

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 (FRIL 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.

