
The Parliament of the Commonwealth of Australia

Review of the re-listing of the Kurdistan Workers' Party (PKK)

Parliamentary Joint Committee on Intelligence and Security

June 2008
Canberra

© Commonwealth of Australia 2008

ISBN 978-0-642-79042-2 Printed Version

ISBN 978-0-642-79043-9 HTML Version



Contents

Membership of the Committee v

Terms of reference vii

List of recommendations viii

1 Introduction 1

 The Government’s procedures 2

 Procedural comments 4

2 The Listing 7

 The criteria for listing an organisation 7

 The listing of the PKK 8

 Conclusion 17

Appendix A – List of Submissions 19

Appendix B – Witnesses appearing at private hearing 21

 Canberra 21

PAGE LEFT BANK DELIBERATELY



Membership of the Committee

42nd Parliament

The Hon Arch Bevis MP

Deputy Chair The Hon Philip Ruddock MP*

Members The Hon Alexander Downer MP

Mr Mark Dreyfus QC MP

Mr Daryl Melham MP

Senator Fiona Nash

Senator Gavin Marshall

Senator Julian McGauran

Senator Michael Forshaw
(from 15 May 2008)

Senator the Hon Robert Ray
(till 5 May 2008)

41st Parliament

Chair The Hon David Jull MP

Deputy Chair Mr Anthony Byrne MP

Members Mr Stewart McArthur MP

The Hon Duncan Kerr SC MP

Mr Steven Ciobo MP

Senator the Hon Robert Ray

Senator the Hon John Faulkner

Senator Fiona Nash

Senator the Hon Sandy Macdonald

* The Hon Philip Ruddock absented himself from discussion on the review of the re-listing of the PKK as he was Attorney-General at the time the re-listing was made.

Committee Secretariat

42nd Parliament

Secretary	Dr Margot Kerley
Inquiry Secretary	Mr Robert Little
Research Officer	Ms Philippa Davies
Executive Assistant	Mrs Donna Quintus-Bosz

41st Parliament

Secretary	Mr Stephen Boyd
Research Officer	Dr Cathryn Ollif
Executive Assistant	Mrs Donna Quintus-Bosz



Terms of reference

This inquiry and report is conducted under the following powers:

Criminal Code Act 1995

Section 102.1A Reviews by Parliamentary Joint Committee on Intelligence and Security

Review of listing regulation

- (1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1, the Parliamentary Joint Committee on Intelligence and Security may:
 - (a) review the regulation as soon as possible after the making of the regulation; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period.

And

Criminal Code Amendment Regulations 2007 (No 13)

Select Legislative Instrument 2007 No.290

Registered: 26 September 2007 (FRLI: F2007L03752)



List of recommendations

2 The Listing

Recommendation 1

The Committee does not recommend the disallowance of the regulation made to proscribe the Kurdistan Workers' Party (PKK).

PAGE LEFT BANK DELIBERATELY

PAGE LEFT BANK DELIBERATELY

Introduction

- 1.1 This review is conducted under section 102.1A of the *Criminal Code Act 1995* (the Criminal Code). Section 102.1A provides that the Parliamentary Joint Committee on Intelligence and Security (the Committee) may review a regulation specifying an organisation as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code and report the Committee's comments to each house of the Parliament before the end of the applicable disallowance period.
- 1.2 The organisation for which the current regulation has been made is the Kurdistan Workers' Party (PKK). It is also listed under the following names: People's Congress of Kurdistan, Kongra Gel, Kongra Gele Kurdistan, Partiya Karkeren Kurdistan, New PKK, Freedom and Democratic Congress of Kurdistan, Kurdistan Freedom and Democracy Congress, KADEK, Kurdistan Halk Kongresi, KHK, Kurdistan Labor Party, Kurdistan People's Congress, Kurdish Freedom Falcons, Kurdish Liberation Hawks, Kurdistan Ozgurluk Sahinleri, Teyrbazln Azadiya Kurdistan, TAK.
- 1.3 The Attorney-General wrote to the Chairman of the previous Committee on 18 September 2007 advising that a regulation specifying the PKK as a terrorist organisation for the purposes of section 102.1 of the Criminal Code was to be made and that it was scheduled for consideration by the Federal Executive Council.
- 1.4 The Federal Election interrupted the review being conducted by the Committee in the 41st Parliament.

- 1.5 Following the election the regulation was tabled in the House of Representatives and the Senate on 12 February 2008. The original disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore, the Committee was required to report to the Parliament by 20 March 2008.
- 1.6 The Committee in the 42nd Parliament first met on 13 March 2008 and it was therefore not possible to meet this deadline.
- 1.7 Notice of the inquiry was placed on the Committee's website. Three submissions were received from the general public.
- 1.8 Representatives of the Attorney-General's Department (AGD), ASIO and the Department of Foreign Affairs and Trade (DFAT) attended a private hearing on the listing on 20 March 2008 in Canberra.
- 1.9 In its first report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Committee decided that it would test the validity of the listing of a terrorist organisation under the Criminal Code on both the procedures and the merits. This chapter will examine the Government's procedures in listing PKK and chapter 2 will consider the merits of the listing.

The Government's procedures

- 1.10 In a letter sent to the Committee on 12 October 2007, the Attorney-General's Department informed the Committee that it had adhered to the following procedures for the purpose of the listing:
- An unclassified Statement of Reasons was prepared by ASIO, and endorsed by DFAT, detailing the case for listing the organisation.
 - Chief General Counsel, Mr Henry Burmester QC provided written confirmation on 20 August 2007 that the Statement of Reasons was sufficient for the Attorney-General to be satisfied on reasonable grounds of the matters required under s 102.1(2) for the listing by regulation of an organisation as a terrorist organisation.
 - The Director-General of Security, Mr Paul O'Sullivan, wrote to the Attorney-General on 29 August 2007 outlining the background, training activities, terrorist activities, and relevant statements of the organisation.
 - A submission was provided to the Attorney-General on 14 September 2007 including:

- ⇒ copies of the Statement of Reasons from ASIO for the organisation
- ⇒ advice from the Chief General Counsel in relation to the organisation; and
- ⇒ regulations and Federal Executive Council documentation.
- Having considered the information provided in the submission, the Attorney-General signed a statement confirming that he is satisfied on reasonable grounds that the organisation is an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whether or not the act has occurred or will occur. The Attorney-General also signed a regulation in relation to the organisation, and approved associated Federal Executive Council documentation including an explanatory statement, explanatory memorandum, and executive council minute.
- The Attorney-General wrote to the Prime Minister on 18 September 2007 advising of his intention to list the PKK as a terrorist organisation.
- The Attorney-General advised the Leader of the Opposition of the proposed listing of the PKK as a terrorist organisation by letter on 18 September 2007 and offered a briefing in relation to the listing.
- On 18 September 2007 the Prime Minister wrote to the Premiers of the States and Chief Ministers of the Territories advising them of the decision to list the PKK as a terrorist organisation. South Australia, Northern Territory and Queensland agreed to the listing of the PKK on the following dates:
 - ⇒ SA - 4 October 2007
 - ⇒ NT - 21 September 2007
 - ⇒ QLD - 26 September 2007
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on Intelligence and Security on 18 September 2007 advising of his decision to list the PKK as a terrorist organisation.
- The Governor-General made the regulation on 26 September 2007.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 26 September 2007 (FRLI Reference Number: F2007L03752).
- A press release was issued on 27 September 2007 and the Attorney-General's Department's National Security website was updated.

- Following the election the regulation was again lodged on the Federal Register of Legislative Instruments (FRLI) on 12 February 2007 (FRIL Reference Number: F2007L03752).

Procedural comments

The Committee's procedure

- 1.11 In its submission, the Federation of Community Legal Centres (Vic) Inc (the Federation)¹ expressed concern about a number of procedural matters. The Committee considered these concerns. The Committee is of the view that the process followed on this occasion is both reasonable and proper and notes that:
- A statement of reasons was provided by the Attorney General. The statement is set out in paragraph 2.5 of this report.
 - The Committee's website included information regarding its review of the re-listing of the PKK and the process for making submissions since September 2007.
 - Following discussion with representatives of the Federation on 16 April 2008 the date for submissions was extended to 5 May 2008.
 - Absence of an advertisement has been noted by the Committee. Depending on the nature of future inquiries advertisements will be placed in appropriate papers or journals.
- 1.12 As mentioned, the Federal election impacted on this review. The Committee has taken care to give interested parties, such as the Federation, the ability to submit their views to the Committee.

State and Territory consultation

- 1.13 The Committee notes that only South Australia, the Northern Territory and Queensland acknowledged communication from the Attorney General and none of them disagreed with the re-listing.
- 1.14 The Attorney General's view is that the states and territories are quick to communicate if they have a problem or disagree with an action the

1 Federation of Community Legal Centres (Vic) Inc, Submission No. 7, p. 3.

Department plans to take.² The Committee has expressed a similar view in other reports.

- 1.15 No State or Territory expressed opposition to the re-listing.

Community consultation

- 1.16 In its previous report, *Review of the listing of the Kurdistan Worker's Party (PKK)*, the Committee recommended that:

a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.³

- 1.17 The Attorney-General's Department informed the Committee that they:

. . . have been working on some new material which will be in various languages.

The new material is focussing a lot more on the listing that we are developing in various languages.⁴

- 1.18 The Attorney-General's Department advised the Committee that they would be monitoring the effectiveness of these pamphlets and undertook to engage in consultations with community leaders.⁵

2 Classified transcript, private hearing 20 March 2008, p. 7.

3 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of six terrorist organisations*, March 2005, p. 20.

4 Classified transcript, private hearing 20 March 2008, p. 9.

5 Classified transcript, private hearing 20 March 2008, p. 9.

The Listing

The criteria for listing an organisation

2.1 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 Minister:

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 (whether or not the 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).¹

2.2 At the hearing on 1 February 2005 for the *Review of the listing of six terrorist organisations*, the Director-General of ASIO advised the Committee of ASIO's evaluation process in selecting entities for proscription under the Criminal Code. Some of the factors included:

- engagement in terrorism;
- ideology and links to other terrorist groups or networks;
- links to Australia;
- threat to Australian interests;
- proscription by the UN or like-minded countries; and
- engagement in peace or mediation processes.²

1 Subsection 102.1(2) of Division 102, Subdivision A of the Criminal Code.

2 Confidential exhibit, ASIO, tabled 1 February 2005.

- 2.3 These factors are not legal criteria; they are used by ASIO in their evaluations. Each factor may be accorded a different weighting according to the evaluation taking place. The Committee has, since February 2005, used these factors as the basis for testing the listings which it has reviewed. The Committee has decided to use these factors in testing the current re-listing.

The listing of the PKK

- 2.4 The Attorney-General informed the Committee of the proposed listing by letter dated 18 September 2007 with an attached statement of reasons. On 27 September 2007, the Attorney-General issued a media release announcing the decision to list the PKK.
- 2.5 The Attorney-General's statement of reasons is as follows:

(Also known as: Peoples Congress of Kurdistan, Kongra Gel, Kongra Gele Kurdistan, Partiya Karkeren Kurdistan, New PKK, Freedom and Democratic Congress of Kurdistan, Kurdistan Freedom and Democracy Congress, KADEK, Kurdistan Halk Kongresi (KHK), Kurdistan Labor Party, Kurdistan People's Congress, Kurdish Freedom Falcons, Kurdish Liberation Hawks, Kurdistan Ozgurluk Sahinleri, Teyrbazln Azadiya Kurdistan (TAK.)

The following information is based on publicly available details about the Kurdistan Workers' Party (PKK). These details have been corroborated by material from intelligence investigations into the activities of the PKK and by official reporting. ASIO assesses that the details set out below are accurate and reliable.

The Kurdistan Workers Party (PKK) is listed as a proscribed terrorist organisation by the governments of the United Kingdom and Canada. The organisation is proscribed by the government of the United States under the name of Kongra Gel. The PKK is listed by the European Union for the purposes of its anti-terrorism measures.

Current Status of the PKK

The PKK is Kurdish separatist organisation founded in Turkey by Abdullah Ocalan in 1974. The organisation initially presented itself as part of the communist revolution. To increase popular support from the Kurdish community, the PKK began to adopt

Islamic beliefs in the late 1980s. However the organisation remains predominantly secular. During the 1980s and early 1990s, the PKK was responsible for numerous attacks on Turkish security forces and civilians, including foreign tourists. Following Ocalan's arrest by Turkish authorities in February 1999 the group announced a unilateral ceasefire in September 1999. Despite this, PKK attacks continued.

The PKK changed its name to the Congress for Freedom and Democracy in Kurdistan (KADEK) in April 2002, claiming the PKK had accomplished its mission. KADEK announced its dissolution in October 2003 and re-formed as Kongra Gel. The armed wing of KADEK, known as the Peoples' Defence Forces (HPG), remained active. In early 2004 Kongra Gel split, with militants taking control of the organisation when others broke away to form a new political party. In April 2005, Kongra Gel reverted to the name Kurdistan Workers Party (PKK) or the 'New' PKK. However, not all elements of the organisation have reverted to the name PKK.

PKK front groups, including the Kurdistan Freedom Falcons (TAK), claim responsibility for attacks against civilians. In reality the PKK directs these operations. These groups are created to give plausible deniability for attacks against civilians. The military wing of the PKK, the HPG is also controlled by the PKK leadership and is not distinguishable from the PKK.

The PKK periodically announces ceasefires. During these periods, attacks by the PKK decline in number but do not cease. Continued clashes with the Turkish security forces and attacks during ceasefire periods indicate ceasefires are not recognised or adhered to by either side. Ceasefires were announced by the group in October 2006 and again in June 2007. However PKK attacks have continued, including the 22 May 2007 suicide bombing in Ankara, the 15 June 2007 bombing in Diyarbakir and the 23 June 2007 suicide attack against a police station.

Objectives

The PKK's aims and objectives have evolved over time. Initially the group aimed to establish a Kurdish nation separate from Turkey, Syria, Iraq and Iran. 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 exhibits 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 figure-head of the PKK. In practice the PKK is run by Murat Karayilan. Although the organisation has undergone numerous name changes, there is a continuity of key leaders, including Abdullah Ocalan, Cemil Bayik and Murat Karayilan .

PKK membership is estimated at approximately 5000, predominantly based in northern Iraq and south-eastern Turkey. The PKK maintains camps in northern Iraq where military and weapons training are provided. PKK funding is generated largely through criminal activity, including extortion and smuggling, and from the fundraising activities within Kurdish communities worldwide. Some money is also raised through the sale of publications.

Terrorist activities

Recent terrorist activities ascribed to the PKK, or for which it has claimed responsibility, include:

- February 2006: A bomb exploded at a supermarket in Istanbul, injuring at least 11;
- March 2006: A bomb exploded near the police station and supply office in Kadifekale district of Izmir, injuring one;
- May 2006: A bomb exploded in Hakkari targeting a bus carrying children of military officers, injuring 15;
- June 2006: A mobile-phone triggered grenade was detonated in Mersin, injuring 15;
- August 2006: A bomb exploded in Sultanahet Square, Istanbul injuring three;
- August 2006: Three percussion bombs exploded in Marmaris within 15 minutes of each other. One aboard a minibus, injuring 16, including 10 British tourists. The other two bombs were in rubbish bins, injuring five;
- August 2006: A bomb exploded in a shopping area of Antalya, killing three and injuring more than 20;
- September 2006: A mobile-phone triggered bomb exploded at a bus stop in Diyarbakir, killing 11 and injuring 16;
- May 2007: A suicide bombing in a shopping area of Ankara, killing 20;
- June 2007: A bomb exploded near a bus station in Diyarbakir, injuring six;

- June 2007: A suicide truck bomb attack on a police station in Tunceli, killing the two occupants of the truck; and
- June 2007: A bomb exploded on the railway line near Islahiye, damaging a freight train.

Conclusion

The Criminal Code provides that for an organisation to be listed as a terrorist organisation the Attorney General must be satisfied that:

- The organisation is directly or indirectly 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
- The organisation advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

On the basis of the above information, ASIO assesses the PKK is directly preparing, assisting in or fostering the doing of terrorist acts. It is submitted that the acts attributable to the PKK are terrorist acts, as they:

- are done with the intention of advancing a political cause, namely, promoting and advancing the rights of Kurds living in Turkey;
- are intended to coerce or influence by intimidation the government of a foreign country, namely Turkey, and/or intimidate sections of the public; and
- constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

This assessment is corroborated by information provided by reliable and credible intelligence sources.

- 2.6 On the basis of the statement of reasons, submissions, assessments by the US State Department, Jane's Terrorism and Insurgency Centre database, other open source intelligence, news reports and evidence given at the hearing, the PKK has been measured against ASIO's stated evaluation process as follows.

Engagement in terrorism

- 2.7 The statement of reasons lists a number of the violent acts in the period 2006 to 2007 ascribed to or claimed by the PKK, the most recent being in June 2007. In addition Jane's Terrorism and Insurgency Centre notes the following attacks:

- On 29 September 2007, 12 male villagers, seven of them members of the pro-state militia known as 'village guards', were massacred close to the

village of Besagac, near Turkey's border with Iran, allegedly by a unit of the PKK;

- On 2 October 2007 two IEDs exploded within a few hours of each other in the Aegean port of Izmir, killing one civilian and wounding eight others;
- On 7 October 2007, a group of 45-50 PKK militants ambushed an 18-man Turkish commando unit in the Gabar mountains close to Turkey's border with Syria. Thirteen of the commandos were killed and three wounded.
- On 7 October 2007, five people were injured when an IED left in a rubbish bag exploded in Istanbul; and,
- On 21 October 2007, 150-200 PKK militants overran a military outpost in the village of Daglica on Turkey's border with Iraq, killing 12 soldiers, wounding 16 and taking eight prisoner.³

2.8 The Committee considered submissions from the Kurdish Association of Victoria, Australian Tamil Rights Advocacy Council and the Federation of Community Legal Centres (Vic) Inc. These did not offer any evidence that the PKK has either renounced violence against civilian targets or has re-entered into a peace process.

2.9 These submissions⁴ referred to issues of self determination of the Kurdish people. In its previous report⁵ the Committee discussed at length the historical background to the Kurdish problem and issues relating to terrorism, self determination and minority rights. Whilst being sensitive to the history of the Kurdish people the Committee reiterates that acts of terrorism, particularly where innocent civilians are targeted, are unacceptable to Australia and the international community.

Ideology and links to other terrorist groups/networks

Ideology

3 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 12 November 2007, <http://jtic.janes.com>, p. 3.

4 See Kurdish Association of Victoria, Submission No. 5, p. 1, Australian Tamil Rights Advocacy Council, Submission 6, p 1-2, Federation of Community Legal Centres (Vic) Inc, Submission No. 7, p. 5.

5 Joint Parliamentary Committee on Intelligence and Security, *Review of the listing of the Kurdistan Workers' Party (PKK)*, April 2006, p. 19 – 21.

- 2.10 Established in 1974,⁶ the PKK's immediate objectives:
- ... are greater cultural and political rights for Turkey's Kurdish minority, including the amendment of the Turkish constitution to include and explicit recognition of a Kurdish identity, a comprehensive amnesty for PKK militants, including allowing the organisation's leadership to participate in political activities in Turkey, and an easing of the conditions of imprisoned PKK leader Abdullah Ocalan leading eventually to his release.⁷
- 2.11 As a Marxist organisation, it was and remains a predominantly secular organisation. However, the statement of reasons notes that '(T)o increase popular support from the Kurdish community, the PKK began to adopt Islamic beliefs in the late 1980s.'
- 2.12 The PKK claims to have 10,000 fighters. The statement of reasons, however, numbers the members of the PKK at 5,000, mostly located in northern Iraq. Both the US State Department and Jane's agree, suggesting membership of 4,000 to 5,000. However, the number of sympathisers in Turkey and in Europe, where there are 700,000 Kurds, is said to be in the many thousands. Jane's notes that in March 2003 about 15,000 Kurds marched in Frankfurt in solidarity with Kurds in Turkey and Northern Iraq and calling for the release of Ocalan.⁸

Links to other terrorist groups

- 2.13 The Attorney-General's statement of reasons reports no links to other groups. In its 2004 report on the PKK Jane's claims that the PKK maintains relations with Sri Lanka's Liberation Tigers of Tamil Ealam (LTTE), the Palestinian Hamas organisation, Greece's November 17, the Armenian Secret Army for the Liberation of Armenia and the Red Army Faction.⁹ Sri Lankan Prime Minister Ratnasiri Wickremanayaka has alleged that the Tamil Tigers maintain links with international terror groups such as the PKK.¹⁰ The Committee could find no corroborative evidence of this.

6 The organisation was founded in 1974 but was named the PKK in 1978. Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 12 November 2007, <http://jtic.janes.com>, p. 1.

7 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 12 November 2007, <http://jtic.janes.com>, p. 1.

8 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 12 November 2007, <http://jtic.janes.com>, p. 4.

9 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 6.

10 <http://www.financialexpress.com/news/LTTE-has-links-with-intl-terror-groups-Lanka-PM/288142/> (accessed 27 March 2008)

Links to Australia

- 2.14 No links between Australia and the PKK are mentioned in the statement of reasons. The Committee understands that a direct link to Australia is not legally necessary in order for an organisation to be listed under the Criminal Code. However, ASIO has advised the Committee that it is one of the factors that it considers in deciding whether to list an organisation.
- 2.15 ASIO gave evidence to the Committee on the PKK's fundraising activities and highlighted the difficulty in showing that particular funds might be flowing from Australia to the PKK:
- We do not see someone out waving a flag, with a tray, seeking handouts for the PKK. We do see charity groups raising funding within the Kurdish community in Australia. Often people who are contributing money to those associations and charities are not aware that this money is being redirected by the PKK.¹¹
- 2.16 On 21 December 2001, Australia listed the PKK (and Kongra Gel on 4 May 2004) on the DFAT Consolidated List. The consequence of this listing is that it is illegal to deal with the organisation's assets or to make assets available to it.
- 2.17 At the hearings, the Committee asked witnesses whether any action had been taken as a result of this listing. The Committee was advised that there have been no prosecutions over the provision of funds to the PKK.

Threat to Australian interests

- 2.18 The Attorney-General's statement of reasons is silent on the question of whether the PKK threatens Australian interests. Australian interests have been defined for the Committee in previous reviews in terms of threats of harm to Australians travelling into the area of operation of a terrorist organisation or dangers to Australian businesses or trade in such places or threats to Australians in Australia.
- 2.19 The response of witnesses to the Committee's questions regarding the threat to Australia's security from the PKK was similar to previous views put to the Committee on this question: that there are indiscriminate attacks in Turkey, that:

... when the PKK talks about including tourists and Western tourists specifically as targets that then encapsulates the large numbers of Australians who travel there.¹²

11 Classified transcript, private hearing 20 March 2008, p. 4.

12 Classified transcript, private hearing 20 March 2008, p. 3.

- 2.20 There have been no attacks on Australian businesses either deliberately targeting or inadvertently affecting Australian business in Turkey.
- 2.21 There is also an unspecified level of tourism to Turkey, as increasing numbers of Australians have travelled to Turkey to visit Gallipoli in recent years. The Department of Foreign Affairs provides advice to Australians travelling to Turkey which says, without specifying the PKK, that the threat level in Turkey is high:
- We advise you to exercise a high degree of caution in Turkey because of the high threat of terrorist attack. Domestic terrorist groups (some with links to international terrorists) have recently staged attacks.
 - We continue to receive reports that terrorists are planning attacks against a range of targets, including places frequented by foreigners. Foreigners have been killed and injured. Terrorist attacks can occur anywhere at any time in Turkey. Possible targets include Turkish and Western government interests and commercial interests, including banks.
 - Recent credible reports suggest terrorists are planning attacks in Turkey, including in response to Turkish military action against terrorists and their bases in northern Iraq.¹³

Proscription by the UN or like-minded countries

- 2.22 The PKK has not been listed by the United Nations (UN) 1267 Committee.
- 2.23 According to the State Department, the United States Government designated the PKK as a Foreign Terrorist Organisation (FTO) under the *Immigration and Nationality Act* on 8 October 1997. It has added the name Kongra Gel to the listing.¹⁴ On January 10, 2008 the United States designated the Kurdistan Freedom Falcons (TAK) as a Specially Designated Global Terrorist.¹⁵
- 2.24 Canada listed the PKK on 11 December 2002 under the *Criminal Code Act*. The United Kingdom listed the PKK under the *Terrorism Act 2000*.
- 2.25 The Kurdish Association of Victoria referred to the 3 April 2008 decision of the European Court of First Instance, relating to decisions taken by the EU Council of Ministers, to include the Kongra-Gel/PKK on the EU's terrorist list.
- 2.26 The Committee has considered the 3 April 2008 decision of the European Court of First Instance, and has sought and received advice from the

13 <http://www.smarttraveller.gov.au/zw-cgi/view/Advice/Turkey> (accessed 26/03/2008)

14 <http://www.state.gov/s/ct/rls/fs/2004/40945.htm>

15 <http://www.state.gov/r/pa/prs/ps/2008/jan/99128.htm>

Attorney-General's Department on the detail of this matter. The Attorney-General's Department has advised:

The Court of First Instance annulled the EU's decision to include Kongra Gel on the EU's terrorist list for the purposes of asset freezing, as the EU had not provided reasons to support the inclusion of Kongra-Gel on the list at this time, or shortly after, the listing decision was made.

The PKK was not a party to the proceedings and the Court made no specific ruling with respect to the PKK.

...[however] the EU Council Secretariat told the Australian Embassy in Brussels that the Court's decision would have no practical impact as the EU's current listing of the PKK/Kongra-Gel was based on an EU regulation made in December 2007 (whereas the Court only annulled the 2001 decision). The EU regulation listing both the PKK and its aliases, Kongra-Gel and KADEK, would therefore remain unaffected.¹⁶

2.27 The submission from the Kurdish Association of Victoria stated that:

... we would like to inform you that about a month ago the European Court of First Instance in Luxembourg annulled the EU decision to list the PKK as a terrorist organisation. *The lawsuit was reportedly backed by Britain.*¹⁷

2.28 This may be interpreted as implying that the UK supported the PKK in the lawsuit against the EU. Such a view is incorrect. The Council of the EU were joined by United Kingdom and Ireland in defending the suit brought by Kongra-Gel.

Engagement in peace/mediation processes

2.29 Since the capture of Abdullah Ocalan in 1999, the overtures of the Turkish Government for EU membership and the war in Iraq, there has been considerable change in the activities of the PKK and the response of the Turkish Government and the security forces. A ceasefire was called for by the gaolled leader of the PKK in 1999 and appears to have had some effect up to June 2004 when the ceasefire was formally ended.¹⁸

2.30 The level of Kurdish attacks since the breakdown in the ceasefire and the Turkish cross-border raids suggest to the Committee that it will be some

¹⁶ Committee correspondence from Attorney-General's Department, 8 May 2008.

¹⁷ Kurdish Association of Victoria, Submission No. 5, p. 2 (emphasis added).

¹⁸ See paragraph 2.25.

time before the appropriate political environment exists for a renewal of the peace process.

Conclusion

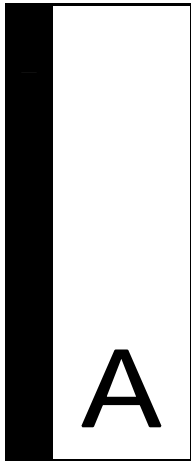
- 2.31 The Committee found that the PKK continues to engage in activities that satisfy section 102.1 of the Criminal Code. The Committee does not recommend disallowance of the regulation.

Recommendation 1

The Committee does not recommend the disallowance of the regulation made to proscribe the Kurdistan Workers' Party (PKK).

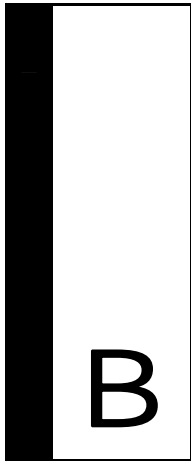
The Hon Arch Bevis MP

Chairman



Appendix A – List of Submissions

1. The Hon Philip Ruddock MP, Attorney-General
2. The Hon Philip Ruddock MP, Attorney-General
3. Attorney-General's Department
4. Attorney-General's Department
5. Kurdish Association of Victoria
6. Australian-Tamil Rights Advocacy Council
7. Federation of Community Legal Centres (Vic)



Appendix B – Witnesses appearing at private hearing

Canberra

Thursday, 20 March 2008

Australian Security Intelligence Organisation

Deputy Director-General

Manager – National Threat Assessment Centre

Attorney-General's Department

Mr Geoff McDonald – First Assistant Secretary, Security Law and Critical Infrastructure Division

Ms Annette Willing – Acting Assistant Secretary, Security Law Branch, Security Law and Critical Infrastructure Division

Ms Maree Hume – Principal Legal Officer, Security Law Branch, Security Law and Critical Infrastructure Division

Department of Foreign Affairs and Trade

Mr Perry Head – Assistant Secretary, Counter-Terrorism Branch

Ms Susan Grace – Director, Counter-Terrorism Policy Section

Ms Alison Duncan – Executive Officer, Counter-Terrorism Policy Section

Mr Greg Wilcox – Director, Iraq Task Force

Ms Rachel White – Executive Officer, Sanctions and Transnational
Crime Section

Mr Adam McCarthy – Assistant Secretary, International Legal Branch

Mr Glenn White – Acting Assistant Secretary, Northern, Southern
and Eastern Europe