

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 195**

Issued by the authority of the Attorney-General

*Criminal Code Act 1995*

*Criminal Code Amendment Regulation 2012 (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.

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.

A ‘terrorist organisation’ is defined in subsection 102.1(1) of the Code 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 102.1(1)(a)); or
- an organisation specified in the regulations (paragraph 102.1(1)(b)).

The purpose of the regulation is to amend the *Criminal Code Regulations 2002* (Criminal Code Regulations) to specify Kurdistan Workers Party (PKK), also known as Freedom and Democratic Congress of Kurdistan, Hezan Parastina Gel (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 People’s Congress, New PKK, Partiya Karkeren Kurdistan, People’s 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 regulation enables the offence provisions in Division 102 of the Code to continue to apply to persons with links to Kurdistan Workers Party (PKK). Details of the regulation 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).

The Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the regulation pursuant to subsection 102.1(2A) of the Code.

In determining whether she 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 an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation (ASIO) in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Kurdistan Workers Party (PKK) is at Attachment B.

Prior to making the regulation, 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 offered the Leader of the Opposition a briefing.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Code provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which they take effect.

### **Statement of Compatibility with Human Rights**

This regulation 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*.

#### *Objective*

The object of the *Criminal Code Amendment Regulation 2012 (No. 11)* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. This will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

The *Criminal Code Amendment Regulation 2012 (No. 11)* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit, train or receiving training, get funds to, from or for Kurdistan Workers Party (PKK), and provide support or associate with Kurdistan Workers Party (PKK).

The offence in subsection 102.8 of the Criminal Code of associating with a terrorist organisation is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or representation.

Whilst the *Criminal Code Amendment Regulation 2012 (No. 11)* may limit the right to freedom of association with Kurdistan Workers Party (PKK), the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Kurdistan Workers Party (PKK) are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life, as detailed in the Statement of Reasons (at [Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons ([Attachment B](#)) supports the Attorney-General's decision made on reasonable grounds, that Kurdistan Workers Party (PKK) satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Criminal Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code Amendment Regulation 2012 (No. 11)* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws*. The *Criminal Code Amendment Regulation 2012 (No. 11)* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) the Minister must arrange for the Leader of the Opposition to be briefed in relation to the regulation
- under subsection 102.1(3) the *Criminal Code Amendment Regulation 2012 (No. 11)* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) 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. The effect of the Minister's declaration is

that the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code

- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code Amendment Regulation 2012 (No. 11)* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Act, and
- both Houses of Parliament may disallow the *Criminal Code Amendment Regulation 2012 (No. 11)* within the applicable disallowance period, as provided in subsection 102.1A(4).

### *Conclusion*

The regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

**ATTACHMENT A****Details of the Criminal Code Amendment Regulation 2012 (No. 11)****Section 1– Name of Regulation**

This section provides that the title of the Regulation is the *Criminal Code Amendment Regulation 2012 (No. 11)*.

**Section 2 – Commencement**

This section provides that the Regulation commences on the day after it is registered.

**Section 3 – Amendment of Criminal Code Regulations 2002**

This section provides that Schedule 1 amends the *Criminal Code Regulations 2002*.

**Schedule 1 – Amendments****Item [1] – Regulation 4W**

This item substitutes the existing regulation with a new regulation 4W to provide that for paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code Act 1995* (the Code), the organisation known as Kurdistan Workers Party (PKK) is specified.

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

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

**ATTACHMENT B****Kurdistan Workers Party (PKK)**

**(Also known as: Freedom and Democratic Congress of Kurdistan, Hezan Parastina Gel (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 People's Congress, New PKK, Partiya Karkeren Kurdistan, People's Congress of Kurdistan, People's Defence Force, PKK, TAK, Teyrbazên Azadiya Kurdistan)**

The following information is based on publicly available details about the PKK. To the Australian Government's knowledge, these details are accurate and reliable and have been corroborated by classified information.

**Basis for listing a terrorist organisation**

Division 102 of the *Criminal Code* 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***Objectives*

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

The PKK's objectives have changed over time, in line with Turkey's evolving political environment. The organisation now calls for autonomy for Kurds within Turkey and seeks to promote 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.

*Leadership and Membership*

Abdullah Ocalan, currently serving life imprisonment in Turkey, is still considered the leader and figurehead of the PKK; however, in practice, the group's day-to-day affairs are run by Murat Karayilan. Other key leaders include Cemil Bayik, Duran Kalkan, Fehman Huseyin and Riza Altun.

The precise strength of the PKK is not known; however, it is widely believed the group numbers approximately four to five thousand militants, the majority of whom are based in northern Iraq. Additionally, the group draws on considerable logistical support from a large number of sympathisers among the Kurdish community, particularly in south-east Turkey, but also in Syria and Iran.

#### *Funding and recruitment*

The PKK derives most of its financial resources from drug trafficking, which is reported to generate hundreds of millions of US dollars for the group. At different times, the PKK is assessed to have controlled up to 80 per cent of the European illicit drug market.

In January 2012, under the US State Department's Foreign Narcotics Kingpin Designation Act, the US Department of Treasury's Office of Foreign Assets Control designated three Moldavia-based individuals as Specially Designated Narcotics Traffickers for acting for or on behalf of the PKK. One individual was identified as a high-ranking PKK member.

The PKK also generates income through extortion, illegal immigration, 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. PKK-related criminal activity is especially prevalent in Europe. The European Police Office warned in its European Union Terrorism Situation and Trend Report 2012 that the PKK remains committed to using Europe as a logistical support base for funding, as well as for recruitment, training and propaganda. Funds are also raised through publication sales, grants, aid campaigns and fundraising activities organised by PKK branches in Europe.

Most PKK members are recruited from the main Kurdish areas in south-east Turkey; however, some are drawn also from cities in the country's west. In addition, the group recruits from the Kurdish population in Iran and Syria and from the Kurdish diaspora in Europe. Most recruitment in rural areas of Turkey occurs through personal acquaintance. In urban areas and in Europe, a network of PKK members and sympathisers working in non-governmental organisations and predominantly Kurdish political parties manage the recruitment process. The group's external recruitment practices were highlighted in February 2010 when police in France and Italy detained at least 20 people for alleged involvement in training and recruitment for the PKK.

#### **Terrorist activity of the organisation**

##### *Directly or indirectly engaged in the doing of terrorist acts*

The PKK has continued to have extensive, direct involvement in most terrorist acts occurring in Turkey since the group was last listed in 2009. The group has been particularly active since February 2011 when it ended a unilateral ceasefire in place since April 2009. Most attacks appear to be very specifically targeted, for example, armed assaults against Turkish military forces using small-arms fire. However, there also have been several indiscriminate, mass-casualty attacks employing both suicide bombings and vehicle-borne improvised explosive devices (IED). While most attacks have targeted Turkish security forces in the southeast, a number have targeted places frequented by civilians or tourists, including a shopping area in Ankara and a major shopping, tourist and leisure district in Istanbul. The PKK also was responsible for a ferry hijacking in the Marmara Sea, near Istanbul.

The PKK has also conducted kidnappings, including of Westerners. In the latest incident on 2 June 2012, a British tourist reportedly was kidnapped but was released the following day.



Significant recent attacks for which responsibility has been claimed by or reliably attributed to the PKK include:

- 1 March 2012: Fifteen police officers and a civilian were wounded in a remotely controlled IED attack by suspected PKK militants targeting a police bus in the Imrahor Street area of Istanbul. The explosion reportedly occurred as the bus passed the headquarters of the ruling Justice and Development Party.
- 24 November 2011: Three Turkish employees of a Canada-based energy company were killed by PKK militants in an attack targeting the Selmo oil field at Kozluk, Batman province.
- 11 November 2011: A PKK militant carrying a suspected explosive device hijacked a passenger ferry and took hostage 18 passengers and six crew members in the Marmara Sea, near Istanbul.
- 29 October 2011: At least two people were killed and as many as 20 others wounded when a suspected PKK suicide bomber detonated her explosives outside a teahouse near the office of the Justice and Development Party in the town of Bingol in Bingol province.
- 27 September 2011: PKK militants kidnapped a total of eight teachers and a village guard in five armed attacks in the Pulumur district of Tunceli province; in the village of Gundogdu in Elazig province; and in the villages of Ciftlibahce, Dolunay and Cavundur in Diyarbakir province.
- 17 August 2011: Eight soldiers and a village guard were killed and a further 14 soldiers wounded when suspected PKK militants detonated four IEDs consecutively against a military convoy on the Hakkari-Cukurca highway in the Cukurca district of Hakkari province.
- 14 July 2011: Thirteen soldiers were killed and seven others wounded when PKK militants ambushed a security patrol with small-arms and grenades in Silvan district, Diyarbakir province.
- 26 May 2011: A police officer and seven civilians were wounded when suspected PKK militants detonated an IED at a bus stop near the Akmerkez shopping centre in the Etiler district of Istanbul.
- 4 May 2011: At least one police officer was killed and two others wounded in a combined small-arms and IED attack by suspected PKK militants targeting a bus transporting security force personnel on the outskirts of the city of Kastamonu in Kastamonu province. The attack occurred shortly after Prime Minister Recep Tayyip Erdogan held an election rally in the city.
- 31 October 2010: Thirty-two people were wounded – including 15 police officers – when a suicide bomber attacked a bus carrying police officers in Taksim Square, Istanbul. An IED planted nearby failed to explode.
- 19 June 2010: Nine soldiers were killed and 14 others wounded when PKK militants attacked an army border unit in the Semdinli area of Hakkari province. A further two soldiers were killed in a separate IED incident in Hakkari on the same day.

*Directly or indirectly preparing or planning the doing of terrorist acts*

Under the HPG alias, the group issued a statement in January 2012 declaring that “2012 will be the year of a struggle to ensure a free Leader and Free Kurdistan through an effective resistance and a Popular Revolutionary War”. A military intelligence report, which was made public in mid-February 2012, warned also of a PKK plan to escalate its terrorist campaign. PKK leaders had reportedly discussed their intentions to conduct large-scale attacks throughout the south-east, with the aim of inflicting major losses on the Turkish military. The group also planned to attack police and civilians in urban areas using homemade explosives.

**Conclusion**

On the basis of the above information, ASIO assesses the PKK continues to directly and/or indirectly engage in, prepare, plan, assist, advocate or foster the doing of terrorist acts involving threats to life and serious property damage. This assessment is corroborated by information provided by reliable and credible intelligence sources.

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

- that causes, or could cause, serious damage to property, the death of persons or endangers a person’s life; and
- with the intention of advancing the PKK’s political, religious or ideological causes; and
- with the intention of intimidating the public and sections of the public.

**Other relevant information**

*Links to other terrorist groups or networks*

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

*Links to Australia*

There are no known PKK links to Australia; however, it is likely elements of Australia’s Kurdish community remain sympathetic to the Kurdish nationalist cause.

*Threats to Australian interests*

There are no known direct threats from the PKK to Australian interests. The PKK is not known to be engaged in any peace or mediation processes.

*Proscription by the UN and other countries*

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