

Kurdistan Workers' Party

- 3.1 The Committee first considered the listing of the Kurdistan Workers' Party (PKK) as a terrorist organisation in April 2006, and has reviewed each subsequent re-listing of the organisation (June 2008, November 2009 and October 2012). In each case, the listing and re-listing of the PKK as a terrorist organisation has been supported.¹
- 3.2 However, since the Committee's last consideration in 2012, a number of important developments have occurred. This includes the PKK's participation in peace talks and Australia's direct military involvement in the region in response to the threat presented by Da'esh (also known as Islamic State). Due to the additional evidence received, the geostrategic complexity and the public interest, this Chapter will examine the re-listing of the PKK separately to the other re-listings considered in this Report.

Overview of the PKK

- 3.3 The PKK was formally established by Abdullah Ocalan in 1978 at which time it was primarily committed to the creation of an independent Kurdish state in south-eastern Turkey, Syria and Iraq.² However, in response to the evolving political environment in Turkey, the PKK's objectives have changed over time and the organisation now calls for autonomy for Kurds within Turkey.³ In addition, the PKK seeks to

1 The initial listing of the PKK as a terrorist organisation was supported by the majority of the Committee, however two members (the Hon Duncan Kerr SC MP and Senator the Hon John Faulkner) presented a minority report on its proscription. Each subsequent review of the re-listing of the organisation was unanimously supported by Committee members.

2 Statement of Reasons, Kurdistan Workers' Party, p. [1].

3 Statement of Reasons, Kurdistan Workers' Party, p. [1]. See also Jane's Counter Terrorism and Insurgency Centre, *Partiya Karkerên Kurdistan*, viewed 10 September 2015, <<http://janes.ihs.com>>.

‘promote the rights of Kurds living in Turkey, specifically the right to maintain a Kurdish ethnic identity’.⁴

- 3.4 As shown in Appendix A, the statement of reasons was prepared and the decision was made to re-list the PKK prior to the end of a ceasefire with Turkey on 25 July 2015.⁵
- 3.5 Although the group’s activities have waned since 2013,⁶ the statement of reasons comments that the PKK has continued to conduct terrorists attacks against civilian, military and other government targets in Turkey. According to the statement of reasons, PKK militants ‘continue to frequently attack military bases and police interests, kidnap civilians and military personnel and sabotage infrastructure projects, including dams, gas pipelines and power plants’.⁷
- 3.6 The exact membership of PKK is unknown, although it is widely believed to number approximately 7000, the majority of whom are based in northern Iraq. The organisation also draws on logistical support from Kurdish communities in south-east Turkey, Syria and Iran. A large diaspora in Europe provides support to the organisation.⁸
- 3.7 The PKK has been listed as a terrorist organisation in Turkey, the European Union, the United States, the United Kingdom, Canada, Austria, Azerbaijan, Iraq, France, Germany, the Netherlands, Kazakhstan, Moldova, New Zealand and the Philippines.

Legislative test to list a terrorist organisation

- 3.8 As stated in Chapter 1, to be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Attorney-General 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.
- 3.9 The Attorney-General may also consider a range of non-legislative factors in the course of making a decision to list (or not to list) an organisation as

4 Statement of Reasons, Kurdistan Workers’ Party, p. [1].

5 Attorney-General’s Department, *Submission 4*, p. 4.

6 Statement of Reasons, Kurdistan Workers’ Party, p. [2].

7 Statement of Reasons, Kurdistan Workers’ Party, p. [2].

8 Statement of Reasons, Kurdistan Workers’ Party, p. [2].

a terrorist organisation under the Criminal Code. These are addressed later in this Chapter.

Engagement in terrorism

- 3.10 At the time the statement of reasons was prepared, the PKK's engagement in terrorist activities had slowed as a result of a unilateral ceasefire announced in 2013. Despite the ceasefire, however, members of the PKK had 'continued to conduct terrorist attacks against civilian military and other government targets in Turkey'.⁹
- 3.11 The PKK's terrorist activities have largely occurred in Turkey's south and east, though the organisation has also conducted attacks outside of this region, including in Turkey's capital Ankara, and in its largest city, Istanbul.¹⁰
- 3.12 The statement of reasons notes that since August 2012, when the group was last listed as a terrorist organisation in Australia, over 50 people have been killed in PKK attacks and the group is reported to have kidnapped more than 300 children between December 2013 and May 2014.¹¹
- 3.13 More specifically, the statement of reasons provides a list of 26 significant attacks for which responsibility has been claimed by or reliably attributed to the PKK since its last re-listing in mid-2012.¹² The statement of reasons is included at Appendix C.
- 3.14 In response to the Committee's request for further information, the Attorney-General's Department (the Department) provided an updated list of attacks which had occurred since the statement of reasons was initially prepared. This second list detailed a further 17 attacks between 22 July 2015 and 8 September 2015.¹³
- 3.15 In light of these attacks, ASIO assessed that the PKK continues to directly and/or indirectly engage in preparing, planning, assisting in, or fostering the doing of terrorist acts, therefore satisfying the legislative definition of a terrorist organisation.¹⁴ Legal advice from the Australian Government Solicitor to the Attorney-General confirmed that the Attorney-General could be satisfied on reasonable grounds that the matters specified in section 102.1(2) had been met in relation to the PKK (see Appendix A).

9 Statement of Reasons, Kurdistan Workers' Party, p. [2].

10 Statement of Reasons, Kurdistan Workers' Party, p. [2].

11 Statement of Reasons, Kurdistan Workers' Party, p. [2].

12 Statement of Reasons, Kurdistan Workers' Party, pp. [3-4].

13 Attorney-General's Department, *Submission 4*, pp. 10-11. The submission is available on the Committee's website.

14 Statement of Reasons, Kurdistan Workers' Party, p. [4].

- 3.16 However, representative organisations of the Kurdish community in Australia disputed the facts asserted in the statement of reasons and opposed the re-listing of the PKK on this basis.
- 3.17 A joint submission from the Kurdish Association of Victoria, the Australian Kurdish Association and the Kurdish Association of Western Australia (the joint associations) disputed the PKK's involvement in the kidnapping of children, stating, 'this allegation has only ever been made by the Turkish security forces and no independent body has verified this allegation'.¹⁵ The joint submission further argued,
- in the absence of ASIO's provision of reliable sources of information, it would appear to be a gross breach of procedural fairness if the Statement of Reasons were based on even some, at best, inaccurate information.¹⁶
- 3.18 In support of its argument, the joint associations referred the Committee to reports that PKK leaders signed Geneva Call's *Deed of Commitment for the Protection of Children from the Effects of Armed Conflict* in October 2013.¹⁷ The effect of the Deed is to publicly formalise the PKK's policy to prevent children under 18 years of age from taking part in hostilities and to protect them from the effects of the conflict. Significantly, the PKK made a reservation to the Deed, which establishes a new non-combat category for children between 16 and 18 years of age who join the organisation.¹⁸
- 3.19 The submission from the Department provided details of a number of child kidnappings. The Department provided specific details of one such child kidnapping:
- On 23 April 2014, the PKK kidnapped 25 students between the ages of 14 and 16 from the Lice District Revolutionary Patriotic High School in Diyarbakir Province while they were attending a picnic commemorating Turkey's National Sovereignty and Children's Day. The parents of one of the kidnapped children, 15 year old Sinan Bockum, staged a sit-in protest demanding that the

15 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 15. See also, Dr Gina Lennox, Co-Chair, Kurdish Lobby Australia, *Committee Hansard*, Canberra, 17 September 2015, p. 6.

16 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 15.

17 Australian Kurdish Association and Kurdish Association of Victoria, *Submission 5*, p. 1; Geneva Call, 'Major Kurdish armed group commits to the protection of children in armed conflict', 25 October 2013, < <http://www.genevacall.org/major-kurdish-armed-movement-commits-protection-children-armed-conflict/> > accessed 21 September 2015.

18 Geneva Call, 'Major Kurdish armed group commits to the protection of children in armed conflict', 25 October 2013, < <http://www.genevacall.org/major-kurdish-armed-movement-commits-protection-children-armed-conflict/> > accessed 21 September 2015.

PKK return their son. On 19 May 2014, the parents of Halime Gunduz and Firay Aydin Eren (who were also kidnapped) joined the protest. By 30 May 2014, 21 families were demonstrating against the PKK and demanding the return of their children. After 17 days of protests, the PKK returned three of the children. The rest of the children remain missing.¹⁹

- 3.20 The Kurdish Association of Victoria also disputed assertions that the PKK targets civilians in its attacks, commenting that the leadership had officially and publically stated it would hold its members to account if any civilian was killed in an operation.²⁰ The Kurdish Association of Victoria further commented that it 'is not acceptable if any civilian lost their life. But ... unfortunately if there is political violence ... civilians [will always] suffer'.²¹
- 3.21 Similarly, Kurdish Lobby Australia (KLA) and the Australian Kurdish Association questioned whether all of the acts attributed to the PKK were committed by the PKK, and argued that some acts attributed to the PKK may have been conducted by militant youth acting alone.²²
- 3.22 However, the Department's submission stated that the PKK has claimed responsibility for a number of recent attacks:
- 8 September 2015 - PKK militants bombed a police shuttle bus escorting customs officials at the Dilucu border crossing between Turkey and Azerbaijan, then conducted an armed attack against the police officers. The militants killed 13 police officers and injured one other.
 - 10 August 2015 - the PKK conducted a series of attacks in Istanbul. A car bomb exploded outside the Sultanbeyli Fatih police station, injuring 10 people. PKK militants then opened fire on emergency service workers and police investigators who responded to the bombing, killing a police officer. Two PKK militants and a police officer were later killed in clashes elsewhere in Istanbul.
 - 22 July 2015 - PKK militants killed two police officers in their home in Ceylanpinar, Sanliurfa province.²³

19 Attorney-General's Department, *Submission 4*, p. 2.

20 Mr Mahmut Kahraman, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 3.

21 Mr Mahmut Kahraman, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 3.

22 Dr Gina Lennox, Co-Chair, Kurdish Lobby Australia, *Committee Hansard*, Canberra, 17 September 2015, p. 8; Mr Asker Aeiveri, Co-Chair, Australian Kurdish Association, *Committee Hansard*, Canberra, 17 September 2015, pp. 2-3.

23 Attorney-General's Department, *Submission 4*, pp. 10-11.

- 3.23 The Committee notes that the PKK publicly claimed responsibility for at least two of these attacks through a Kurdish media organisation with links to the group.²⁴ The Committee further notes that the organisation has claimed responsibility for other attacks not on the list supplied by the Department.²⁵

Political context

- 3.24 Representative organisations of the Australian-Kurdish community argued that not all acts of politically-directed violence amount to acts of terrorism in a civil conflict, and that the context in which these acts occur must be recognised.
- 3.25 While the representative organisations accepted that the PKK had engaged in acts of violence,²⁶ the organisations argued that the political context in which they occurred, and continue to occur, is a conflict between ‘the occupying Turkish Army and Kurdish guerrillas’.²⁷ The KLA was of the view that the Criminal Code does ‘not appear to distinguish between an act of terrorism and an act of war’.²⁸
- 3.26 The joint associations’ submission explained:
- [S]tates in the region portray the Kurdish problem merely as a terrorism issue. However, the problem is an amalgamation of economic and socio-political factors. The Kurds [are]... the largest minority in the world without a nation-state.²⁹
- ...
- From a Kurdish point of view, Kurdish people generally see that state discrimination and policies as well as social and economic problems as the main causes of Kurdish unrest, which led to the

24 For example, ‘Two police officers punished by Apoist team of self-sacrifice’, *Firat News Agency*, 22 July 2015, <<http://anfenglish.com/kurdistan/hpg-two-police-officers-punished-by-apoist-team-of-self-sacrifice>> accessed 18 September 2015; ‘HPG claims responsibility for the action in Sultanbeyli’ *Firat News Agency*, 11 August 2015, <<http://anfenglish.com/kurdistan/hpg-claims-responsibility-for-the-action-in-sultanbeyli>> accessed 18 September 2015.

25 ‘15 soldiers killed in Geliye Doski’ *Firat News Agency*, 6 September 2015 <<http://anfenglish.com/kurdistan/hpg-15-soldiers-killed-in-geliye-doski>> accessed 18 September 2015.

26 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 14; Mr Mahmut Kahraman, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 2.

27 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 14.

28 Kurdish Lobby Australia, *Submission 3*, p. 12.

29 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 3.

military uprising of the Kurdistan Workers' Party (PKK) party. The Kurdish problem in Turkey stems from Turkey's refusal to recognise the existence of the Kurdish people, their language and culture.³⁰

3.27 The joint submission argued that the PKK 'is engaged in a protracted civil conflict in furtherance of self-determination by an ethnic minority, subject to the laws of armed conflict and the Geneva Convention'.³¹ The submission stated that

it is not justified to continue to list the PKK in the context of the well evidenced political violence and human rights abuses committed by the Turkish state ... We submit that continuing and present human rights abuses against Kurds require specific consideration by the Committee in discharging its obligation to Parliament ... Turkey's human rights record is of fundamental relevance to the Committee's deliberations whether the PKK should be re-listed.³²

3.28 At a classified hearing, the Committee pursued these arguments with the participating agencies. In response, the Department advised the Committee that:

The Statement of Reasons for renewing the listing of the PKK provides examples of the PKK's activities. The Attorney-General is satisfied that the PKK meets the definitions of 'terrorist organisation' and 'terrorist act' respectively ... Attacks against Kurdish interests in Turkey are not relevant to determining whether the PKK meets the criteria for listing according to Division 102 of the Criminal Code.³³

3.29 The Department further stated:

The issue of whether the conflict between Turkey and the PKK is a 'civil armed conflict in international law' is not relevant for the purposes of the Attorney-General's determination of whether the

30 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 7.

31 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 13. See also Mr Deniz Ozer, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 1.

32 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, pp. 13-14.

33 Attorney-General's Department, *Submission 4*, p. 5.

organisation meets the legislative criteria for listing as a terrorist organisation under subsection 102.1(2) of the Criminal Code.³⁴

Non-legislative factors

- 3.30 As noted Chapter 1, in preparing advice to the Attorney-General, ASIO gives consideration to a range of non-legislative factors, including engagement in peace or mediation processes and any links to Australia.

Engagement in peace negotiations

- 3.31 Although there have been several unilateral ceasefires since the late 1990s, the statement of reasons notes that the PKK has repeatedly resumed an armed campaign against the Turkish Government.³⁵ Most recently in March 2013, the PKK announced a unilateral ceasefire and commenced peace talks with the Turkish Government. In recent months, however, these talks have stagnated.³⁶
- 3.32 Importantly, the statement of reasons notes that, despite the ceasefire the PKK had ‘not renounced the use of violence, and sporadic terrorist attacks, attributable to certain elements within the PKK, continue’.³⁷ According to the statement of reasons, PKK leaders had threatened to end the ceasefire and resume attacks if the peace process fails.³⁸
- 3.33 Jane’s Counter Terrorism and Insurgency Centre similarly comments that although peace talks between the PKK and the Turkish Government were ongoing between 2013 and early 2014, ‘little progress was made’.³⁹ Jane’s further notes that the talks ‘stalled’ in 2014 following attacks by Da’esh against ethnic Kurd populations in Iraq and Syria:

These attacks prompted direct PKK involvement in the fighting in Iraq and a call by the group for Turkish Kurds to fight in Syria alongside its affiliate, the Yekîneyên Parastina Gel (YPG), much to the concern of the Turkish Government. The PKK has since

34 Attorney-General’s Department, *Submission 4*, p. 6.

35 Statement of Reasons, Kurdistan Workers’ Party, p. [1]. See also Jane’s Counter Terrorism and Insurgency Centre, *Partiya Karkerên Kurdistan*, viewed 10 September 2015, <<http://janes.ihs.com>>.

36 See also Jane’s Counter Terrorism and Insurgency Centre, *Partiya Karkerên Kurdistan*, viewed 10 September 2015, <<http://janes.ihs.com>>.

37 Statement of Reasons, Kurdistan Workers’ Party, p. [1].

38 Statement of Reasons, Kurdistan Workers’ Party, p. [4].

39 Jane’s Counter Terrorism and Insurgency Centre, *Partiya Karkerên Kurdistan*, viewed 10 September 2015, <<http://janes.ihs.com>>.

accused the Turkish government of supporting the Islamic State's attacks against Kurds in areas near the border with Turkey, while the Turkish Government has shown concern over the PKK's growing influence in neighbouring Iraq and Syria.⁴⁰

- 3.34 However, the representative organisations of the Kurdish communities in Australia were of a different view. In its submission, KLA suggested that the peace process 'stagnated' in the lead up to the general election on 7 June 2015 due to claims made against pro-Kurdish groups amid increasing support for the People's Democratic Party (HDP).⁴¹ At the public hearing, the KLA also argued that previous ceasefires were broken as a result of Turkey's 'actions or inaction on the peace process'.⁴²
- 3.35 In July 2015, news outlets reported that the ceasefire had effectively collapsed as the cycle of violence escalated.⁴³ In August 2015, the PKK interim leadership council announced that the PKK would accept a ceasefire under international mediation efforts, and called for armed followers to avoid harming civilians and to refrain from all unprovoked attacks on Turkish forces.⁴⁴
- 3.36 The joint associations' submission also noted the recent pronouncements by the PKK and the calls for an international mediator. The joint submission, however, was critical that this development was not reflected in the statement of reasons, commenting:
- In this context the expectation of Kurdish Australians is that the Australian government along with allies such as the US play an active role in mediating a peace process where grievances can be heard and lasting peace established. The proscription of the PKK only hinders the constructive role Australia can play in bringing an end to this conflict.⁴⁵
- 3.37 At the public hearing, the Kurdish Association of Victoria updated the Committee on recent developments:

40 Jane's Counter Terrorism and Insurgency Centre, *Partiya Karkerên Kurdistan*, viewed 10 September 2015, <<http://janes.ihs.com>>.

41 Kurdish Lobby Australia, *Submission 3*, pp. 3-4.

42 Dr Gina Lennox, Co-Chair, Kurdish Lobby Australia, *Committee Hansard*, Canberra, 17 September 2015, p. 6.

43 Lucy Kafanov, 'End of Turkey-PKK ceasefire puts HDP in a tough spot', *Al-Jazeera*, 10 August 2015, <<http://www.aljazeera.com/news/2015/08/turkey-pkk-ceasefire-puts-hdp-tough-spot-150806110231827.html>>

44 Kurdish Lobby Australia, *Submission 3*, p. 4.

45 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 16.

In considering whether to re-enlist the PKK, I think it is important to note that the PKK would ideally like to find a diplomatic way of negotiating a peace deal with Turkey. In fact, only yesterday the PKK released a statement announcing that they are, in accordance with the recommendations from the European Parliament, ready for a 'mutual consolidated ceasefire' with Turkey. The PKK has also recently stated that it would prefer the likes of the US to help mediate a peace deal between themselves and a Turkish state. Obviously, removing the PKK from the terror list would help the peace process progress. Currently, it makes it much easier for the Turkish state to dismiss the PKK as a terrorist organisation whenever there are difficult periods in negotiations. The important thing is that the millions of people the PKK represent cannot all be seen as terrorists. These people need Turkey to stay at the negotiation table until a deal is negotiated. This will be achieved if the international community removes the PKK from the terrorist lists.⁴⁶

- 3.38 The KLA similarly noted that the listing of the PKK as a terrorist organisation in Australia and other countries is unhelpful in encouraging all parties to reach a negotiated peace:

Support for a bilateral ceasefire and transparent peace process in Turkey will require liaising with the Turkish state, PKK and others. Given Erdogan's repeated claim he will not talk to or negotiate with terrorists, and given PKK's critical role in negotiations and its effectiveness in fighting ISIS, we ask you to consider the merits of delisting PKK as a terrorist organisation.⁴⁷

- 3.39 In previous reviews of the re-listing of the PKK, the Committee was informed by ASIO that it would consider de-listing the PKK if there were peace discussions 'of a substantial character'.⁴⁸ In light of this previous evidence, the Committee questioned the agencies about these recent developments at the classified hearing. In response, the Department submitted:

With respect to the PKK's participation in peace negotiations, the PKK announced the end of the ceasefire on 25 July 2015 and has since conducted a number of attacks in 22 Turkish provinces. Further, as was the case with previous ceasefires, the PKK's

46 Mr Deniz Ozer, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 2.

47 Kurdish Lobby Australia, *Submission 3*, p. 12.

48 Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of Hamas' Brigades, PKK, LeT, and PIJ as terrorist organisations*, Canberra, November 2009, p. 28.

terrorist activities and attacks continued throughout the 2013 – 2015 ceasefire.⁴⁹

Links to, and impact of listing on, the Kurdish community in Australia

- 3.40 As has been the case with each re-listing of the organisation, the statement of reasons for this re-listing records no known PKK links to Australia.
- 3.41 The Committee sought further information from the agencies at a classified hearing about the character of the connection between some in the Kurdish community in Australia and the PKK. ASIO advised that although there are a number of people in Australia who are sympathetic to the PKK, they are not members, and consequently, any link with the PKK is very indirect.⁵⁰
- 3.42 The joint associations' submission expressed concern that, as a result of the initial listing and each subsequent re-listing of the PKK, the Kurdish community in Australia is profiled as a 'terrorist affiliated' one.⁵¹ The joint submission was of the view that a peaceful political process in Turkey could only be achieved 'through a complete ceasing of demonization of the Kurdish movement and its diaspora communities'.⁵²
- 3.43 The joint submission further argued that the listing of the PKK 'prevents the Australian Kurdish community from directly or indirectly showing their own personal support for the Kurds engagement in self-determination'.⁵³ The joint submission expressed the view that, for Australian Kurds, their listing results in:
- [Erosion of] free speech to speak out against rights violations committed by the Turkish government and security forces and supporting the self-determination rights of Kurds;
 - [Creation of] uncertainty over Kurdish activities that are simply an expression of their identity;
 - [Erosion of] freedom of association by creating a wedge between Kurds and the various organisation that support or are sympathetic to the PKK;
 - Racial profiling of the Kurdish community and isolating them from mainstream Australian society. Indeed, Kurdish Australians have become increasingly isolated, thus making

49 Attorney-General's Department, *Submission 4*, p. 4.

50 *Classified Committee Hansard*, 10 September 2015, p. 4.

51 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 3, 11.

52 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 3.

53 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 12.

them vulnerable to various acts by arsonists and vandals, which can rightly be defined as racist and terrorist in nature.⁵⁴

3.44 The joint submission concluded:

The listing of the PKK not only criminalises Kurdish Australians, but also prevents 'freedom of political expression and association' and for Australians to speak out against the human rights violation towards oppressed people, such as the Kurds.⁵⁵

3.45 The Department noted that 'although background information on the PKK's objectives is included in the statement of reasons, the PKK's designation as a proscribed terrorist organisation is based on its activities, not its stated aims or ideology'.⁵⁶

3.46 The Department further stated that the PKK's support within the Kurdish community in Australia 'is not relevant to determining whether the organisation meets the criteria for listing as a terrorist organisation'.⁵⁷

3.47 The Department also sought to allay the concerns of Kurdish community organisations about the impact of the listing on community support for the broader Kurdish independence movement:

Australians do not face penalties for supporting Kurdish civil society movements or political parties in Turkey, for supporting a peaceful resolution to the conflict between the PKK and the Turkish Government or the promotion of Kurdish rights in Turkey. The listing of the PKK only provides for criminal penalties for individuals who are members of the PKK, provide support, recruit for or direct the activities of the PKK, provide training to, receive training from or participate in training with the PKK, get funds to the PKK, and in certain circumstances, associate with the PKK.⁵⁸

PKK role in fighting Da'esh

3.48 Unlike the other organisations listed under the Criminal Code, the PKK is currently engaged in a conflict with another declared terrorist organisation Da'esh (also known as Islamic State). Significantly, Australia

54 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 12.

55 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 17.

56 Attorney-General's Department, *Submission 4*, p. 7, 8.

57 Attorney-General's Department, *Submission 4*, p. 7.

58 Attorney-General's Department, *Submission 4*, p. 8.

is working to disrupt and dismantle Da'esh in both Iraq, and more recently, Syria, where the PKK is also engaged.

3.49 Although this is not a criteria to which the Attorney-General is able to give consideration under the Criminal Code,⁵⁹ the Committee considered it important to look at this aspect.

3.50 At a public hearing, the Kurdish Association of Victoria discussed the role of the Kurdish forces against Islamic State:

Some of the most effective forces against the Islamic State have been provided by Kurdish forces, whether that be the Peshmerga forces, YPG, YPJ [Yekîneyên Parastina Jin] or PKK. When the Yazidis were stranded on Mount Sinjar, it was the PKK that fought against Islamic State and helped over 40 000 Yazidis escape with the assistance of US airstrikes. The PKK, along with sister Kurdish forces, have played an active role in defending Kurds and other minorities against Islamic State in areas such as Kobani, Kirkuk and Mosul.⁶⁰

3.51 The Kurdish Association of Victoria sought to distinguish the PKK from the YPG and YPJ, while noting the linkages between the three organisations:

They have a similar ideology – they want to have a democratic autonomous system in Syria, like Kurds in Turkey want. But they are separate organisations – they have their own administration, their own leadership; they run independently. Ideologically, yes, they follow Mr Ocalan's ideology.⁶¹

3.52 The representative organisations of Kurdish communities in Australia were of the view that a re-listing of the PKK may be counter-productive to the more direct threat to Australia posted by Da'esh. The KLA stated:

In fighting ISIS in Syria and Iraq, PKK has proved a highly effective, reliable ally, alongside Kurdish forces from Iraqi Kurdistan, Syria and Iran. PKK has made a vital contribution in:

- Makhmur, south of Erbil, and in Kirkuk province, since August 2014;
- Mount Sinjar in northern Iraq in August 2014, rescuing thousands of Yezidi from a siege by ISIS;

59 Attorney-General's Department, *Submission 4*, p. 4.

60 Mr Deniz Ozer, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 2.

61 Mr Mahmut Kahraman, Spokesperson and Committee member, Kurdish Association of Victoria, *Committee Hansard*, Canberra, 17 September 2015, p. 4.

- Diyala province in northern Iraq, alongside Kurdish Peshmerga and Shia militia from Iraq and Iran since August 2014;
- ISIS siege of Kobani in northern Syria between October 2014 and January 2015;
- Tel Abyad, Hasaka and elsewhere in northern Syria since February 2015, alongside YPG/YPJ and other forces, cutting supply routes into Raqqa.⁶²

3.53 The joint associations' submission argued that the PKK plays 'a vital role in protecting thousands of civilians from the horrors of jihadi extremism'.⁶³ The joint submission also stated that, in light of its successes against Da'esh, the re-listing of the PKK is 'illogical' and 'inappropriate':

The PKK is a force which has successfully repelled these groups but also damaged their organisational capacity. This further highlights that in the context of this fight against global Jihadism the listing of the PKK is inappropriate ... The relisting of the PKK in this context is illogical as the only effective ground force against the Islamic State are the Kurds, some of which are aligned with the PKK. The delisting of the PKK could provide an opportunity for direct cooperation with the US and Australia against IS.⁶⁴

3.54 In response to these points, the Department commented:

In determining whether an organisation meets the legislative criteria for listing as a terrorist organisation under subsection 102.1(2) of the Criminal Code, the Attorney General is not required to consider whether an organisation represents a threat to Australian allies.

Similarly, the PKK's fight against the Islamic State of the Iraq and the Levant (ISIL) is not relevant to determining whether the group meets the criteria for listing under Division 102 of the Criminal Code.⁶⁵

62 Kurdish Lobby Australia, *Submission 3*, p. 11.

63 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, p. 16.

64 Kurdish Association of Victoria, Australian Kurdish Association and Kurdish Association of Western Australia, *Submission 2*, pp. 16-17.

65 Attorney-General's Department, *Submission 4*, p. 4.

Committee comment

- 3.55 In making the following comment and recommendation, the Committee acknowledges the Kurdish people's desire for autonomy and the right to maintain a Kurdish ethnic identity in Turkey. The Committee also notes the very effective military force that the Kurdish populations provide in the fight against Da'esh in neighbouring countries.
- 3.56 However, in undertaking its responsibilities to the Parliament, the Committee is tasked with ensuring that the Attorney-General has followed the appropriate procedures in listing the PKK as a terrorist organisation under the Criminal Code, and that the organisation meets the legislative definition provided within that Code. Consequently, although the Committee recognises the legitimate concerns raised by the representative organisations of Kurdish communities in Australia, these concerns are not directly relevant to the assessment of whether the PKK is a terrorist organisation as defined in Australian law.
- 3.57 The Committee is satisfied that the PKK continues to engage in terrorism as defined in Australian law.⁶⁶ In reaching this conclusion, the Committee considered the list of attacks referred to in both the statement of reasons and the Department's later submission.
- 3.58 Although the Committee accepts that the PKK has not claimed responsibility for all the listed attacks, the Committee is nonetheless satisfied that the attacks for which the PKK has claimed responsibility meet the test provided for in Division 102 of the Criminal Code.
- 3.59 The Committee questioned agencies about the matters that were considered during formulation of the most recent re-listing, including political and security issues. Specifically, the Committee questioned

66 Section 100.1 of the Criminal Code defines a terrorist act as 'an action or threat of action' which is done or made with the intention of:

advancing a political, religious or ideological cause; *and*

coercing, or influencing by intimidation, the government of the Commonwealth, State or Territory or the government of a foreign country or intimidating the public or a section of the public.

Action will only be defined as a terrorist act if it:

causes serious physical harm or death;

seriously damages property;

endangers a person's life;

creates a serious risk to public health or safety; or

seriously interferes with, seriously disrupts, or destroys, an electronic system.

Action will not be a terrorist act if it is advocacy, protest, dissent or industrial action and is not intended to cause serious physical harm or death, endanger the lives of others or create a serious risk to the public health or safety.

agencies as to whether a certain element within the PKK could be listed under the Criminal Code, as opposed to the whole organisation. ASIO advised that although there is a policy preference, consistent with this Committee's state view, to proscribe a distinct element of an organisation as opposed to the organisation as a whole, there is not a structure within the PKK that can be identified as a distinct element responsible for its terrorist activities.⁶⁷

- 3.60 The Committee takes this opportunity to reassure Kurdish communities in Australia about the effect of a listing of a terrorist organisation under the Criminal Code. As was made clear by the Department, Australians do not face penalties for supporting Kurdish civil society movements or political parties in Turkey, for supporting a peaceful resolution to the conflict or the promotion of Kurdish rights in Turkey.
- 3.61 Rather, the listing of the PKK only provides for criminal penalties for individuals who are members of the PKK, provide support, recruit for or direct the activities of the PKK, provide training to, receive training from or participate in training with the PKK, get funds to the PKK, and in certain circumstances, associate with the PKK.
- 3.62 Indeed, expressing support for Kurdish autonomy is not a criminal offence as a result of the listing of the PKK. Nor is the listing of the PKK the result of the PKK's support for greater Kurdish autonomy – rather it is the organisation's activities, which are of a distinctly terrorist nature, that give rise to its listing under Australian law.
- 3.63 The Committee welcomes the recent statements from senior leaders within the PKK for a ceasefire and a renewed commitment to restart peace talks.⁶⁸ The Committee expresses its support for peace talks between all parties, and anticipates that, should these negotiations prove successful, ASIO will give consideration to supporting the de-listing the PKK, as indicated in previous advice to this Committee.
- 3.64 The Committee is also of the view that the Australian Government, through its strong diplomatic relationship with the Turkish Government, should work, in cooperation with international partners, to encourage all parties to engage with the peace process in good faith. Australia's encouragement of a peaceful resolution to this conflict is particularly important in light of the ongoing conflict in Syria and Iraq against Da'esh.

67 *Classified Committee Hansard*, 10 September 2015, p. 2.

68 'PKK says ready for "tactical" cease-fire', *Daily Sabah*, 16 September 2015, <<http://www.dailysabah.com/kurdish-issue/2015/09/17/pkk-says-ready-for-tactical-cess-fire>> accessed 17 September 2015.

Recommendation 2

The Committee recommends that the regulation, made under the Criminal Code section 102.1, to list the Kurdistan Workers' Party as terrorist organisation not be disallowed.

Mr Dan Tehan MP

Chair

September 2015

