

Submission

Parliamentary Joint Committee on Intelligence and Security

Review of the Listing and Re-listing of Six Organisations as Terrorist Organisations Under the Criminal Code

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Introduction

1. After recently returning from several years working in Afghanistan and Somalia, where dealing with terrorism is a serious business, I was dismayed to see how our national counter terrorism strategy has evolved and concerned by the structural deficiencies embedded in it.
2. This review of the listing and re-listing of six terrorist organisations provides an opportunity to address deficiencies in this process through the work of the Committee. The six organisations being reviewed are a microcosm of those already on the list and the issues raised here reflect this situation.
3. This submission will briefly review the purpose of the listing process and assess the list against five criteria reasonably necessary for it achieve its stated objectives as a basis for assisting the Committee in determining whether listing or relisting the six organisations identified in the terms of reference serves the intended purpose.

The Terrorist Organisations List – What It Purports to Do and Why It's There

4. The Commonwealth Government's Listed Terrorist Organisations initiative has been established and maintained by successive Governments (of all political persuasions) to support the creation of "*an effective counter-terrorism regime*", because "*it is vital that our laws target not only terrorist acts, but also the organisations that plan, finance and carry out such acts*".
5. The rationale for this statement is clear enough and while it is a daunting task to identify and list all such organisations, many of which are deeply secretive and operate under multiple pseudonyms, the proposition is outwardly reasonable. Importantly, the Government also identifies the means by which the list contributes to the counter terrorism regime, which is to put "*the organisation and members of the public on notice that the organisation is a terrorist organisations under Australian law*".
6. This latter point is very important because there are serious penalties for assisting or being part of a terrorist organisation in Australia. Accordingly, Australian citizens have the right to expect the list of terrorist organisations to be: impartial and representative of the terrorism spectrum; comprehensive and easy to understand; contemporary, logically consistent; and, ideally at least, comparable to some other international lists. The reason for these requirements is that even if a terrorist organisation is not listed, citizens can still be charged with terrorist offences for assisting or being part of an unlisted organisation. This is dangerous ground to be on if the list is insufficient to put citizens on notice that their activities may be illegal.

Is the List Impartial and Representative of the Terror Spectrum?

7. The most disturbing feature of the terrorist organisations list is that all of the organisations identified are without exception Muslim in origin¹, as are the six organisations before the Committee for review. While it is understood many parts of the Islamic world are in a state of turmoil and this generates substantial numbers of insurgent organisations which use terror as a weapon, it is nevertheless difficult to believe there are no non-Muslim terror groups with possible connections to Australia or its constituent citizens.

8. It would not take long for even the most amateur researcher to discover what is well known to all those engaged in the terrorism field, which is, there are indeed some pretty serious terrorist organisations out there which are not Muslim in origin.

9. For example, the United Kingdom's Home Office lists 14 proscribed terrorist organisations of disturbing complexion from Northern Ireland, ranging from Irish Republican offshoots to their Unionist opponents. Australia has a much larger population of citizens who are of Irish as opposed to Muslim origin, yet none of these organisations are listed in Australia, leaving anyone who funds or cooperates with them at peril of being charged with terrorist offences. Where do these people stand in terms of being "put on notice" about possible terrorist organisations identified by one of Australia's oldest and closest allies?

10. Similarly, the Government of India's Home Office has proscribed 42 terrorist organisations with an intriguing mix of Sikh, Marxist, Leninist, Maoist, Tamil, Nepalese, Muslim and other political, religious and, ideological orientations. This is a truly diverse list by comparison to anything produced in Australia. Interestingly, Australia has chosen to proscribed few if any of these despite official figures showing that India is now the second largest annual source of immigrants to this country. Again, this lack of clarity creates vulnerabilities for a significant component of the population with ties to an increasingly close international interlocutor.

11. The absence of listings relevant to large sections of the population seems to defeat the Government's stated purpose for establishing the process in the first place and perhaps it would (facetiously) be more accurately described as the "List of Muslim Origin Terrorist Organisations", so that people, of for example Irish or Indian origin, would know better than to spend their time seeking much clarity from it.

12. This situation raises the specter of bias in the way the Australian list has been developed which exclusively targets the Muslim community in Australia. This is not a good look and is in marked contrast to the multicultural values promoted by the same governments responsible for production of the list.

13. As a final observation it should be noted US surveys reveal that Muslims fear terrorism more than any other religious group and contrary to widely held misperceptions, they are hostile to terrorism. These communities should be treated with the respect they deserve in the struggle

¹ Organisations associated with predominantly Muslim populations or causes. This can include groups which purport to be secular but are dominated by Muslim membership.

with terrorism and demands for them to ‘step-up’ and producing overtly biased lists only serve to alienate the very people who are most concerned by this phenomenon.

Is the List Comprehensive and Easy to Understand?

14. The most obvious feature of the terrorist organisations list is its brevity with only 26 (25 plus one to come) organisations identified by the Government.

15. At first glance it could be concluded that the task has been conducted with great refinement and efficiency. That being said, examination of the more detailed information obtained by opening files behind each listing quickly dispense with this possibility, as there is no *analytic magic* to be found but rather a *grab bag* of Muslim origin terrorist organisations which comes nowhere near the total number possible contenders.

16. The coverage is confusing, with organisations from West Africa, Nigeria, Pakistan, Indonesia and the Philippines being dumped into the bucket. Objectively, listings from Indonesia and the Philippines make some sense due to their regional proximity but it is very difficult to relate this thinking in any systematic way to other listings which are so remote from areas of high Australian involvement as to warrant further explanation for their specific inclusion.

17. There are also multiple entries for some organisations, such as the ever popular Al Qaeda franchise and its Islamic State in the Levant (ISIL) breakaways but with notable and important absences. For example, Islamic State Khorasan Province, which refers to the small but very dangerous IS presence in Afghanistan, is listed but strangely the Taliban is not listed in any recognisable way.

18. This is surprising because the *Global Terrorism Index Report* identifies the Taliban as one of the most lethal terror organisations in the world and, from an Australian perspective we not only have a substantial population of Afghan origin which may benefit from a declaration on the terrorism status of the Taliban but also the Taliban is directly responsible for the deaths of 41 Australian military personnel and the injury of 261 others.

19. The sheer brevity of the list suggests *blind spots* in its capacity to put terrorist organisations and members of the public “on notice” of anything much at all given the mass of terrorist organisations operating across the world and the diversity of Australia’s population. The confusing mix of solely Muslim origin organisations does not help as it raises more questions about the perceptions of those who compiled the list than anything else.

20. These problems are unlikely to be helpful in putting Australian’s on notice about terrorist organisations, even allowing for the “*under Australian law*” caveat, so why bother in the first place.

Is the List Contemporary?

21. The most recent elephant to enter the room, is of course, extreme right wing and white supremacist terrorist organisations which target self-identified adversaries in the community. There are several of these organisations in Australia but none have made the list. This differs from the United Kingdom and the United States where such groups have been proscribed.

22. There seemed to be some public surprise in the aftermath of the Christchurch attacks concerning possible threats from right wing and white supremacist organizations. Examination of the facts shows this surprise is misplaced. The 2018 *Global Terrorist Index Report*, based on 2017 data no less, observed, with respect to North America, that “*there has been a resurgence of far-right political terrorism in the past few years*”. Observations of this type were already out in the international arena and ASIO recently confirmed similar concerns in Senate Estimates hearings and yet, they have not been included on the list.

23. The Australian list shows signs of not being contemporary and raises questions as to what other forms of terrorist organization may not be listed. Our preoccupation with Islamic terrorism has revealed not only possible bias but reinforces concerns about *blind spots* already covered-off by Australia’s international partners.

Is the List Logically Consistent?

24. One of the most confounding issues affecting the Australian Terrorist Organisations List lies in the distinction between terrorist organisations and national liberation or similar movements, where subjugated peoples fight for their beliefs or independence from oppressive governments.

25. Distinctions between terrorist and national liberation movements are essentially ethical and influenced by values, perspectives and relationships. Misallocation of an organisation to the wrong group has serious repercussions for social justice and these decisions need to be right.

26. An obvious contender for misallocation on the Australian list arguably involves the Kurdish independence movement which has gained a renewed international profile as an ally of the United States and NATO, and by extension Australia, in the war against ISIL where Kurdish resistance fighters are doing much of the *heavy lifting*.

27. The Kurdish Workers Party (PKK), the lead organisation in the independence movement, is listed as a terrorist organisation in Australia and several other countries because it has used



(Photo Global Rights)

violence to achieve its objectives. Yet, Australia seems to have no difficulty benefiting from this in Syria and Iraq, where *the enemy of my enemy seems to be my friend*. This brings Australia's domestic and international counter terrorism policies into a logical conflict where Australia says 'no' at home on national security grounds but 'yes', even if indirectly, overseas.

28. The Committee should note that in March 2019, the Belgian Court of Indictments ruled that the PKK is not a terrorist organisation which raises further questions over the European Union listing and indeed Australia's own listing.

29. There are potentially similar unresolved logical conflicts arising from Australia's terrorist organisation list which create difficult positions with Middle Eastern nations, China and Indonesia. These difficulties play out for example with Palestinian liberation movements (illegal in Israel), groups like the Falun Gong, which Chinese officials have labelled a quasi-terrorist sect, and the Free Papua Movement, outlawed by Indonesia but enjoying some popular support in Australia on social justice grounds.

30. Does this list achieve its purpose of putting organisations and Australian citizens on notice when there are such clear exceptions to the rule which could result in Australian citizens being prosecuted for associating with indirect allies or becoming members of unlisted groups? This is unlikely to pass the so called "pub test" for ordinary Australians.

Is there Consistency Between International Lists?

31. The world's international organisations, such as the United Nations, as well as nation states maintain an array of terrorist organisation lists. Comparisons of these lists reveal widespread inconsistencies, even amongst tight knit states such as the "*Five Eyes Community*". Organisations listed by Australia, for example, only overlap with its *Five Eyes* partners in respect of some organisations with significant differences between them. This is the first sign that nations do not agree on which organisations should be defined as terrorist in nature.

32. When other nation states are brought into the frame, the picture becomes down right confusing. A recent headline on the *India Today* news service reads, "*Pakistan has 69 banned groups, [but] it sponsors half of India's proscribed outfits*". There is clearly little agreement here due to the tensions between India and Pakistan and as with the discussion on national liberation movements, the Australian position is increasingly inconsistent with many of its neighbours and trading partners. Perhaps the very notion of a terrorist organisations list raises questions that political office holders just don't want to ask, never mind answer.

33. Terrorist organisation lists are inconsistent between nations because they are highly politicised, no less so in Australia than anywhere else, which tends to diminish their utility as objective statements of fact. Indeed, there is a danger they damage or unnecessarily complicate our international relationships, present and future, by taking steps or failing to do so which incite unnecessary animosities.

Does the List of Terrorist Organisations Work?

34. Australia's terrorist organisation list fails the basic tests of impartiality, comprehensiveness, contemporaneity, logical consistency and comparability needed for it to reliably and replicatively support the counter terrorism policy regime in Australia by putting organisations and members of the public on notice that the organisation is a terrorist organisations under Australian law.

35. The listing initiative has passed the point of being an embryonic endeavor with nearly two decades of history behind it. Defects arising from the list are persistent and have not been addressed by those responsible for the list with the consequence that this initiative has real potential to harm Australia's counter terrorism efforts rather than help them. The considerations raised in this submission relate directly to the listing or relisting of the six organisations covered by the current review as they question whether the current listing process is fit for purpose.

36. In reviewing just the five organisations identified for relisting, the whole process seems to have become an end in itself which is repeated without question or the application of intellectual rigour. There are inherent risks in such processes of *group think* which to focuses on factors we all, rightly or wrongly, accept whilst ignoring other blindingly obvious features of the threat landscape. These are matters which would benefit from further attention by the Committee.

37. Options for correcting the defects in this policy initiative include:

- i. Abolish the listing process in favour of reliance on the terrorism alert system specific to the current situation in Australia at any given time;
- ii. Change the listing process by reducing the scope of its objectives and including safeguards to control for bias and the emergence of blind spots; or
- iii. Retain the listing process with its current objectives but establish and auditable methodology of decision-making rules for inclusion and exclusion of organisations from the list. In doing so, the listing process needs to be properly funded and staffed with sufficient capacity to sustain such a major endeavor to not only reconstruct but also maintain the list for as long as it is needed.

37. These options provide for a range of improvements with budgetary options ranging from low cost alternatives such as option i), to much higher high costs such as option iii).

38. Members of the Committee are encouraged to raise any questions they may have on this submission.

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