

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 12 September 2018

HOME AFFAIRS PORTFOLIO

Identification of Terrorist Organisations under the Criminal Code

Asked:

Can the department respond to the oral evidence by Stary Norton Halphen that, were the PKK not to be listed under section 102.1 of the Criminal Code, a court would not be prevented from making a determination that an organisation met the statutory definition under section 102.1 as part of proceedings for the prosecution of terrorism offences?

Answer:

Under Australian law, there are two ways that an organisation may be identified as a terrorist organisation. First, the organisation may be specified in regulations and second, the prosecution can prove beyond reasonable doubt that the organisation meets the definition of a terrorist organisation (ie an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act) under section 100.2 of the Criminal Code as part of a prosecution for a terrorist offence. Listing can assist the prosecution to prove the existence of a terrorist organisation, for the purposes of proving a terrorist organisation offence.

The only offence that requires an organisation to be listed in regulations is the association offence at section 102.8 of the *Criminal Code*.

The listing process provides a mechanism for the Australian Government to identify terrorist organisations, and provide notice to the organisation and the community that certain interactions (such as associations) with those organisations are criminalised under Australian law.

Australia's listing process also sends a clear message to the public that the Australian Government does not condone the actions of groups that use terrorism to achieve their political, religious or ideological objectives.

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Applications of Australia's terrorist organisation offences

Asked:

Can the department provide further information about the applications of Australia's terrorist organisation offences, in response to concern in the public submissions about how the provisions could apply to the Kurdish community in Australia?

Answer:

To the extent that criminal offences may apply to conduct related to the PKK, the offence provisions in the *Criminal Code* are appropriate and targeted.

Australia's terrorist organisation offences are limited in their application to membership, association, providing support, recruiting, directing activities, providing funding, and training for the PKK.

Australian law does not criminalise support for other, non-violent, Kurdish civil society independence movements or political parties who support Kurdish rights and aspirations for independence or autonomy.

Australia's terrorist organisation offences (including the offence of associating with a terrorist organisation) were introduced in 2004. These offences have been drafted carefully to ensure they do not criminalise actions that do not contribute to terrorism.

- The offence of associating with a terrorist organisation contains a range of important exceptions (s102.8(4)), and expressly states that the offence does not apply so as to limit any constitutional doctrine of implied freedom of political communication (s102.8(6)).
- Further, the offence of providing support for a terrorist organisation requires that an individual intentionally provides support to the organisation, which would help that organisation to engage in terrorist activities (s102.7(1)(a)).

The purpose of Australia's terrorist organisation offences is to limit support for terrorist organisations which would allow them to flourish and enhance their ability to commit acts of violence.

These offence provisions send a clear message to the public that the Australian Government does not condone the actions of groups that use terrorism to achieve their political, religious or ideological objectives. In addition, Australia's listing process provides a mechanism for the Australian Government to identify terrorist organisations, and provide notice to the organisation and the community that certain interactions with those organisations are criminalised under Australian law.

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Other country listings of the PKK

Asked:

Can the department provide information about other country listings of the PKK, including information about the regularity with which the listings are reviewed?

Answer:

While the approach of other countries is relevant to Australia's consideration of organisations for proscription, each country's scheme differs, including by applying differing legislative thresholds which enliven different offences and differing restrictions on contact with organisations.

The information below is from publicly available information:

The PKK is currently proscribed as a terrorist organisation by a number of countries, including Canada, New Zealand, the UK and US.

Under **Canada's** *Criminal Code* the listing of terrorist organisations is reviewed every two years.

Designations of terrorist organisations in **New Zealand** expire and must be re-made every three years under the *Terrorism Suppression Act*

Under the **United Kingdom** terrorist listing scheme in the *Terrorism Act 2000*, proscriptions of a terrorist group do not expire. The UK Secretary of State may review the proscription of an organisation upon application by the proscribed organisation or a person affected by the proscription of proscribed organisation.

Similarly, in the **United States** the listing of a foreign terrorist organisation under the *Immigration and Nationality Act* is not subject to a specified review period under legislation.

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PKK threat / link to Australia

Asked:

Can ASIO provide additional unclassified information to articulate the link / threat of the PKK to Australia?

Answer:

Turkey is a popular destination for Australians. While the PKK directs attacks against Turkish government and security force targets, civilian bystanders are treated as acceptable collateral.

In 2016, the scale of PKK attacks increased when the group started using more vehicle borne improvised explosive devices, and expanded its area of operations to include urban centres in Turkey, including Ankara and Istanbul.

This has directly increased the threat to civilians – including tourists in Turkey – of being incidentally harmed in attacks aimed at others. The PKK continues preparing and planning terrorist attacks in Turkey and Australians could be injured in such attacks.