

Your reference

Our reference TP:LGP



t: (03) 9269 0234 f: (03) 9269 0440

E-mail: llewellp@vla.vic.gov.au

20 January 2006

Committee Secretary
Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Melbourne Office

350 Queen St
Melbourne VIC 3000
GPO Box 4380
Melbourne VIC 3001
DX 210646 Melbourne VIC
t: 03 9269 0234
1800 677 402
www.legalaid.vic.gov.au
ABN 42 335 622 126

By email: pjcis@aph.gov.au

Dear Secretary,

Submission in relation to the proscription of the *Kurdistan Workers Party (PKK)*

We appreciate the opportunity to participate in the above review and wish to express the following concerns regarding the listing of the PKK under the *Criminal Code*.

Whilst VLA does not support the activities of the PKK, we submit that banning organisations is undemocratic. The proscription power breaches the fundamental principle of criminal law that guilt is attributed to individuals on the basis of their own individual actions in causing harm or damage. The proscription power imposes criminal liability by association on whole groups and on those who associate with them. It therefore imposes criminal liability on individuals who may have no proven or provable connection to violent acts that threaten the safety of the public.

We are also concerned that this proscription is inconsistent with Australia's international obligations under the *International Covenant on Civil and Political Rights*, most notably those obligations relating to freedom of association (Article 22). The listing power places a greater restriction on the right to freedom of association than is necessary in a democratic society to maintain national security.

VLA submits that given the wide ministerial discretion in respect of the proscription power, this power must be exercised in an open and transparent manner to ensure due process, and executive accountability. Such a process should involve public disclosure of all criteria, evidence and processes involved in its exercise.

The *Criminal Code* provides for a number of offences, which arise where an organisation has been listed or where an organisation fits the definition of a terrorist organisation. The terms involved in defining these offences are overly broad and vague and therefore have the potential to apply to a large category of people.

The penalties specified for these offences are excessive and disproportionate given the absence of any requirement that there be a nexus between the offences and actual terrorist violence.

VLA is also concerned that criminalisation of the PKK will affect the status of refugees fleeing from persecution in Turkey, to whom Australia owes an obligation under the UN Convention on Refugees. Claims of persecution due to real or alleged association with the PKK or related organisations will expose refugees and asylum-seekers to criminal prosecution for membership or a number of other serious offences related to a proscribed organisation.

VLA has acted for a significant number of refugees from countries such as Turkey. Proscription of the PKK would disproportionately affect refugee applicants from this country by automatically bringing some of them under the 'serious crimes' exclusion clauses in the Refugee Convention. Current laws require an investigation of the circumstances behind an individual's past activities and an assessment of whether there are 'serious reasons to consider' before a person is excluded from protection by the Refugees Convention. Simple proscription of an organisation fails to take into account the sort of complex circumstances outlined above, and could place asylum seekers at risk of being unfairly denied refugee status and returned to a situation of serious danger despite having played no direct or indirect part in terrorist activities.

Should you require further information please contact Llewellyn Prain on (03) 9269 0138.

Yours faithfully

TONY PARSONS
Managing Director