

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 127

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code Amendment Regulations 2009 (No. 11).

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code* (the Code).

Division 102 of the Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; receiving training from or providing training to a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

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

Paragraphs (a) and (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code define a ‘terrorist organisation’ as:

- an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs) (paragraph (a));
or
- an organisation specified in the regulations (paragraph (b)).

The purpose of the Regulations is to amend the *Criminal Code Regulations 2002* to specify the Kurdistan Workers Party also known as Freedom and Democratic Congress of Kurdistan, HPG, KADEK, KG, KHK, 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 Peoples Congress, New PKK, Partiya Karkeren Kurdistan, Peoples Congress of Kurdistan, People’s Defence Force, PKK, TAK and Teyrbazên Azadiya Kurdistan, for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

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

Subsection 102.1(2) of the Code provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code, the Minister must be satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

In determining whether he is satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, the Minister takes into consideration unclassified Statements of Reasons prepared by the Australian Security Intelligence Organisation (ASIO) in consultation with the Department of Foreign Affairs and Trade and the Australian Government Solicitor. The Statement of Reasons in respect of the Kurdistan Workers Party is at Attachment B.

Subsection 102.1(2A) of the Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

Prior to the making of the Regulations, consultations were held with the Department of Foreign Affairs and Trade, ASIO and the Australian Government Solicitor. In addition, the Prime Minister wrote to the Premiers and Chief Ministers of the States and Territories and the Attorney-General has provided a written briefing to the Federal Leader of the Opposition.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Code provides when the regulations will sunset.

ATTACHMENT A

Details of the Criminal Code Amendment Regulations 2009 (No. 11)

Regulation 1- Name of Regulations

This regulation provides that the title of the Regulations is the *Criminal Code Amendment Regulations 2009 (No. 11)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered.

Regulation 3 – Amendment of *Criminal Code Regulations 2002*

This regulation notes that Schedule 1 amends the *Criminal Code Regulations 2002*.

Schedule 1 – Amendments

Item [1] – Regulation 4W

This item provides that the existing regulation 4W ‘Terrorist organisations – Kurdistan Workers Party’, is to be substituted with a new regulation 4W.

New subregulation 4W(1) provides that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code* (the Code), the organisation known as Kurdistan Workers Party is specified.

The effect of this subregulation is that Kurdistan Workers Party will continue to be specified as a terrorist organisation under subsection 102.1(1) of the Code for a further 2 years.

Subregulation 4W(2) provides that for the purposes of subregulation (1), Kurdistan Workers Party is also known by the following names:

- (a) Freedom and Democratic Congress of Kurdistan;
- (b) HPG;
- (c) KADEK;
- (d) KG;
- (e) KHK;
- (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 Peoples Congress;

- (q) New PKK;
- (r) Partiya Karkeren Kurdistan;
- (s) Peoples Congress of Kurdistan;
- (t) People's Defence Force;
- (u) PKK;
- (v) TAK;
- (w) Teyrbazên Azadiya Kurdistan.

ATTACHMENT B

Kurdistan Workers Party

(Also known as: Freedom and Democratic Congress of Kurdistan, HPG, KADEK, KG, KHK, 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 Peoples Congress, New PKK, Partiya Karkeren Kurdistan, Peoples Congress of Kurdistan, People's Defence Force, PKK, TAK, Teyrbazên Azadiya Kurdistan)

The following information is based on publicly available details about the Kurdistan Workers Party (PKK). 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* 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 (whether or not a terrorist act has occurred or will occur); or
- (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

Details of the organisation

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. After the end of Cold War, the PKK increasingly emphasised its role as a Kurdish nationalist movement. At times the group has sought to increase its popularity by exploiting the religious sentiment of the Kurdish community, but the organisation was and remains predominantly secular.

In August 1984, the PKK began sporadic attacks on Turkish security force targets, especially in the south-east of the country. The group also targeted Kurds regarded as 'state collaborators' — especially those belonging to the 'village guards', a Kurdish militia that had been established by the Turkish government in the mid-1980s to counteract the PKK's growing influence. On 20 June 1987, PKK militants raided Pincarik, a small Kurdish village in the province of Mardin, and called upon the village guards to surrender. When they refused, the PKK massacred 30 people, including 16 children and six women. After the massacre, Ocalan is reported to have said: "Let's kill, and become the authority".

The PKK intensified its campaign in the early 1990s, often employing large-scale, mass-casualty operations. During these years, the group also extended its insurgency to western Turkey, bombing department stores and markets frequented by civilians. For a short period, it targeted foreigners and was responsible for kidnapping a number of tourists. By the time

Turkish security forces captured Ocalan in February 1999, the PKK had conducted tens of thousands of attacks, resulting in an estimated 30 to 40 thousand people being killed — many of them innocent civilians.

Following Ocalan's arrest, the PKK announced a unilateral ceasefire — although Ocalan stipulated that PKK militants would only lay down their arms if the Turkish government likewise agreed to cease hostilities against the PKK. As a result, violence abated significantly over the next few years but never completely ceased.

The PKK increasingly sought to distance itself from its terrorist past. The group thus changed its name, in April 2002, to the Kurdistan Freedom and Democracy Congress (KADEK), which claimed adherence to 'democratic transformation and unity'. This was followed, in November 2003, by yet another facelift, the PKK this time changing its name to Kongra Gel and insisting on its commitment to 'peaceful' activities.

But these attempts to cultivate a more benign public image failed — in January 2004, the US government listed not only the PKK but also its various aliases, including KADEK and Kongra Gel, as terrorist organisations. The group subsequently called off the ceasefire. As a result, violence perpetrated by the PKK — which reverted to its original name in April 2005 — steadily increased over the next few years. It also began the practice of using front groups, especially the Kurdistan Freedom Falcons (TAK), to conduct attacks in tourist areas frequented by foreigners. It was hoped that the TAK would provide the PKK with 'plausible deniability' when conducting attacks that killed civilians, including foreigners. In reality, however, the PKK directs TAK operations.

Despite intermittent ceasefires after 2005, the PKK continued to mount terrorist attacks against Turkish security, civilian and economic targets. By late 2007, the group had reportedly claimed a further 1,500 lives since the resumption of its insurgency in June 2004. Urban attacks, led by the TAK, increased during 2005 and culminated in a wave of bombings in tourist areas during the following summer. On 28 August 2006, a blast in the Turkish resort city of Antalya killed three people and wounded around 20 others. A day earlier, in Marmaris — another coastal city popular with tourists — three bombs were detonated near-simultaneously. Twenty-one people were injured, including 10 British citizens. Between June 2004 and July 2008, the PKK reportedly killed around 35 civilians, seven of them foreign tourists.

The PKK's intensification of the insurgency led to an inevitable backlash from Turkish authorities. In November 2007, after a series of PKK attacks on Turkish military outposts that killed more than 20 soldiers, the Turkish Government passed emergency legislation authorising military attacks on PKK bases in northern Iraq. The Turkish Armed Forces bombarded PKK bases with aerial attacks for two months before launching a cross-border assault on 21 February 2008 that lasted eight days. A number of aerial operations followed and by September 2008, according to Turkish military figures, more than 750 PKK fighters had been killed since the beginning of the year.

Despite these setbacks, the PKK retains both the intent and capability to conduct large-scale attacks on Turkish official and military as well as civilian targets anywhere in Turkey. In January 2008, PKK militants were responsible for detonating a car bomb in Diyarbakir, the largest city in south-eastern Turkey, that killed six people — five of them Kurdish school students. This was followed, on 27 July 2008, by a double bombing in a residential neighbourhood of Istanbul that was specifically designed to achieve maximum civilian fatalities — after an initial small-scale blast that attracted onlookers, a second, larger bomb was detonated. Twenty-seven people were killed and more than 150 others injured in the

attack. Also in July 2008, People's Defence Forces (HPG — the military wing of the PKK) militants kidnapped three German mountain climbers in retaliation for Berlin's decision to further circumscribe the organisation's broadcasting activities in Germany. The hostages were released 12 days after being kidnapped.

Abdullah Ocalan, currently serving life imprisonment in Turkey, is still considered the leader and figure-head of the PKK. In practice, the PKK's day-to-day affairs are run by Murat Karayilan. Although the organisation has undergone numerous name changes, there is a continuity of key leaders, including Ocalan and Karayilan, but also Cemil Bayik, Duran Kalkan, Fehman Huseyin and Riza Altun.

The PKK has experienced a number of internal power struggles since Ocalan's arrest in 1999. Karayilan has emerged as the organisation's dominant figure, but manoeuvring within the PKK continues. Karayilan and leader of the HPG, Fehman Huseyin, have reportedly been engaged in a long-standing rivalry.

The precise strength of the PKK is not known. In late 2007, Karayilan claimed to command as many as 10,000 militants. The Turkish military was more circumspect, reporting in November that year that the PKK numbered around 7,000 active militants. However, it is widely believed the group numbers approximately four to five thousand militants, the majority of whom are based in northern Iraq.

Terrorist activity of the organisation

The PKK's objectives have changed over time. Initially the group aimed to establish a separate Kurdish nation from the large Kurdish populations in Turkey, Syria, Iraq and Iran. The organisation now calls for autonomy for Kurds within Turkey and seeks to promote and advance the rights of Kurds living in Turkey, specifically the right to maintain ethnic identity.

The PKK has consistently demonstrated a willingness to use violence in order to achieve these objectives.

The PKK focuses its attacks on Turkish official and especially security force targets in south-eastern Turkey. The group also has a significant presence in western and southern Turkey, with recent car bombings of police and military targets in the coastal cities of Mersin and Izmir perhaps suggesting a renewed focus in response to Turkish military successes in northern Iraq.

The PKK has also conducted attacks against both Turkish and Kurdish civilians — the latter for allegedly 'collaborating' with Turkish security forces. Since 2004, the group has used proxies, especially the TAK, to bomb areas frequented by foreign tourists. At various times, the group has also kidnapped foreigners.

The PKK employs a wide variety of attack methodologies. During the early years of its insurgency, the group mostly conducted direct armed attacks on Turkish military posts in the country's south-east. However, after the Turkish military regained control of these territories by employing more sophisticated weapons technology — especially Cobra attack helicopters, which were used in 'hot pursuit' operations — the PKK increasingly concentrated on attacks using mines, snipers and long-range strafing of military outposts.

Improvised explosive devices (IEDs) quickly became the PKK's weapon of choice — mainly because IEDs improved the group's capability against the numerical superiority of the Turkish military. The PKK, while making extensive use of small IEDs in attacks on Turkish

civilian and military targets, also developed more sophisticated devices — including car bombs (VBIEDs). On 11 September 2007, in Ankara, Turkish police discovered a vehicle loaded with approximately 600 kilograms of explosive material. This was followed by the PKK conducting a number of successful car bombings throughout 2008.

Suicide bombings have also featured prominently in the PKK's attack repertoire. Beginning in 1996, as the Turkish military was regaining control of south-eastern Turkey, the PKK conducted more than 20 suicide bombings up to 1999. During these years, the group made extensive use of female suicide bombers, mainly because of their ability to conceal large amounts of explosives under the guise of pregnancy. Although Ocalan's call for a ceasefire in 1999 effectively ended this campaign, the practice has re-emerged in recent years with PKK suicide bombings against Turkish civilian and security force targets in Ankara, Mersin and Tunceli during 2007 and 2008.

The PKK acquires the overwhelming bulk of its money from drug trafficking, which some commentators have claimed garnered as much as 500 million Euros (800 million US dollars) for the organisation in 2008. At different times, the PKK has reportedly controlled up to 80 per cent of the European illicit drug market. In June 2008, in recognition of its involvement in these activities, the US State Department added the PKK to its list of major international drug-dealers under the Foreign Narcotics Kingpin Designation Act.

Other criminal activities that contribute to the PKK's finances include human trafficking, money laundering and prostitution rackets. Revenue is also raised by collecting 'taxes' — through voluntary means or coercion — from Kurdish diaspora communities around the world. In 2007, the group reportedly raised approximately 12 to 15 million dollars in Europe alone through commercial activities (including semi-legitimate activities) and donations. Sales of publications, grants, aid campaigns and revenues obtained from 'special nights' organised by PKK branches in Europe also contribute to the group's coffers.

The PKK conducts attacks against a range of Turkish security force, civilian and foreign targets. Significant recent attacks or attack planning for which responsibility has been claimed by, or reliably attributed to, the PKK include:

- 13 September 2006: A mobile phone-triggered IED exploded at a bus stop in the Baglar region of Diyarbakir city. Eleven people were killed, including five children, and 13 injured;
- 12 May 2007: One civilian was killed and around 18 others injured when a bicycle bomb exploded in a market place in Izmir;
- 22 May 2007: A suicide bombing near a market centre in Ankara killed 10 people and injured around another 100;
- 10 June 2007: A small IED exploded outside a clothing shop in Istanbul, injuring at least 14 people;
- 23 June 2007: Two PKK militants rammed an oil-filled truck into a police station in the province of Tunceli. Only the militants in the truck were reported to have been killed in the attack, which appears to have been a suicide mission;
- 29 September 2007: A group of PKK militants ordered 12 people, including 'village guards' and civilians, off a bus in Sirnak province and shot and killed all 12;

- 2 October 2007: Two people were injured when a bomb exploded outside a shopping centre in Izmir, Turkey's third-largest city and popular 'capital' of its Aegean region. About three hours later, a larger bomb hidden in the saddle of a stolen motorbike exploded near the same shopping centre, killing one person and injuring two others;
- 7 October 2007: A bomb left in a garbage bin in Istanbul was detonated by remote control as a police officer passed by, injuring five people but none of them seriously;
- 10 October 2007: A policeman was killed and six others injured when a grenade was thrown at a police vehicle in Diyarbakir;
- 25 December 2007: An explosion near a police station in a residential area of Istanbul killed one person and injured six others;
- 3 January 2008: a car bombing in Diyarbakir targeting a military bus as it passed a school killed at least six people and injured 68 others;
- 9 May 2008: In the south-eastern province of Batman, three people were killed and five wounded, when the bus they were traveling in was destroyed by a landmine detonated by PKK guerrillas;
- 8 July 2008: The PKK took as hostages three German tourists who were on a climbing trip on Mount Ararat, in eastern Turkey. The hostages, who were taken to protest Berlin's crackdown on the group's fund-raising activities in Germany, were released unharmed on 20 July 2008;
- 19 July 2008: A group of PKK militants killed four people and wounded seven others in Bingol, a province in central-eastern Turkey;
- 27 July 2008: The PKK, though denying involvement, carried out a twin bombing in a residential neighbourhood in Istanbul that killed 27 Turkish civilians, including five children, and wounded more than 150;
- 19 August 2008: Mersin police stopped a car being driven by a suspected PKK suicide bomber, who then detonated the device, killing himself and injuring twelve police officers;
- 21 August 2008: In Izmir, a car bomb planted by the PKK was employed against a minibus carrying approximately 40 police officers and soldiers. Seven policemen, three soldiers and six civilians were injured;
- 11 October 2008: Turkish police arrested a female member of the PKK who was planning a suicide attack on an unspecified target in Istanbul. She was feigning pregnancy in order to conceal 8.8 kilograms of explosives on her body;
- 23 December 2008: Turkish security forces discovered a car in Diyarbakir loaded with 57 kilograms of explosives, an RPG7 rocket launcher, 50 rocket grenades, 70 hand grenades and ammunition; and
- 20 March 2009: Police arrested three PKK militants in Istanbul. Explosives, a firearm, two hand grenades and three pistols were seized in the raid, but the target of the alleged attack was unknown.

As demonstrated, the PKK is directly preparing, planning, assisting in or fostering the doing of terrorist acts. It is considered that the acts attributable to the PKK are terrorist acts as they:

- (i) are done with the intention of advancing a political cause, namely, promoting and advancing the rights of Kurds living in Turkey;
- (ii) are intended to coerce or influence by intimidation the government of a foreign country, namely Turkey, and/or intimidate sections of the public; and
- (iii) constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

Other relevant information

The PKK is listed as a proscribed terrorist organisation by many governments, including the UK and Canada. The organisation is proscribed by the US government under the name of Kongra Gel. The PKK is listed by the European Union for the purposes of its anti-terrorism measures.