



Australian Government
Department of Home Affairs



***Department of Home Affairs supplementary submission
to the review of the re-listing of five organisations as
terrorist organisations under the Criminal Code***

Parliamentary Joint Committee on Intelligence and Security

8 September 2021

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Introduction

1. The Department of Home Affairs (the Department) welcomes the opportunity to provide this supplementary submission to the Parliamentary Joint Committee on Intelligence and Security to assist the Committee's review of the re-listing of Al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades, the Kurdistan Workers' Party (the PKK), Lashkar-e-Tayyiba and Palestinian Islamic Jihad as terrorist organisations under the *Criminal Code Act 1995* (the *Criminal Code*).
2. In its September 2018 report on the previous re-listing of the PKK, the PJCIS recommended that Government agencies engage further with Kurdish communities and provide specific advice on the conduct that would fall within the ambit of criminal conduct under the *Criminal Code*. It recommended the advice also detail the types of communications that, in accordance with the implied right of political communication, would not engage provisions of the *Criminal Code*.¹
3. In July 2020, the Government accepted this recommendation, noting that Government agencies are unable to provide legal advice and that individuals and organisations should seek independent legal advice in relation to their specific circumstances.²
4. The purpose of this supplementary submission is to provide further information on the Department's implementation of the Committee's September 2018 recommendation, to assist the Committee in its current review of the re-listings.

Consultation with Kurdish community organisations

Implementation of 2018 PJCIS recommendation

5. In response to the Committee's 2018 recommendation and the Government's subsequent acceptance of that recommendation, the Department's community liaison officers in Sydney and Melbourne have continued to conduct outreach to a number of Kurdish community groups.
6. Meetings between the Department and Kurdish community organisations have been conducted on a range of issues. Engagements (in reverse chronological order) have included:

Date	Community organisation	Organisation Location
25 May 2021	Federation of Democratic Kurdish Society-Australia	Sydney
9 November 2020	Kurdish Democratic Centre of Victoria	Melbourne
6 October 2020	Federation of Democratic Kurdish Society-Australia; Kurdish Democratic Centre of Victoria	Sydney, Melbourne
23 September 2020	Kurdish Democratic Centre of Victoria	Melbourne
7 September 2020	Kurdish Lobby Australia	Sydney

¹ Parliamentary Joint Committee on Intelligence and Security, *Report on the review of the re-listing of five organisations and the listing of two organisations as terrorist organisations under the Criminal Code*, 20 September 2018, p. 15.

² Australian Government response to the Committee's 2018 report, 25 August 2020, p. 2.

Date	Community organisation	Organisation Location
6 August 2020	United Kurdish of New South Wales	Sydney
16 April 2020	Federation of Democratic Kurdish Society- Australia	Sydney
8 November 2019	Kurdish Democratic Community Centre of Victoria	Melbourne
10 October 2019	United Kurdish of New South Wales	Sydney

7. The Department has considered and responded to correspondence from individuals and community organisations with regard to the re-listing of the PKK.
8. The Department has also published a fact sheet (**Attachment A**) for the purpose of engaging with communities on terrorist organisation listings, including the scope of terrorist organisation offences. The fact sheet is publicly available on the Australian Government's National Security website at www.nationalsecurity.gov.au/Listedterroristorganisations.

Outcome of consultation

9. The Department's community engagement program provides a mechanism for community members to engage with Departmental officials on their priorities and concerns. During the meetings conducted over the last 16 months, the Department's community liaison officers have discussed a range of issues with a number of Kurdish groups including, in some instances, the PKK listing, as well as other issues of concern, such as the impacts of the COVID-19 pandemic on the Kurdish community.
10. Discussion of the PKK listing with Departmental officials has primarily reiterated Kurdish community views on the Turkish Government's relationship with the community, human rights issues affecting the Kurdish community in Turkey, and their perspective that the PKK's activities should be governed by international humanitarian law rather than counter-terrorism law.
11. The Department noted Kurdish community views when considering re-listing of the PKK. With regards to the Kurdish community's view that PKK's activities should be governed by international humanitarian law, the Department notes the Australian Government's longstanding view that international humanitarian law does not prevent, and is not relevant to, the application of Australia's domestic counter-terrorism legislation to acts of terrorism that occur within an armed conflict.

Attachment A – Terrorist Organisation factsheet



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Terrorist organisations

The information in this document is intended to provide general information only, and is not intended to be taken as legal advice.

What is a terrorist organisation?

Australia's counter-terrorism laws target not only terrorist acts, but also the organisations that plan, finance and carry out such acts. Under Division 102 of Part 5.3 of the *Criminal Code Act 1995* (the Criminal Code), a terrorist organisation is an organisation that:

- is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act; or
- has been *listed* in regulations as a terrorist organisation.

A court may find an organisation to be a terrorist organisation during a prosecution for a terrorism offence. If an organisation is listed as a terrorist organisation, the prosecution will not need to prove the organisation is a terrorist organisation.

How is a terrorist organisation listed?

An organisation can be listed as a terrorist organisation if the Minister for Home Affairs is 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 considers the advice of Australian security and law enforcement agencies to determine which organisations should be listed. This issue is constantly reviewed by security and law enforcement agencies.

There are also a range of other factors, referred to as non-legislative factors, which guide and prioritise the selection of organisations for consideration. These factors can include the organisation's links to other terrorist groups, links to Australia, threats to Australian interests, or its engagement in peace or mediation processes. Depending on available information, some factors may carry more weight than others in selecting organisations for consideration. However, a lack of information with respect to one or more factors will not necessarily prevent an organisation from being considered for listing.

Offences relating to terrorist organisations

The information that follows is provided for general information only. You should seek independent legal advice in relation to your specific circumstances.

The Australian Government does not condone the actions of groups that use terrorism to achieve their political, religious or ideological objectives. This is clearly demonstrated by the range of offences relating to terrorist organisations contained in Division 102 of Part 5.3 of the Criminal Code. These offences include being a member of a terrorist organisation, directing activities or recruiting for a terrorist organisation, training with a terrorist organisation, or dealing with funds relating to a terrorist organisation. It is also an offence to provide support to, or associate with, a terrorist organisation.

Providing support to a terrorist organisation means intentionally providing any support or resources that would help the organisation prepare, plan, assist in, or foster the doing of a terrorist act. Importantly, it is not a terrorist act to engage in advocacy, protest, dissent, or industrial action where a person does not have the intention to cause harm to others. To be guilty of the offence, a person must have known that the relevant organisation was a terrorist organisation, or have been reckless as to whether the relevant organisation was a terrorist organisation.

Associating with a terrorist organisation is a criminal offence if:

- the person knows the organisation is a terrorist organisation,
- the association with a member of the organisation is intentional and occurs two or more times,
- the person knows that the other person is a member of, or a person promotes or directs the activities of, the organisation,
- the association is in support of the organisation, and
- it is intended that the support assist the organisation to expand or continue to exist.

The offence does not relate to association that relates to family or domestic matters, occurs as part of public religious worship, is for the purpose of providing humanitarian aid, or for the purpose of providing certain legal advice or legal representations.

Oversight and safeguards

Parliamentary review process

The listing (or re-listing) of a terrorist organisation may be reviewed by the Parliamentary Joint Committee on Intelligence and Security (PJCIS). If the PJCIS considers that there are insufficient grounds for an organisation to be listed or has other concerns with the listing, it may recommend that Parliament disallow the listing regulation so that it ceases to have effect.

Review by the PJCIS also provides an avenue for members of the public to raise any concerns and provide information to the PJCIS with respect to the listing of particular terrorist organisations. Further information about the PJCIS is available at: <https://www.aph.gov.au/pjcis>.

De-listing terrorist organisations

A regulation listing a terrorist organisation ceases three years after it commences. This ensures that there is regular review and re-evaluation as to whether the organisation continues to meet the legislative criteria for listing.

If the Minister for Home Affairs is no longer satisfied that an organisation meets the criteria to be listed as a terrorist organisation, the Minister must make a written declaration to that effect. The Regulations which specify the organisation cease to have effect when such a declaration is made. Any person or entity can make an application to the Minister for Home Affairs for such a declaration.

Under section 75(v) of the Constitution and section 39B of the *Judiciary Act 1903*, the courts may review the Minister's satisfaction 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 must be satisfied of these matters based on logically persuasive evidence, taking into account relevant information.

Oversight by the Inspector-General of Intelligence and Security (IGIS)

The IGIS is an independent statutory office holder who monitors and reviews the activities of Australia's intelligence and security agencies.

The IGIS has own motion inquiry powers and can also conduct inquiries in response to complaints from any person or requests from ministers. Should the IGIS decide to conduct an inquiry into the role of intelligence and security agencies in the terrorist listing of any particular organisation, the IGIS would consider whether agencies had followed appropriate processes when considering the organisation for listing and when providing advice to the Minister for Home Affairs. Further information about the IGIS is available at: <http://www.igis.gov.au/>.

Further information

Further information can be found at <http://www.nationalsecurity.gov.au>. This includes the current list of terrorist organisations, the Protocol for Listing Terrorist Organisations and the Statement of Reasons for each listing.