known by the name Atomwaffen Division.

Statement of Reasons

Listing of National Socialist Order as a terrorist organisation under the *Criminal Code Act 1995*

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

Name of the organisation

National Socialist Order (NSO)

Known aliases

Atomwaffen Division (AWD; 'Nuclear Weapons 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 Minister for Home Affairs must be satisfied on reasonable grounds that the organisation:

- a) is directly or indirectly engaged in, preparing, planning, 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

National Socialist Order has not previously been listed under the *Criminal Code*.

Details of the organisation

National Socialist Order (NSO), formerly known as Atomwaffen Division (AWD), is a nationalist and racist violent extremist (NRVE) group founded in 2015 in the United States (US) by Brandon Russell. NSO traces its origins to Iron March, a now-defunct internet forum for white supremacists and national socialists, and adopted a decentralised operating model with multiple cells across the US. NSO promotes a national socialist and accelerationist ideology. The organisation advocates the use of violence to initiate a 'race war' to accelerate the collapse of western society and establish a 'white ethno-state'.

NSO is inspired by *Siege*, a compilation of newsletters, interviews and speeches written by prominent national socialist James Mason. In *Siege*, Mason calls for destruction of the 'System' (the perceived Jewish-controlled state) through violence and subsequent installation of a national socialist regime. Mason proposes strategies and tactics to achieve this,

predominantly leaderless resistance involving lone-actor terrorist attacks. Mason has had close contact with members of NSO (then AWD) and described himself as an ‘advisor’ to the group. In February 2021, Mason was proscribed as a terrorist entity by the Government of Canada.

In March 2020, AWD publicly claimed its disbandment, following the arrests of multiple leadership figures by US law enforcement. In July 2020, a national socialist website announced the creation of NSO, which described itself as ‘*an organisation founded and led by the remaining leadership of AWD.*’ A video uploaded to the group’s Odysee account in May 2021 stated that NSO had learned from mistakes that AWD made, and that NSO has a strong executive leadership and a clear national socialist worldview with the goal to ‘*build an Aryan, national socialist world by any means necessary.*’

NSO is assessed to be a direct continuation of AWD, likely rebranded with the intention of avoiding law enforcement attention. NSO was announced four months after AWD publicly disbanded due to law enforcement activity, claims to maintain the same leadership as AWD, and has explicitly declared an intent to pursue the same objectives.

Leadership

The organisation was founded as AWD in 2015 by US citizen Brandon Russell. In September 2017, Russell was arrested and pled guilty to unlawful possession and storage of explosives. In January 2018, Russell was sentenced to five years’ imprisonment. After Russell’s arrest and imprisonment, John Denton, known online as ‘Vincent Snyder’ and ‘Rape’, replaced Russell as leader. Under Denton’s leadership, the group’s ideology incorporated occult influences from the Satanic ‘Order of Nine Angles’ movement. Denton was arrested in February 2020 in connection with a conspiracy to intimidate ideological opponents through ‘swatting’ (making false threats to provoke a law enforcement response).

Following the arrests of multiple leadership figures in early 2020 and reorganisation into NSO in July 2020, the group is reportedly being co-led by four members, each of whom has responsibility for a region of the US.

Membership

Current membership numbers for NSO are unclear following the arrests of several members by US law enforcement in 2020, and are difficult to determine due to the dispersed and decentralised nature of the group. In 2018 the organisation had approximately 80 members across the US – with the largest cells reportedly located in Texas, Washington and Virginia.

NSO primarily recruits through online channels, including Telegram, Discord and Gab. Before 2020, the group actively sought to recruit from the US military in order to gain members with military experience and potential access to military equipment. Following its rebranding from AWD to NSO, the group has reportedly strengthened its vetting procedures, including requiring in-person meetings for new recruits.

Links to other groups

NSO has significant links to other NRVE groups, in particular having shared a number of members with ideologically-aligned US group The Base. The Base is proscribed as a terrorist organisation by the Governments of Australia, Canada and the United Kingdom (UK).

NSO has inspired the formation of a significant number of likeminded groups. This includes the UK-based Sonnenkrieg Division, Estonia-based Feuerkrieg Division, Canada-based Northern Order, Italy-based Nuovo Ordine Sociale, Germany-based AWD Deutschland and Russia-based AWD Russland. Although these groups are likely not controlled by NSO's leadership, they share NSO's ideological aspirations and reportedly have online links to NSO members. Since 2019, members and associates of these groups have planned, prepared, threatened or encouraged terrorist attacks against ideological opponents.

Terrorist activity

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

Consistent with NSO's strategy of 'leaderless resistance' and advocacy of lone-actor terrorism, members of the group have prepared for and made credible threats of violence against ideological opponents. Senior members of NSO (then AWD) have been arrested for illegally stockpiling firearms and explosives, with a likely intention of increasing the group's capability to engage in violence in pursuit of its ideological causes.

Although there is limited information as to the group's activities since its rebranding from AWD to NSO, its current leadership have declared an intent to pursue the same objectives. Given the group's threats of and clandestine preparations for terrorism prior to its claimed disbandment in March 2020, and its continuing encouragement and promotion of terrorism, available information supports a conclusion that NSO likely continues to prepare its members to engage in violence in pursuit of its ideological causes.

- In February 2020, NSO (then AWD) cell leader Kaleb Cole and three other members, Johnny Garza, Cameron Shea, and Taylor Parker-Dipeppe, were charged with a conspiracy to threaten and intimidate journalists and activists. The group delivered posters to journalists and Jewish activists, with the stated intent of constituting a 'show of force'. The posters included national socialist symbols, masked figures with firearms and Molotov cocktails and threatening language including '*Your actions have consequences, our patience has its limits... You have been visited by your local Nazis*' and '*We know where you live.*' These statements are assessed to have constituted a threat of targeted violence against AWD's ideological opponents.
 - In December 2020, Garza was sentenced to one year and four months' imprisonment. In August 2021, Shea was sentenced to three years' imprisonment. In January 2022, Cole was sentenced to seven years' imprisonment.
- In November 2019, NSO (then AWD) cell leader Kaleb Cole and member Aiden Bruce-Umbaugh were arrested in Texas for firearms offences following a traffic stop by law enforcement where officers found a substantial quantity of firearms and ammunition. An FBI official stated that '*the amount of weapons and ammunition*

seized... could have caused serious harm. In April 2020, Bruce-Umbaugh was sentenced to two years' and six months' imprisonment.

- In October 2019, Seattle law enforcement seized a large number of unregistered firearms – as well as parts to assemble untraceable home-made firearms – from Cole's residence. Authorities filed and were granted an Extreme Risk Protection Order against Cole, which prohibited Cole from possessing firearms for one year. According to law enforcement, *'his words, actions and behaviour suggest he has taken additional steps towards a plan with his ideologically motivated violence'* suggesting *'an imminent risk to public safety'*.
- In July 2019, Cole was deported from Canada and banned from the country for life over concerns by Canadian authorities that he was a member of 'an organisation that may engage in terrorism'.
- In August 2019, NSO (then AWD) member Conor Climo was charged with possession of unregistered bomb-making material. Between May and July 2019, Climo had discussed using incendiaries to attack a synagogue in Las Vegas, Nevada, and had also conducted surveillance of a Las Vegas bar catering to the LGBTQI community in preparation for a potential terrorist attack. Climo was sentenced to two years' imprisonment in November 2020.
- In September 2017, NSO (then AWD) leader Brandon Russell was arrested and charged with possessing an unregistered destructive device and unlawful storage of explosive material. Russell had been stockpiling the high-explosive substance HMDT at his Florida apartment alongside homemade fuses and explosive precursors. The materials were discovered after an AWD member murdered two other members in the apartment. Federal prosecutors argued that Russell planned to use the explosives in a terrorist attack, potentially against nuclear facilities or synagogues.
 - Russell was sentenced to five years' imprisonment in January 2018, and was released in August 2021. He will remain on supervised release for three years.
- In September 2017, NSO (then AWD) held its first 'hate camp' in Illinois. Subsequent camps were held in Nevada, Texas and Washington State over 2017 and 2018. The 'hate camps' were intended to train AWD members in firearms, close-quarters combat, bomb-making and survival skills in preparation for a perceived impending 'race war'. Given the group's accelerationist ideology it is likely that the camps were also intended to build the group's capability to engage in violence against ethnic minorities and ideological opponents to initiate the 'race war'.

Advocates the doing of a terrorist act

Despite the arrests of multiple members and the claimed disbanding of the group in March 2020, the organisation has continued to advocate the doing of terrorist acts following its rebranding as NSO. In 2021, NSO uploaded a number of videos containing violent extremist rhetoric to video-sharing website Odysee.

- A video uploaded on 12 September 2021 shows footage of police being assaulted in riots, including in the attack on the US Capitol building on 6 January 2021. It also

includes graphic dashboard camera footage of US police officers being killed by firearms in traffic stops while the lyrics *'kill the police, kill the whole force, smash the system, destroy the courts'*, are played. The footage of acts of violence against law enforcement combined with inflammatory lyrics implicitly encourages violence in support of NSO's ideology.

- A video uploaded on 30 May 2021, titled 'NSO's Three Step Guide', tells viewers to 'educate' themselves on national socialist literature, to identify enemies and to take violent action against them. The video includes imagery which implies that these actions would involve arson against critical infrastructure, murder using firearms, and sexual violence.
- A video uploaded on 27 May 2021 shows members distributing NSO posters in California. One poster displays racist caricatures of ethnic minorities with *'exterminate'* written under them, while another states *'mow down Antifa'* and displays an armed NSO member. The video ends with the statement *'Join your local Nazis'*.
- A video uploaded on 21 May 2021 titled 'NSO Program' – while perhaps not explicitly promoting terrorist acts – includes statements such as *'Our priority is to seize territorial power by any means necessary'*; *'the earth should be solely populated by the Aryan race'*; *'we require all members to be armed and ready at a moment's notice'*; and *'racial holy war now'*.

Other considerations

Links to Australia and threats to Australian interests

NSO has significant reach within the global white supremacist landscape. As AWD, it had links to the defunct Australia-based extremist group Antipodean Resistance – which similarly originated on the Iron March forum and adhered to the same accelerationist ideology.

A successful terrorist attack directed or inspired by NSO or an associated group could result in harm to Australians, and the group's activities and propaganda have ongoing potential to inspire Australian violent extremists and contribute to the radicalisation of others.

Listings by likeminded countries or the United Nations

NSO is proscribed as a terrorist organisation by the Governments of Canada and the UK.

Conclusion

On the basis of the information above, the Australian Government assesses that the organisation known as National Socialist Order (formerly Atomwaffen Division) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts, and advocates the doing of terrorist acts.