

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Criminal Code Act 1995

Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021

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

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 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 Kurdistan Workers’ Party is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In coming to this position, the Minister has taken into consideration unclassified information (the Statement of Reasons) provided by the Department of Home Affairs ([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 Kurdistan Workers' Party.

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

The Regulations commence on 4 August 2021. 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 advice from the Australian Government Solicitor (AGS) in relation to the unclassified information (the Statement of Reasons) at [Attachment C](#).

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 Kurdistan Workers’ Party meets 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 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.

Statement of Compatibility with Human Rights

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

Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) 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—Kurdistan Workers’ Party) Regulations 2021* (the Regulations) specify Kurdistan Workers’ Party for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to specify Kurdistan Workers’ Party as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities that might constitute an offence under Division 102 of Part 5.3 of the *Criminal Code* in relation to Kurdistan Workers’ Party.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of 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 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 Kurdistan Workers’ Party as a listed terrorist organisation.

Terrorist organisations, including Kurdistan Workers’ Party, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that 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 Kurdistan Workers' Party. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests, and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance Kurdistan Workers' Party.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of ‘terrorist organisation’ in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Kurdistan Workers’ Party, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the States and Territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives 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 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 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 Karen Andrews MP
Minister for Home Affairs

Details of the Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021

Section 1 – Name

1. This section provides that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2021*.

Section 2 – Commencement

2. This section provides for the commencement of each provision in the proposed Regulations, as set out in the table.
3. Subsection 2(1) provides 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 provide that the proposed Regulations commence in their entirety on 4 August 2021.
4. The note to subsection 2(1) clarifies 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 of the instrument.
5. Subsection 2(2) provides 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 provides that the proposed Regulations are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.
8. Schedule 1 to the Regulations repeals the whole of the *Criminal Code (Terrorist Organisation—Kurdistan Workers’ Party) Regulations 2018*.

Section 5 – Terrorist organisation—Kurdistan Workers’ Party

9. Subsection 5(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 Kurdistan Workers’ Party is specified.

10. The effect of specifying Kurdistan Workers' Party as a terrorist organisation is to ensure that offences in Subdivision B of Division 102 of Part 5.3 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 Kurdistan Workers' Party.
11. Subsection 5(2) provides a list of names by which the organisation Kurdistan Workers' Party is also known:
- (a) Freedom and Democratic Congress of Kurdistan (paragraph (a))
 - (b) Hezan Parastina Gel (paragraph (b))
 - (c) HPG (paragraph (c))
 - (d) KADEK (paragraph (d))
 - (e) Kongra Azadi u Demokrasiya Kurdistan (paragraph (e))
 - (f) Kongra Gel (paragraph (f))
 - (g) Kongra Gele Kurdistan (paragraph (g))
 - (h) Kurdish Freedom Falcons (paragraph (h))
 - (i) Kurdish Liberation Hawks (paragraph (i))
 - (j) Kurdistan Freedom and Democracy Congress (paragraph (j))
 - (k) Kurdistan Freedom Brigade (paragraph (k))
 - (l) Kurdistan Freedom Hawks (paragraph (l))
 - (m) Kurdistan Halk Kongresi (paragraph (m))
 - (n) Kurdistan Labor Party (paragraph (n))
 - (o) Kurdistan Ozgurluk Sahinleri (paragraph (o))
 - (p) Kurdistan People's Congress (paragraph (p))
 - (q) New PKK (paragraph (q))
 - (r) Partiya Karkeren Kurdistan (paragraph (r))
 - (s) People's Congress of Kurdistan (paragraph (s))
 - (t) People's Defence Force (paragraph (t))
 - (u) PKK (paragraph (u))
 - (v) TAK (paragraph (v)), and
 - (w) Teyrbazên Azadiya Kurdistan (paragraph (w)).

Schedule 1 — Repeals

12. Item 1 of Schedule 1 to the Regulations repeals the *Criminal Code (Terrorist Organisation—Kurdistan Workers' Party) Regulations 2018* (the repealed Regulations).

13. Subsection 102.1(3) of the *Criminal Code* provides that the repealed Regulations cease to have effect on 4 August 2021, being the third anniversary of the day on which they took effect. While the repealed Regulations cease to have effect on this date, the repeal provides clarity and ensures there is no duplication if the proposed Regulations were made before the repealed Regulations cease to have effect.

Statement of Reasons

Listing of Kurdistan Workers' Party as a terrorist organisation under the *Criminal Code Act 1995*

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

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 (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

The Kurdistan Workers' Party was first listed as a terrorist organisation under the *Criminal Code* on 17 December 2005. The Kurdistan Workers' Party was re-listed on 28 September 2007, 8 September 2009, 18 August 2012, 11 August 2015 and 4 August 2018.

Details of the organisation

Name of the organisation

Kurdistan Workers' Party

Known aliases

- Freedom Brigade
- Hezan Parastina Gel
- HPG
- KADEK
- Kongra Azadi u Demokrasiya Kurdistan
- Kongra Gel Kurdish
- Kongra Gele Kurdistan
- Kurdish Freedom Falcons
- Kurdistan Freedom and Democracy Congress
- Kurdistan Freedom Brigade
- Kurdistan Freedom Hawks

- Kurdistan Halk Kongresi
- Kurdistan Labor Party
- Kurdistan Ozgurluk Sahinleri
- Kurdistan People's Congress
- Liberation Hawks
- New PKK
- Partiya Karkeren Kurdistan
- People's Congress of Kurdistan
- People's Defence Force
- PKK
- TAK
- Teyrbazên Azadiya Kurdistan

Organisational overview and objectives

The Kurdistan Workers' Party is an ideologically motivated violent extremist organisation. The group was founded by Abdullah Ocalan in 1978 as a nationalist and revolutionary organisation, based on Marxist-Leninist ideals.

Specifically, the Kurdistan Workers' Party's nationalist ideology encompasses the rights of Kurds to maintain their Kurdish ethnic identity. Further to its nationalist objectives, the Kurdistan Workers' Party aims to monopolise Kurdish political power, including by attacking the interests of rival political parties. However, the Kurdistan Workers' Party primarily conducts attacks against the Turkish government and security forces.

Leadership

The Kurdistan Workers' Party founder and leader, Abdullah Ocalan, is currently serving life imprisonment in Turkey. Day-to-day affairs are run by Murat Karayilan.

The Kurdistan Workers' Party's operational command consists of a three person executive committee, including Murat Karayilan, Cemil Bayik and Fehman Huseyin. This executive committee manages the Kurdistan Workers' Party from its base in the Qandil Mountains in northern Iraq.

Membership, recruitment and funding

The precise strength of the Kurdistan Workers' Party is unknown. The majority of the Kurdistan Workers' Party militants are based in northern Iraq.

Most Kurdistan Workers' Party members are recruited from Kurdish areas in south-east Turkey. The group also recruits from the Kurdish population in Iraq, Syria, Iran, and the Kurdish diaspora in Europe. The group recruits both men and women for all its activities, and recent recruiting strategies have focused on youth. In urban areas and in Europe, a network of Kurdistan Workers' Party members and sympathisers reportedly manage financing, propaganda and recruitment processes.

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

Links to other terrorist organisations

The Kurdistan Workers' Party is not known to maintain formal links with any other listed terrorist organisations. However, the group maintains ties with other pro-Ocalan Kurdish violent extremist organisations across Turkey, Iraq, Syria and Iran.

The Turkish government makes little or no distinction between the Kurdistan Workers' Party and the Syria-based Kurdish People's Protection Units (YPG). The current level of interconnectivity between the Kurdistan Workers' Party and YPG is unclear.

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

The Kurdistan Workers' Party has claimed responsibility for a number of attacks mainly targeting Turkish authorities and infrastructure in Turkey's south-east, and can be reasonably assessed as responsible for the following terrorist attacks and actions:

- On 28 October 2020, the Kurdistan Workers' Party attacked and destroyed the Botaş oil pipeline in Turkey's Mardin province. There were no injuries or deaths reported. The Kurdistan Workers' Party claimed responsibility for the attack the next day.
- On 31 March 2020, a suicide bombing damaged a natural gas pipeline between Turkey and Iran near the city of Barzagan, Agri province, eastern Turkey. The Kurdistan Workers' Party claimed responsibility, stating it had killed at least 30 Turkish soldiers who were guarding the pipeline.
- On 12 September 2019, seven civilians were killed and 10 were injured when a roadside improvised explosive device detonated in Kulp District, Diyarbakir province, south-east Turkey. The Kurdistan Workers' Party subsequently claimed responsibility for the attack, stating they were targeting 'spies'.

On the basis of these examples, the Kurdistan Workers' Party is assessed as being responsible for directly or indirectly engaging in, preparing, planning, assisting in or fostering the doing of terrorist acts.

Other considerations

Links to Australia and threats to Australian interests

The Kurdistan Workers' Party does not currently pose a direct threat to Australian interests. However, Australians could be incidentally harmed in attacks targeting tourist locations in Turkey, or in Iraq and Syria.

One Australian has been charged with being a member of the Kurdistan Workers' Party. In May 2019, the NSW Supreme Court sentenced Renas Lelikan to a three-year Community Corrections Order for being a member of the Kurdistan Workers' Party. Mr Lelikan had earlier pleaded guilty to being a member of the Kurdistan Workers' Party between April 2011 and August 2013.

Listings by likeminded countries or the United Nations

The Kurdistan Workers' Party is proscribed as a terrorist organisation by the governments of Canada, New Zealand, the United Kingdom and the United States.

Engagement in peace or mediation processes

The Kurdistan Workers' Party has engaged in ceasefires and peace talks with the Turkish government at various stages throughout its history.

The Kurdistan Workers' Party's terrorist activities slowed significantly during its most recent ceasefire (2012-2015), though its members continued to conduct occasional attacks against civilian, military and other government targets in Turkey. Following the breakdown of peace talks in June 2015,

Kurdistan Workers' Party attacks increased to pre-ceasefire rates but have since dropped significantly.

Conclusion

On the basis of the information above, the Australian Government assesses that the Kurdistan Workers' Party is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.