

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

Parliamentary Joint Committee on Intelligence and Security

April 2006
Canberra

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Contents

Membership of the Committee	v
Terms of reference	vi
List of recommendations	vii
1 Introduction	1
The Government's procedures	3
Procedural concerns	4
2 The Listing	11
The criteria for listing an organisation	11
The listing of the PKK	14
Terrorism, self-determination and minority rights	31
Minority Report	35
Criteria not met	35
No direct security benefits	36
Blunt instrument—the option of limiting proscription to the PKK's military wing requires further examination	38
Potentially catastrophic community impact on persons of Kurdish origin in Australia ...	39
Conclusion	40

Appendix A – List of Submissions	43
Appendix B – Witnesses appearing at private hearing	45
Canberra	45
Monday, 6 February 2006	45



Membership of the Committee

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Deputy Chair Mr Anthony Byrne MP
(from 7 March 2006)

Members Mr Stewart McArthur MP

The Hon Duncan Kerr SC MP
Mr Stephen Ciobo, MP
(from 8 December 2005)

Senator the Hon John Faulkner
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Senator Alan Ferguson

Senator the Hon Robert Ray

Senator Julian McGauran
(8 September 2005 to 28 March 2006)

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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 ASIO, ASIS and DSD

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 ASIO, ASIS and DSD 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 2005 (No 14)

Select Legislative Instrument 2005 No. 298

Dated 15 December 2005



List of recommendations

2 The Listing

Recommendation 1

The Committee supports the listing.

However it also recommends that the matter be kept under active consideration and requests, in that process, that the Government take into account:

- the number of Australians of Kurdish origin who may support the broad aims of the PKK without endorsing or supporting its engagement in terrorist acts;
- whether it would be sufficient to proscribe the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan HRK) referred to in the Attorney's Statement of Reasons; and
- the fluid state of moves towards possible ceasefires.

Minority Report Conclusion

Recommendation 1

The Minority recommends that the Government reassess this listing.

Recommendation 2

In undertaking the reassessment the Minority requests the Government to take into account, inter alia:

- the number of Australians of Kurdish origin who may peacefully support the broad aims of the PKK;
- whether it would be sufficient to proscribe the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan, HRK); and
- the fluid state of moves towards possible ceasefires.

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 This is the nineteenth organisation to be listed under this legislation.¹ Over the last two Parliaments, the Committee has conducted six reviews, some listing multiple groups. Sixteen organisations have been re-listings of organisations originally listed under previous legislative arrangements. Thirteen organisations were listed by regulation of the Attorney-General under the 2002 Terrorism Act; all were already on lists established by the UN 1267 Committee;² three

1 The other 18 listed organisations are as follows: originally from the UN lists – Al Qa'ida; Jemaah Islamiya; Abu Sayyaf Group; Armed Islamic Group (GIA); Harakat Ul-Mujahideen (HuM); Salafist Group for Call to Combat (GSPC); Ansar Al-Islam; Asbat Al-Ansar; Egyptian Islamic Jihad; Islamic Army of Aden; Islamic Movement of Uzbekistan; Jaish-I-Mohammed; Lashkar I Jhangvi: originally from specific legislation – Hizballah External Security Organisation; Hamas and Lashkar-e-Tayyiba: new listings under the current Criminal Code legislation – Palestinian Islamic Jihad; the Al Zarqawi Network.

2 There was a requirement under the *Security Legislation Amendment (Terrorism) Act 2002* that, in making a regulation to proscribe an organisation as a terrorist organisation, under the Criminal Code, the Attorney-General needed to be satisfied on reasonable grounds that the Security Council of the United Nations has made a decision relating wholly or partly to terrorism. In introducing further amendments to the Criminal Code in October 2003 (finally agreed in 2004), the Attorney-General sought and gained the removal of the clause relating to the United Nations as too restrictive. See the *Review of*

organisations were banned by specific legislation passed by the Australian Parliament. Two reviews have considered the listing of two new organisations, the Palestinian Islamic Jihad and the Al-Zarqawi Network.

- 1.3 The organisation for which the current regulation has been made is the Kurdistan Workers' Party (PKK). It is also listed under the following names: Peoples Congress of Kurdistan, Kongra Gel, Kongra GeleKurdistan, Partiya Karkeren Kurdistan, New PKK, Freedom and DemocraticCongress of Kurdistan, Kurdistan Freedom and Democracy Congress, KADEK, Kurdistan Halk Kongresi, KHK, Kurdistan Labor Party, Kurdistan Peoples Congress, Kurdish Freedom Falcons, Kurdish Liberation Hawks, Kurdistan Ozgurluk Sahinleri, Teyrbazln Azadiya Kurdistan, TAK.
- 1.4 The Attorney-General wrote to the Chairman on 2 December 2005 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 on 15 December 2005.
- 1.5 The regulation was tabled in the House of Representatives and the Senate on Tuesday 7 February 2006. The disallowance period of 15 sitting days for the Committee's review of the listing began from the date of the tabling. Therefore, the Committee is required to report to the Parliament by 9 May 2006.
- 1.6 The Committee advertised the inquiry in *The Australian* on Wednesday 21 December 2005. Notice of the inquiry was also placed on the Committee's website and seventeen submissions were received from the general public.
- 1.7 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 6 February 2006 in Canberra.
- 1.8 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

1.9 In a letter sent to the Committee on 25 January 2006, 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 14 November 2005 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 for Security, Mr Paul O'Sullivan, wrote to the Attorney-General on 23 November 2005 outlining the background, training activities, terrorist activities, and relevant statements of the organisation.
- A submission was provided to the Attorney-General on 30 November 2005 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 2 December 2005 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 2 December 2005 and was offered a briefing in relating to the listing.

- On 9 December 2005 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. All States and Territories agreed to the listing of the PKK on the following dates:
 - ⇒ SA - 13 December 2005
 - ⇒ NT - 13 December 2005
 - ⇒ NSW - 14 December 2005
 - ⇒ QLD - 14 December 2005
 - ⇒ ACT - 14 December 2005
 - ⇒ VIC - 14 December 2005
 - ⇒ TAS - 15 December 2005
 - ⇒ WA - 15 December 2005
- The Attorney-General wrote to the Chairman of the Parliamentary Joint Committee on ASIO, ASIS and DSD on 2 December 2005 advising of his decision to list the PKK as a terrorist organisation.
- The Governor-General made the regulation on 15 December 2005.
- The Regulation was lodged with the Federal Register of Legislative Instruments (FRLI) on 16 December 2005 (FRIL Reference Number: F2005L04036).
- A press release was issued on 15 December 2005 and the Attorney-General's Department's National Security website was updated.

Procedural concerns

Consultation with the States and Territories

- 1.10 The Committee is pleased that consultation on this listing occurred between the Prime Minister and Premiers and Chief Ministers as required under subclause 3.4(6) of the *Inter-Governmental Agreement on Counter-terrorism Laws*. However, Subclause 3.4(3) of the *Inter-Governmental Agreement on Counter-terrorism Laws* states that the Commonwealth will provide the States and Territories with the 'text of the proposed regulation and will use its best endeavours to give the other parties reasonable time to consider and to comment on the proposed regulation'. Given the dates outlined in the Attorney-General's letter of 25 January 2006, the timing of the consultation is too short to be meaningful. The States and Territories were advised only six days before the regulation was made.

- 1.11 This was a new listing. ASIO informed the Committee that consideration of the listing began in November 2004. The Committee was not informed of any urgency which would require the timing of the process to be so brief. For this process to work, all participants must give proper consideration to the listing.
- 1.12 On the matter of the timing and the seriousness with which the Department approached the process, officers from the Attorney-General's Department advised the Committee that:
- It is a serious process in that we give them [the States] all the details. I can't recall a situation where we have had what I would call objections to a listing from the states.³
- 1.13 Asked at the hearing what 'all the details' meant, the Department responded that it meant the statement of reasons.⁴ The Committee also notes that on past listings there have been objections about the process from the ACT Government.

Consultation with DFAT

- 1.14 The Committee was advised by the Attorney-General's Department that:
- An unclassified Statement of Reasons was prepared by ASIO, and endorsed by DFAT, detailing the case for listing the organisation.
- 1.15 No date of the consultation or information about the form of that consultation was provided in the procedural submission from the Attorney-General's Department. In the past, DFAT's input on the listing of organisations has been minimal. At the hearing, officers from the Attorney-General's Department reported that DFAT was now consulting directly with ASIO on a listing.⁵ However, the AGD official did note that, in addition, there were meetings between DFAT, AGD and ASIO on prospective listings.⁶
- 1.16 Asked whether at these meetings there was discussion about or consideration of the potential community impact of a listing, officers from the AGD could not recall such a discussion.⁷ ASIO did not report any discussion with the community on this listing nor did they

3 Classified transcript, private hearing 6 February 2006, p. 10.

4 Classified transcript, private hearing 6 February 2006, p. 10.

5 Classified transcript, private hearing 6 February 2006, p. 12.

6 Classified transcript, private hearing 6 February 2006, p. 12.

7 Classified transcript, private hearing 6 February 2006, p. 14.

believe there was a need for an assessment of the community's views under the legislative test for a listing.⁸

- 1.17 The Department of Foreign Affairs and Trade detailed for the Committee an upgraded procedure for consideration of a listing. The Department provided comment to ASIO on a draft of the statement of reasons at an early stage, the initial request for comment coming to the Department on 26 July 2005.⁹ Four posts, covering areas where Kurds lived, were consulted, only one of which responded. DFAT provided no date for this consultation; however ASIO gave evidence at the hearing that they consulted with posts in May 2005.¹⁰ The Europe Branch within the Department also provided comment.¹¹ DFAT told the Committee they provided broader and more substantive comment than they had in the past.¹²
- 1.18 The Committee appreciates the more substantial advice that was given to it by DFAT in the course of this listing. It wishes to reiterate what it has stated in previous reports. In future listings under the Criminal Code, the Committee would encourage DFAT to continue to provide this detailed advice to the Attorney-General's Department and ASIO and to the Committee. The Committee believes that it is important to understand the whole context in which a listing has been made; the circumstances which have given rise to the activities of the organisation proposed for listing; any assessment of the foreign policy implications of a listing; any information relating to Australia's obligations to the United Nations on the particular organisation. In particular, DFAT should provide advice on whether the organisation has been included in any of Australia's reports to the United Nations Security Council on the monitoring of financial transactions, people movement or the sale of arms.¹³

8 Classified transcript, private hearing 6 February 2006, p. 36.

9 Classified transcript, private hearing 6 February 2006, p. 16. ASIO told the Committee it believed that the draft went to DFAT in November 2004. Classified transcript, private hearing 6 February 2006, p. 26

10 Classified transcript, private hearing 6 February 2006, p. 27.

11 Classified transcript, private hearing 6 February 2006, p. 16.

12 Classified transcript, private hearing 6 February 2006, p. 16.

13 Australia is required to report to the United Nations Security Council on measures taken by the Australian Government to implement Security Council resolutions 1267, 1333, 1390, 1455 and 1373. These resolutions oblige member states to suppress terrorism, including freezing terrorist assets, preventing terrorists from entering into or transiting through their territories, preventing the supply, sale and transfer of arms and military equipment and denying safe haven to terrorists.

- 1.19 Finally, the Committee wishes to understand the potential impact on Australian citizens and residents of a listing.

Community consultation

- 1.20 In its previous report, *Review of the listing of six terrorist organisations*, 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.¹⁴

- 1.21 The letter from the Attorney-General's Department does not state whether any community consultation on this listing was conducted.

- 1.22 At the hearing, the Chairman asked Attorney-General's Department whether there had been any contact with or advice to any Kurdish organisation that the listing was to be made. Officers from AGD advised that there was none. The Attorney-General's Department noted that there had not been as much progress as they would have liked in this area; however, they also clarified that there had never been any intention to conduct community consultations prior to a listing. Rather they intended to notify, in several languages, what organisations were listed under the Criminal Code.¹⁵ The Committee notes that, in the second reading speech on 29 May 2003, the Attorney-General, Mr Williams, stated that 'any such announcement will be widely publicised in both print and electronic media.'

- 1.23 Numerous submissions to the review were critical of the failure of ASIO or the Attorney-General's Department to conduct any community consultation prior to the listing of the PKK, especially as the nature of the PKK and the struggle of the Kurds for self-determination had attracted such broad support in the Kurdish Community.¹⁶ Those submissions emphasized that offences under the provision are both vague and broad and the penalties severe. The implications of the listing for the Kurds in Australia are, therefore, very serious.

If no serious attempt is made to justify to those people the singling out of their political commitments for targeting by the criminal law, they are likely to experience a listing as

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

15 Classified transcript, private hearing 6 February 2006, p. 10.

16 See Chapter 2 for a complete discussion on this issue.

nothing more than an anti-democratic attempt to stifle their political freedom.¹⁷

- 1.24 A number of submissions also questioned the timing of the announcement of the listing as it coincided with the visit of the Turkish Prime Minister to Australia. Liberty Victoria said that 'there were grounds for suspecting that the banning has been motivated by foreign policy considerations.'¹⁸

The dangerous possibility is that the proscription power, instead of being genuinely used to prevent political violence, has been put to the aid of foreign policy goals.¹⁹

- 1.25 The Australian Muslim Civil Rights Advocacy Network also noted:

We are concerned that the listing of an organisation with seemingly no security threat to Australia illustrates a proscription regime that is primarily dictated by foreign policy considerations rather than the more appropriate ends of protecting Australian citizens from the threat of terrorism.²⁰

- 1.26 The Committee asked witnesses about the timing of the decision to list the PKK, particularly whether the visit of the Turkish Prime Minister in December 2005 had influenced the decision. ASIO said the final and formal case for the listing was put forward in late 2005; however, the proscription was under consideration since November 2004 and they had sent the draft statement of reasons to DFAT in November 2004.²¹ The AGD said that the listing had been under consideration for six months prior to the announcement or the visit of the Turkish Prime Minister to Australia.²² DFAT confirmed that they received the draft statement of reasons on 26 July 2005.²³ During its confidential hearings, the Committee sought from DFAT information about whether the Government of Turkey had made any relevant representations to the Prime Minister during his visit in April 2005 to that country. The Committee was provided with all relevant

17 Mr Patrick Emerton Submission No. 18, p. 9.

18 Liberty Victoria, Submission No.6, p.2.

19 Liberty Victoria, Submission No.6, p.6. Other submissions making the same point were: submission numbers 3, 5, 7, 8, 9, 11, 12, and 13.

20 AMCRAN, Submission No. 14, p.1.

21 Classified transcript, private hearing 6 February 2006, pp. 24-26.

22 Classified transcript, private hearing 6 February 2006, pp. 24, 26 and 13. Classified transcript, private hearing 6 February 2006, p. 16.

23 Classified transcript, private hearing 6 February 2006, p. 16.

information. Whether there were such representations and if so what was conveyed by them has not been included in this report because DFAT has advised that the publication of such detail might prejudice Australia's relations with another government. It is a matter of open record that, in other forums, the Government of Turkey has strongly urged the proscription of the PKK by the international community.

1.27 ASIO reported that it did not receive any formal advice in connection with proscribing the PKK from DFAT or any other part of government concerning the discussions between the Australian Prime Minister and the Turkish Prime Minister Erdogan.²⁴ ASIO provided the following timeline for the development of the statement of reasons on this listing:

- 4 April 2005 – Draft statement of reasons sent to AGD for comment;
- 20 April 2005 – Revised draft statement of reasons sent to AGD for comment;
- 21 April 2005 – Revised draft statement of reasons sent to AGD for comment;
- 12 May 2005 - Revised draft statement of reasons sent to DFAT for comment;
- 19 August 2005 - PKK declared ceasefire for one month;
- 19 September 2005 - Revised draft statement of reasons sent to DFAT for comment;
- 22 September 2005 – DFAT sent cables to relevant posts requesting comments on revised draft statement of reasons;
- PKK ceasefire extended from September to 3 October 2005;
- 4 November 2005 - Revised draft statement of reasons sent to DFAT for comment;
- 8 November 2005 – Revised (DFAT endorsed) final statement of reasons sent to AGD for comment.²⁵

1.28 Some discrepancies in the evidence remained after answers to questions on notice were received. ASIO's evidence that they sent the original draft statement of reasons to DFAT in November 2004²⁶ was

24 ASIO supplementary submission, 2 March 2006, p. 1.

25 ASIO supplementary submission, 2 March 2006, p. 2.

26 Classified transcript, private hearing 6 February 2006, p. 24.

contradicted by their answer to questions on notice that the first request for comment was made to DFAT in May 2005. However, DFAT's evidence was that they received the request for comment on 26 July 2005. This varies from ASIO's timeline that DFAT was asked for comment on 12 May and 19 September 2005. DFAT provided the Committee with a copy of their comments on the listing, a single document, dated 29 September 2005. DFAT's evidence that a request was made by the Government of Turkey for consideration of the listing in April and that this was conveyed to both the AGD and ASIO in May 2005 was not endorsed by ASIO.²⁷

- 1.29** The Committee found no evidence that the Turkish Government's approach had affected the proscription timetable. Had there been evidence, the Committee would have viewed such foreign intervention with concern.

27 Classified transcript, private hearing 6 February 2006, p. 19.

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. Factors included:

- engagement in terrorism;
- ideology and links to other terrorist groups/networks;
- links to Australia;
- threat to Australian interests;
- proscription by the UN or like-minded countries; and
- engagement in peace/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 The Committee was grateful for the provision of these specific criteria used by ASIO in deciding whether to list a particular organisation. The Committee has, since February 2005, used them as the basis for testing the listings which it has reviewed. This has generated some discussion with ASIO which has told the Committee that the criteria are a guide only and that they are applied flexibly, that not all elements of the criteria are necessary before a decision might be taken to list an organisation. At a hearing in May 2005, ASIO explained to the Committee that:

They are taken as a whole; it is not a sort of mechanical weighting, that something is worth two points and something is worth three points. It is a judgement across those factors, and some factors are more relevant to groups than others.³

2.4 Understanding the application of these criteria has not been simple. Mr Patrick Emerton argued in his submission that there was no evidence in past listings of a systematic application of the criteria or any clear definition of the meaning of some of them. For example, he noted that the first criteria, engagement in terrorism, if interpreted broadly⁴, does nothing more than reiterate the statutory requirement in the Criminal Code, thereby giving no additional guidance for the selection of a particular organisation over hundreds of others which also indulge in political violence. If there is a narrower definition of terrorism used for the purpose of the criteria, he believed that this ought to be made clear.⁵

2.5 Similarly with the second criteria, ideology, Mr Emerton asked: Does this refer to the political or religious outlook of its members or, given the coupling of ideology with links to other groups, does ideology mean the conception of itself as a player in the geo-political arena? He argued that if it is the former, then ASIO must define what ideologies are considered illegitimate.

In a democracy, it must always be a matter of concern when a necessarily clandestine security agency is given a significant degree of power in determining which political outlooks are legitimate and which are not, and are liable to lead to criminal prosecution. A democratic culture cannot thrive under such conditions. If only certain ideologies are regarded as criminal by those authorities who actually apply the Criminal Code, this should be made explicit and incorporated into the statutory definition.⁶

3 Classified transcript, Private hearing 2 May 2005, p. 1.

4 Given the very broad definition of terrorism in the Criminal Code.

5 Mr Patrick Emerton, Submission No. 18, p. 6.

6 Mr Patrick Emerton, Submission No. 18, p.7.

2.6 Finally, Mr Emerton was critical of the emphasis in a number of the criteria on foreign policy rather than domestic security considerations in the arguments for a listing. Threat to Australian interests, proscription by the UN or like minded countries and participation in peace processes were, he believed, all foreign policy considerations.

There is no doubt that Australia's democratically elected government has the right to pursue its foreign policy goals in accordance with its conception of the country's national interest. But the criminal law should not be used as a tool to enforce these foreign policy preferences.⁷

2.7 Mr Emerton suggested the following alternative criteria,⁸ which recognised that the operation of Australian criminal law will be primarily confined to Australia and that the impact of a listing upon what would otherwise be the lawful activity of Australian citizens and residents must be given the foremost consideration. This criteria would ask ASIO to explain:

- the nature of the political violence engaged in, planned by, assisted or fostered by the organisation;
- the nature of the political violence likely to be engaged in, planned by, assisted or fostered by the organisation in the future;
- the reasons why such political violence, and those who are connected to it via the organisation, ought to be singled out for criminalisation by Australia in ways that go beyond the ordinary criminal law;
- the likely impact, in Australia and on Australians, of the proscription of the organisation, including, but not limited to:
 - ⇒ an indication of the sorts of training Australians may have been providing to, or receiving from, the organisation;
 - ⇒ an indication of the amount and purpose of funds that Australians may have been providing to, or receiving from, the organisation;
 - ⇒ the way in which the concept of 'membership', and particularly 'informal membership', will be applied in the context of the organisation;
 - ⇒ the extent to which ASIO intends to take advantage of the proscription of an organisation to use its detention and questioning power to gather intelligence.⁹

7 Mr Patrick Emerton, Submission No. 18, p.7.

8 These criteria, which had been put forward in an earlier review, are reiterated in his current submission.

9 Mr Patrick Emerton Submission No. 18, p. 8.

- 2.8 The matters raised by Mr Emerton go to the specifics of the relationship between an organisation or people supporting it and the definition of a terrorist organisation in the Criminal Code. The Committee has found them valuable and has used them and will continue to use them as the basis of questions at hearings on particular listings. The proscription of an organisation creates serious criminal offences. The Committee would like to stress the need for clear and coherent reasons explaining why it is necessary to proscribe an organisation under the Criminal Code.

The listing of the PKK

- 2.9 The Attorney-General informed the Committee of the proposed listing by letter dated 2 December 2005 with an attached statement of reasons. On 15 December 2005, the Attorney-General issued a media release announcing the decision to list PKK. The media release provided open source details on the organisation similar to those supplied to the Committee in the Attorney's letter.
- 2.10 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 Peoples 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.

Background

The PKK is Kurdish separatist organisation founded in Turkey by Abdullah Ocalan in 1974. The organisation initially presented itself as part of the 'worldwide Marxist revolution'. During the 1980s and early 1990s, the PKK was responsible for numerous attacks on Turkish security forces and civilians accused by the PKK of collaborating with the state. After a crackdown by Turkish forces in 1989, the PKK shifted its focus to concentrate on military targets and urban terrorism, although civilians were still targeted. In the late 1980s, the PKK had difficulty mobilising support from the Kurdish community, in which religious sentiment is strong, and began to adopt Sunni Islamic beliefs. However, the organisation was founded on a Marxist-Leninist ideology and remains predominantly secular. Ocalan was arrested by Turkish authorities in February 1999 and announced a unilateral ceasefire in September 1999, directing members to refrain from violence. Despite this, the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan, HRK), was maintained and sporadic attacks continued.

The PKK changed its name to KADEK in April 2002, claiming the PKK had accomplished its mission. KADEK announced its dissolution in October 2003 and re-formed as Kongra Gel, a 'new' political organisation with the stated aim of pursuing Kurdish rights through negotiation with the Turkish Government rather than seeking independence. 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. Kongra Gel ended its unilateral ceasefire with the Turkish Government in June 2004, and warned foreigners against visiting or investing in Turkey.

Kongra Gel, and the front group Kurdish Freedom Falcons (TAK), carried out violent attacks in Turkey in late 2004 and early 2005 and members have vowed to defend the Kurdish liberation movement. In April 2005 Kongra Gel reverted to the name Kurdistan Workers Party (PKK) or the 'New' PKK. However, it is not clear if all elements of the organisation have reverted to the name PKK.

On 19 August 2005 the PKK unilaterally announced it would suspend attacks against Turkish security forces until 20 September, stating that it might permanently extend the ceasefire if the Turkish government met its conditions. While PKK initiated

attacks decreased during the ceasefire period, continued clashes between Turkish security forces and the PKK, including attacks by the TAK, indicate the ceasefire was not recognised or adhered to by either side. The ceasefire was subsequently extended to 3 October 2005. However, in a statement faxed to the international media in early October 2005, the PKK announced it would resume its armed campaign against Turkish security forces because the Turkish government had not met their demands.

Objectives

The PKK's aims and objectives have evolved over time and have ranged from the separation of Kurdistan from Turkey, Syria, Iraq and Iran, and the creation of a Kurdish federation in the Middle East, to the establishment of an independent Kurdish state in south eastern Turkey. The organisation has now ostensibly abandoned the goal of a separate Kurdish state and instead seeks to promote and advance the rights of Kurds living in Turkey, specifically the right to maintain ethnic identity.

Leadership and membership

Abdullah Ocalan, although currently serving life imprisonment in Turkey, is still considered the leader and figure-head of the PKK. Although the organisation has undergone numerous name changes, there is a continuity of key PKK/KADEK/Kongra Gel leaders, including Abdullah Ocalan, Cemil Bayik (a member of the original PKK's Chairmanship Council and a senior member of the Kongra Gel Presidency Council) and Murat Karayilan (commander of the Peoples Defence Forces (HPG) and recently appointed general spokesman of the re-formed PKK Assembly).

PKK membership is estimated at approximately 5000, predominantly based in northern Iraq and south-eastern Turkey. There is also a large support base in Europe, particularly Germany. The PKK maintains camps in northern Iraq where training is provided in ideology, weaponry and guerrilla warfare. PKK funding is generated largely through criminal activity, including extortion and smuggling, and from the fundraising activities of the Kurdish diaspora worldwide (collected by both voluntary donation and through intimidation). 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:

- July 2003 - Eight Iranian soldiers were killed in a raid on an outpost in Shinava, Iran.
- December 2003 - Five Turkish soldiers were killed in Turkey when their vehicle hit a land-mine planted by PKK/KADEK.
- June 2004 - Three Turkish security personnel were killed during an attack in Hatay Province, Turkey.
- 11 Aug 2004 - Two hotels and a gas depot in Istanbul centre were bombed, resulting in the death of two foreign tourists and injuries to others.
- 27 Aug 2004 - Turkish security forces captured two PKK members who were planning bomb attacks in Istanbul and Ankara. Explosive materials were also found with the terrorists.
- 24 Oct 2004 - PKK members attacked a Turkish Oil Corporation pipeline in the southeastern city of Batman, Turkey.
- 27 Oct 2004 - One security officer was killed and three wounded in an attack in the eastern city of Bingol, Turkey.
- 27 Jan 2005 - PKK members opened fire in the city of Mardin, Turkey, killing one soldier and injuring another.
- 2 July 2005 - A bomb attack against a passenger train in Bingol province was followed by a small arms attack on a second train sent to assist. Approximately six people were killed and 12 injured.
- 10 July 2005 - A bomb in Cesme injured at least 15 people. Responsibility was claimed by the Kurdish Freedom Falcons (TAK), considered to be a front for PKK.
- 16 July 2005 - An explosion on a bus in Kusadasi killed five people, including one British and one Irish citizen, and injured 13. Some media reported that the TAK had claimed responsibility. Turkish police attributed the attack to the PKK, although they denied responsibility.
- 27 July 2005 - The mayor of Yayladere in Bingol province was kidnapped by Kurdish separatists, and released five days later.
- 10 October 2005 - A policeman was abducted at a roadblock set up by the PKK near Idil in Simak Province.
- 15 October 2005 - A bomb detonated in a vehicle at a service station in Istanbul, injuring five people. The TAK claimed responsibility.

Conclusion

ASIO assesses the PKK is continuing to prepare, plan and foster the commission of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources.

In the course of pursuing its objective of promoting and advancing the rights of Kurds living in Turkey, the PKK is known to have engaged in actions that:

- are aimed at advancing the PKK's political causes;
- are intended to cause, or have caused, serious damage to property, the death of persons or endangerment of life; and
- are intended to cause, or have caused, serious risk to the safety of the public in Turkey and other persons visiting areas in which it operates.

In view of the above information, PKK is assessed to be preparing, planning, and fostering the conduct of terrorist acts. Such acts include actions which are to be done and threats of actions which are to be made with the intention of advancing a political, religious or ideological cause and with the intention of coercing, or influencing by intimidation the Government and people of Turkey and other countries. The actions or threatened actions which the PKK are assessed to be involved in would, if successfully completed, cause serious physical harm and death to persons and serious damage to property.

- 2.11 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

- 2.12 The statement of reasons lists a number of the violent acts in the period 2003 to 2005 ascribed to or claimed by the PKK, the most recent being in October 2005. The Committee notes that between 1999 and approximately 2004 there was a generally effective ceasefire. The ceasefire was formally ended in June 2004, re-established in August 2005 until October 2005.
- 2.13 The historical context of the Kurdish question is an important starting point for any discussion of the listing of the PKK. Not all political violence must be defined as terrorism. The United Nations in the Universal Declaration of Human Rights acknowledges the right of people to engage in armed struggle in the face of tyranny and as a last resort.¹⁰

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and

oppression, that human rights should be protected by the rule of law.

- 2.14 Whether the Kurdish people have a right to self determination under international law is an open question. However, international law has increasingly come to recognise the legitimacy of the struggle of peoples for liberation to use all means, including armed struggle. While, this does not justify violence, which breaches the rules that apply to armed conflicts of this nature or other violations of human rights, it does acknowledge and reflect the complexity of political violence and the fundamental importance of the respect for the rule of law. With the defeat of the Ottoman Empire in the First World War, the Kurdish people expected to gain a nation state, in line with the application to the post war settlement of the US President Woodrow Wilson's 14 Points. This held out the offer of self-determination to all substantial national groups. The Treaty of Sevres (1920), which dismantled the Ottoman Empire, provided for Kurdish autonomy; however, it was overturned by the Treaty of Lausanne (1923) after objections from Turkey and British reluctance. The prohibition on Kurdish language and culture led to uprisings in 1925 and 1930, which were forcibly put down. There have followed 25 uprisings by Kurdish groups against Turkish rule. In 1937-38, Kurdish positions were bombed. Continued pressure on the Kurdish population led to the creation of the PKK, a Marxist, revolutionary organisation preaching self-determination. From its establishment in 1974 to the late 1990s, the PKK led a violent, separatist insurgency matched by severe repression by Turkish Government military and security forces.¹¹ Both sides of the conflict have been accused of serious abuses:

As part of its fight against the Kurdistan Workers Party (PKK), the Government forcibly displaced non-combatants, failed to resolve extrajudicial killings, tortured civilians, and abridged freedom of expression. The PKK itself committed widespread abuses, including the frequent murder of non-combatants, as part of its terrorism against the Government and civilians, mostly Kurds. Estimates of the total number of villagers forcibly evacuated from their homes since the conflict began vary widely from 330,000 to 2 million. A credible estimate given by a former Member of Parliament from the region is around 560,000.¹²

11 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 2.

12 Attachment to Submission No 1. David Brown, <http://www.fas.org/irp/world/para/pkk.htm>

2.15 The Federation of Community Legal Services presented a similar story. They told the Committee at the hearing that the actions of the Turkish state in the conflict have included 'the destruction of Kurdish villages, extra-judicial killings, the torture of Kurdish arrestees, the banning of political organisations and the prohibition on publications calling for Kurdish self-determination. Those engaged in pro-Kurdish non-violent democracy activity or merely expressions of opinion ... are routinely met with systematic political repression.'¹³

2.16 Mr Kaplan in his submission to the review made the point that:

In such a context of severe political repression, with a plethora of state security forces and armed actors, it is extremely difficult to assess the veracity of reports of any 'terrorist' incidents with certainty. ASIO's unreferenced and unverified 3-page security assessment needs to be read in this context.¹⁴

2.17 On this point, that it is difficult to assess with certainty what is happening on the ground, Stephen Kinzer, who was the *New York Times* bureau chief in Istanbul, 1996 to 2000, related an incident during his recent visit where:

Soon after I passed through Hakkari, a car bomb exploded in an outlying town, the second such attack there in a week. It was staged to look like the work of the PKK, but bystanders chased and caught the fleeing bombers, and they turned out to be men tied to the government security forces.¹⁵

2.18 The Federation of Community Legal Services, quoting the BBC news, offered some corroboration of this uncertainty:

There are credible reports that the PKK's five year ceasefire was called off due to sustained annihilation operations against the PKK by the Turkish authorities.¹⁶

2.19 This view was reiterated by the Federation at the hearing:

[I]t is very difficult to verify the credibility of intelligence if the primary source of intelligence is the Turkish military or the intelligence of Turkish allies who also consider the PKK as being terrorist. There is credible and publicly available evidence of systematic corruption, military influence on government and

13 In-camera transcript, private hearing 6 February 2006, p. 2.

14 Mr. Dalit Kaplan, Submission No. 2, p. 2.

15 Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 36. See also Federation of Community Legal Services (Vic), Submission No. 12, p.24.

16 Federation of Community Legal Centres (Vic), Submission No 12, p.23.

military involvement in routine bombings against civilians which have at times been attributed to the PKK.¹⁷

- 2.20 The Committee asked ASIO about the intelligence upon which the listing was based. ASIO could not comment on the grounds that sources were operational matters.¹⁸
- 2.21 It appears to the Committee that invariably only critics of a listing are motivated to lodge a public submission.
- 2.22 Over the period from 2002 there has been a number of splits in the PKK. It changed its name to KADEK in 2002. KADEK was dissolved in 2003 and reformed as Kongra Gel. In April 2005, Kongra Gel reverted to the name PKK. It would appear that these splits were occasioned by disputes over policy, particularly over the degree of militancy and the use of violence and over whether the organisation would continue to be separatist or seek only to protect the rights of the Kurdish minority within the existing Turkish state.¹⁹
- 2.23 Armed wings of the organisation have not disarmed and large numbers of the active membership have located to northern Iraq, where they have been tolerated by the Kurdish and US authorities.²⁰ The participation of Kurdish parties (although not the PKK) in the Iraqi elections is interpreted by Jane's as a possible indication of the PKK moving into democratic politics.²¹ Under pressure from the EU Turkey has moved to accommodate Kurdish aspirations and the consequent pull for Kurdish organisations to be involved in mainstream politics appears to have had some effect in calming the regional conflict.²²
- 2.24 In response, ASIO noted that the PKK's participation in the political process does not decrease the group's relevance to security so long as militants continue to plan and conduct terrorist attacks.²³

17 In-camera transcript, private hearing 6 February 2006, p. 2.

18 Classified transcript, private hearing 6 February 2006, p. 32.

19 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 4. See also: Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 34-36.

20 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 4.

21 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 4.

22 Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 34-36.

23 ASIO's response to the draft report, 5 April 2006.

Ideology and links to other terrorist groups/networks

Ideology

- 2.25 Since its establishment in 1974,²⁴ the PKK has defined itself as a separatist organisation fighting for the creation of an 'independent, democratic Kurdish state in the Middle East'²⁵. It was established as a Marxist revolutionary organisation, centred in and, until the mid 1990s, conducting most of its activities in rural eastern Turkey.
- 2.26 As a Marxist organisation, it was and remains a predominantly secular organisation. However, the statement of reasons notes that 'in the late 1980s the PKK had difficulty mobilising support from the Kurdish community, in which religious sentiment is still strong, and began to adopt Sunni Islamic beliefs.'
- 2.27 In 1999, the leader of the PKK, Abdullah Ocalan, announced a ceasefire, ordered members to refrain from violence and sought to establish a dialogue with the government of Turkey. This was endorsed by the party congress in 2000 and reiterated in 2002 when the party, then named KADEK, proclaimed a commitment to 'non-violent activities in support of Kurdish rights.'²⁶ Separatism as an objective gave way to minority rights for Kurds within the Turkish state.²⁷ However, the statement of reasons notes that the military wing did not disarm and 'sporadic attacks continued.' In 2004 Kongra Gel²⁸ ended the unilateral ceasefire with the Turkish Government. The ceasefire was briefly revived in 2005. Jane's states that the ceasefire ended because of splits in the PKK over tactics, especially the decision of fighters from northern Iraq to infiltrate into Turkey. This was compounded by a renewal of the offensive by the Turkish security forces.²⁹
- 2.28 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

24 The US State Department states its establishment as 1978.

25 US State Department, *Patterns of Global Terrorism - 2003*.

26 US State Department, *Patterns of Global Terrorism - 2003*.

27 See the statement of reasons, p. 13 of this chapter.

28 KADEK dissolved itself in October 2003 and reformed as Kongra Gel.

29 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 3.

Iraq and calling for the release of Ocalan.³⁰ Stephen Kinzer, on a visit to south eastern Turkey in late 2005 reported that, with the easing of the 'war' between the Government and the PKK, a result in large measure of the pressure on Turkey from the EU, there was considerable, outspoken, popular support for the PKK in the region.³¹ DFAT disputed that view, asserting that the PKK did not have majority support among Kurds in Turkey.³² The basis for that assessment was not clear.

- 2.29 Members asked why no distinction was made between the military and other wings of the PKK, as was done with other listed organisations such as Hezbollah. The statement of reasons, however, makes a distinction. It talks about the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan HRK) and the armed wing of KADEK, known as the Peoples' Defence Forces (HPG). Jane's also specified a military wing for the organisation.³³ ASIO also characterised part of the organisation as the 'political arm'.³⁴ Nevertheless, both DFAT and ASIO argued at the hearing that they saw no political agenda coming forward from the PKK separate from its military agenda.³⁵ Asked if anyone who waved a PKK flag was therefore associating themselves with a military venture, the response was, 'that is certainly how it is perceived in Turkey.'³⁶

Links to other terrorist groups

- 2.30 The Attorney-General's statement of reasons reports no links to other groups. However, 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.³⁷
- 2.31 Nevertheless, the tactics of the PKK and the Turkish Government forces as described by Jane's are typical of those associated with a long-running,

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

31 Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 34-36.

32 Classified transcript, private hearing 6 February 2006, p. 20.

33 See the statement of reasons, paragraph 2.10 and Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p.2.

34 Classified transcript, private hearing 6 February 2006, p.30.

35 Classified transcript, private hearing 6 February 2006, p.21.

36 Classified transcript, private hearing 6 February 2006, p. 21. DFAT said that it based its judgement on this on 'a range of material, published and unpublished: intelligence, political assessments, statements by the PKK, claims of responsibility by the TAK.

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

focussed and confined conflict. The PKK has operated a 'guerrilla campaign in southeast Turkey' ... with Turkish military positions the primary targets'.

Although Turkish government forces provide the principal targets, the group has carried out attacks on Turkish diplomatic and commercial facilities overseas. ... Villagers in the region and in northern Iraq provide sanctuary; assistance is assured by killing uncooperative civilians. ... The PKK has made some use of suicide bombing, using mainly female terrorists. When they have suffered military defeats in the past, the group has struck at economic targets, damaging the country's tourist industry ... This latter method did not prove effective and was short lived.

As the fighting between Turkish military forces and the PKK rebels intensified in 2004-05, the PKK's tactics centred on ambushing military convoys and temporary outposts. They used rocket launchers to attack gendarmerie outposts and mined roads that the Turkish forces would use. The Turkish forces used Cobra helicopters, tanks and mortar fire in their attempt to defeat the PKK.³⁸

Links to Australia

- 2.32 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.
- 2.33 The Committee also notes that, as outlined in its report, *Review of the listing of the Palestinian Islamic Jihad (PIJ)*, the Attorney-General has indicated that links to Australia are a significant factor in deciding whether to list an organisation under the Criminal Code.³⁹ In an interview on *Lateline* on 21 April 2004, the Minister was asked:

TONY JONES: Does this organisation have members in Australia about whom you are worried?

PHILIP RUDDOCK: Look it is one of the factors that we've been taking into account. We may move from this, but generally speaking we look to see whether there are linkages in Australia.

38 Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 8.

39 Joint Parliamentary Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad*, June 2004, p. 19

Those linkages can be in a variety of forms. They can be raising money for organisations, they can be having people who have trained with them, they can be people who are overtly supporting them. There are a range of factors, but we look for linkages.

...

PHILIP RUDDOCK: The aspects that have to be looked at first are – is it a terrorist organisation? Then you establish whether or not before you proscribe that as a terrorist organisation that it has linkages with Australia. I think the United Nations have proscribed - or have suggested proscription for – something like 100 or more organisations and we've proscribed to date 16. You can see that the fact that has been influencing us is whether there is a connection with Australia.

2.34 A submission from Mr Patrick Emerton to a previous inquiry emphasised this point and suggested that:

...it is the domestic impact of proscription that must be given the foremost consideration. The greater the number of Australians who are involved with an organisation, or whose friends, associates or family are involved, the greater will be the impact – the real legal impact...- upon Australian citizens, and Australian families, and Australian communities, of any decision to ban the organisation.⁴⁰

2.35 Although the Committee understands that direct links to Australia are not legally necessary in order for an organisation to be listed under the Criminal Code, it is the Committee's view that it should be an important consideration. The views of ASIO, the Attorney-General and Mr Emerton would appear to be consistent with the Committee's opinion.

2.36 In the past, the Committee has been critical of the listing of organisations with negligible links to Australia, as the listing could have no practical effect. However, a more serious consideration exists where there are substantial links to Australia. Then the potential impact of the listing on Australians needs to be weighed carefully, especially when the offences under the legislation are tied into a broad range of activity.

2.37 At the hearing, the Attorney-General's Department was asked whether an independent assessment was made of the impact the listing would have on the Australian diaspora. The department did not have information on the extent of the diaspora, but, on notice, provided the Committee with

40 Submission No 3 to the review of the listing of the Al-Zarqawi Network, Mr Patrick Emerton, p. 4

statistics similar to those quoted from the Australian Bureau of Statistics in paragraph 2.44. Asked whether the impact on the Australian community was a legitimate question to consider prior to any listing, the departmental officer did not dispute it.⁴¹ However, he believed that it was a question best put to ASIO.⁴² When asked about the extent of the support in the community for the PKK or its aspirations for an independent Kurdistan, ASIO responded that that question was outside the legislative tests.⁴³

- 2.38 The PKK is fragmented and its overall aims are likely to generate broad sympathy among large numbers of Australians, not only people of Kurdish background. The offences under the Criminal Code do not require that there be a direct link between the actions of a person and actual terrorism. The Combined Community Legal Centres Group (NSW) argued:

The objective of advancing Kurdish rights is likely to be shared by a large number of Australians. However, as no link to any terrorist act is required, and given the broad range of associated offences, virtually any support in relation to these objectives leaves Australians open to prosecution. Thus the proscription of PKK could have a potentially devastating impact on communities in Australia, and could have a disproportionately negative impact on Australians of Turkish or Kurdish origins.⁴⁴

- 2.39 The Federation of Community Legal Services told the Committee that there was 'deep rooted fear' in the Kurdish community.

I have spoken to people who are on management committees of community organisations and to Kurdish people who are heavily involved in their communities. ... I think Kurdish people in Australia are aware of and communicate with people, friends, relatives internationally. They see the level of oppression happening in so called Western democratic countries such as, for example, Germany and the UK. ... Under the UK terrorism act, having the insignia of a terrorist organisation is an offence. ... the PKK flag, ... is also the a de-facto Kurdish flag.⁴⁵

41 Classified transcript, private hearing 6 February 2006, pp. 13-14.

42 Classified transcript, private hearing 6 February 2006, p. 12.

43 Classified transcript, private hearing 6 February 2006, pp. 35-36.

44 Combined Community Legal Centres Group (NSW) Submission No. 11, p.2 .

45 In-camera transcript, private hearing 6 February 2006, p. 8. In their submission, the Federation noted that charges brought against Kurdish people in England who had been involved in demonstrations and were collecting money for Kurdish language rights protest were dismissed by the Courts. Federation of Community Legal Services Submission No. 12, p.28.

[P]eople who have fled persecution are now fearing ongoing persecution by the Australian Government because of their political views or moreover merely by virtue of their ethnic identity.⁴⁶

- 2.40 At the hearing, the Committee sought further information on whether there are any Australian links with the PKK either through membership or financial or other support. ASIO provided the Committee with information as to the links to Australia.⁴⁷ However, the Committee notes that, in the listing process, Government departments and agencies considered no information and made no distinction on whether support by the Kurdish population for the PKK was for its broader political aspirations or for its military tactics.
- 2.41 Whether or not this is the case for the PKK, the Committee notes that some terrorist organisations make no distinction between the political and military wings of the organisation so that they can maximise fundraising.
- 2.42 The Committee notes that, under the Charter of the UN Act, where the PKK is already listed there have been no prosecutions of Australians for the financing of the PKK. This may well indicate that the listings are working well.

Threat to Australian interests

- 2.43 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.
- 2.44 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 'a lot of Australians go to Turkey.'⁴⁸ ASIO's view was that the number of Australian tourists going to Turkey was a threshold issue in the decision to list the PKK rather than, say, the Tamil Tigers (LTTE).⁴⁹ ASIO quoted a figure of 50,000 Australians visiting

46 In-camera transcript, private hearing 6 February 2006, p. 5.

47 Classified transcript, private hearing 6 February 2006, p. 30.

48 Classified transcript, private hearing 6 February 2006, p. 14. The Committee was told that 50,000 Australians visit Turkey each year.

49 Classified transcript, private hearing 6 February 2006, p.33.

Turkey each year;⁵⁰ however, the Committee received figures on tourists visiting Turkey in 2005 of 20,400, while the number visiting Sri Lanka in 2005 was 25,400.⁵¹

2.45 There have been no attacks on Australian businesses either deliberately targeting or inadvertently affecting Australian business in Turkey.

2.46 The Department of Foreign Affairs notes that there are considerable links between Australia and Turkey through the migration program that began in 1967:

The 2001 Census records 29,821 Turkey-born migrants and overall community size, including second and third-generation, as 54,596. Other estimates suggest the Turkish community in Australia could be as large as 100,000 people.⁵²

2.47 Of these, according to the Australian Bureau of Statistics, 4,494 are Kurdish. Many of these people presumably return to Turkey on a regular basis.

2.48 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. We continue to receive reports that terrorists are planning attacks against a range of targets, including places frequented by foreigners.
- Domestic terrorist groups (some with links to international terrorists) have carried out attacks in Turkey. Further terrorist attacks in Istanbul, Ankara and other cities and tourist areas may occur.
- We advise you to reconsider your need to travel to rural areas in the border region between Turkey, Syria, Iraq and Iran at this time due to the unpredictable security situation. If you do decide to travel, you should exercise extreme caution when you are in this region.

2.49 In a detailed statement on security and terrorism, the department draws attention to the existence of the PKK in the border regions between Turkey and Iraq and Syria. The threat is described as a generalised one against foreigners and western tourists, not one specifically directed at

50 Classified transcript, private hearing 6 February 2006, p.23.

51 www.abs.gov.au, January 2006.

52 DFAT Country Briefs: http://www.dfat.gov.au/geo/turkey/turkey_brief.html

Australians. It is possible that Australians travelling to Turkey might be 'threatened' by terrorist violence if there is a high level of threat in the country. DFAT advised that there had been no Australians targeted by terrorist violence in Turkey.

- 2.50 The Committee notes that, of the terrorist incidents listed in the statement of reasons, two have affected foreign tourists, for one of which the PKK denied responsibility. ASIO was asked how many of the 100 PKK attacks were directed at tourists. ASIO responded that since 2001 eight PKK attacks appear to have been specifically directed at tourists, [and] 25 further attacks have targeted public places.⁵³
- 2.51 At the hearing, officers from ASIO were asked to explain how a listing would assist in the protection of Australian assets or personnel overseas. ASIO responded that 'the Parliament, and more generally the community, judges that taking action by way of proscription is a more prudent way of behaving than by not taking action. ... If you have information that leads you to conclude that this organisation is a terrorist organisation and you do not [proscribe it] you seem to be failing in your duty of care to the citizens.'⁵⁴
- 2.52 The Committee asked whether there had been any violent actions taken by Australians of Kurdish origin in Australia. ASIO responded that there had been four incidents/protests between 1992 and 1999 directed at the Turkish, German and Greek consulates. Since 1999, protest activity had been peaceful.⁵⁵

Proscription by the UN or like-minded countries

- 2.53 The PKK has not been listed by the United Nations (UN) 1267 Committee; however, 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.
- 2.54 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.
- 2.55 According to the State Department, the United States Government designated the PKK as a Foreign Terrorist Organisation (FTO) under the

53 ASIO supplementary submission, 2 March 2006, p. 2.

54 Classified transcript, private hearing 6 February 2006, p. 38.

55 ASIO supplementary submission, 2 March 2006, pp.1-2.

Immigration and Nationality Act on 8 October 1997. It has recently added the name Kongra Gel to the listing.⁵⁶

- 2.56 Canada listed the PKK on 11 December 2002 under the *Criminal Code Act*. The United Kingdom listed the PKK under the *Terrorism Act 2000*. The Committee notes that Norway does not recognise the EU listing of the PKK 'as it would conflict with Norway's role as a facilitator for peace in the region.'⁵⁷

Engagement in peace/mediation processes

- 2.57 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 gaoled leader of the PKK in 1999 and it would appear to have had some effect up to June 2004 when the ceasefire was formally ended.⁵⁸
- 2.58 Jane's reports that the PKK has been weakened by the capture of its leader in 1999 and the splits that have occurred since then in the organisation. It also notes that the organisation has been 'decentralised and autonomous cells retain the ability to attack Turkish targets.'⁵⁹ With the breakdown of the ceasefire, Jane's reports that the Turkish security forces have 'stepped up their offensive against the PKK from January 2005.' It is estimated that 240 people were killed in April and May, half of them soldiers and half PKK rebels. However, between 1987 and 2001 official figures state that the security forces in Turkey killed 23,438 guerrillas, 3,150 were captured and 2,380 surrendered.⁶⁰ Another unilateral ceasefire was announced from 20 August to 3 October 2005.⁶¹ Therefore, the high point of the conflict appears to have passed.
- 2.59 Officers from DFAT said that the PKK had not been listed earlier as 'it was right and proper to give the processes (of the ceasefires and negotiations) time for assessments to be done.'⁶² This argument does not appear to be consistent with a decision to list which, at the latest, must have been made in early November 2005, only one month from the breakdown of the last

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

57 Federation of Community Legal Centres (Vic), Submission No 12, p.31.

58 See paragraph 2.25.

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

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

61 DFAT Country Briefs: http://www.dfat.gov.au/geo/turkey/turkey_brief.html

62 Classified transcript, private hearing 6 February 2006, p. 18.

ceasefire, but, more likely, according to other evidence given to the Committee, was actively being considered much earlier when the ceasefire was in place.⁶³

- 2.60 Given that there is a safe haven and training camps in northern Iraq for hardline PKK rebels, the Turkish government has sought a resolution through tripartite talks between the Kurdish authorities in Northern Iraq, the US administrators and itself. These are continuing.
- 2.61 The rapprochement towards the Kurds inside Turkey by more liberal policies and cultural recognition appears to have added to the preparedness of Kurds to accept integration rather than separation and it has undercut support for the more radical position. The situation would appear to be at a delicate stage in terms of finding a resolution to a century old conflict and a thirty year old insurgency conducted on both sides with bitter savagery.

Terrorism, self-determination and minority rights

- 2.62 The Committee has expressed concern in past reviews about intervention by outside forces in complex internal conflicts which pose no direct threat to Australia or Australians and which rightly should be, and can only be, resolved by negotiation between the parties. Submission No 2 to this review put it to the Committee:

I believe that the listing of this organisation is not necessary in order to protect the public from any politically and religiously motivated violence in Australia.⁶⁴

- 2.63 More importantly, there are a large number of Australians of Kurdish origin and the historical experience of these people means that many of their grievances are real. It should be noted that general sympathy for the PKK's more legitimate aspirations for an autonomous homeland appears to have been widespread among Kurds both inside Turkey, in Europe and in Australia.⁶⁵

63 Attorney-General's Department, Submission No. 15, p. 1. See also timing of the listing in Chapter 1.

64 Mr. Dalit Kaplan, Submission No. 2, p. 2.

65 Federation of Community Legal Centres (Vic), Submission No 12, p.30. See also Stephen Kinzer, *Kurds in Turkey: The Big Change*, New York Review of Books, 12 January 2006, pp. 24-26 and Jane's Terrorism and Insurgency Centre, *Workers' Party of Kurdistan (PKK)*, 25 April 2004, <http://jtic.janes.com>, p. 9

2.64 The Combined Community Legal Centres make the point that, in future, with the banning of the PKK, refugee claims would expose the claimant to prosecution.

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.⁶⁶

2.65 Victoria Legal Aid makes the further point that:

Simple proscription of an organisation fails to take into account the sort of complex circumstances [investigation into a persons individual circumstances regarding past activities], 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.⁶⁷

2.66 The banning of the PKK under the Criminal Code not only affects people who might participate in violent action, but potentially criminalises an entire group who might support the organisation in broad and general ways; 'criminalises conduct distantly related to acts like bombings and hijackings.'⁶⁸ Liberty Victoria argues that there is a fundamental inconsistency in that the 'banning of the PKK raises the danger of criminalising refugees for the same reasons they were granted asylum.'⁶⁹

2.67 Australia has obligations under international law to protect refugees. However, those granted refugee status in Australia have obligations to comply with Australian law. Past associations cannot be used to justify funding and support of terrorist organisations.

66 Combined Community Legal Centres (NSW), Submission No. 11, p. 2.

67 Victoria Legal Aid, Submission No, 10, p.2.

68 Liberty Victoria, Submission No.6, p. 8.

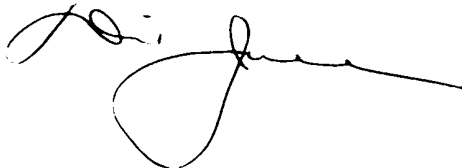
69 Liberty Victoria, Submission No.6, p. 9.

Recommendation 1

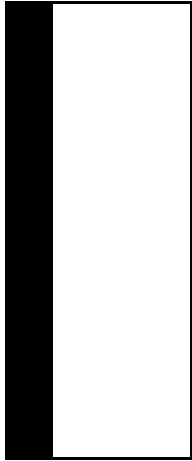
The Committee supports the listing.

However it also recommends that the matter be kept under active consideration and requests, in that process, that the Government take into account:

- the number of Australians of Kurdish origin who may support the broad aims of the PKK without endorsing or supporting its engagement in terrorist acts;
- whether it would be sufficient to proscribe the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan HRK) referred to in the Attorney's Statement of Reasons; and
- the fluid state of moves towards possible ceasefires.



Hon David Jull, MP
Chairman



Minority Report

- 1.1 The Joint Committee on Intelligence and Security (formerly the Joint Committee on ASIO, ASIS and DSD) does not divide on partisan lines. Members have accepted that their participation on the Committee requires them to form judgments only after careful assessment of both public and confidential materials – and that this is a special responsibility.
- 1.2 Members put aside any issues of party advantage and bring their independent judgment to bear on all material issues.
- 1.3 Where possible the Joint Committee attempts to reach consensus. In the past that has resulted in unanimous conclusions on the various matters that have been the subjects of report.
- 1.4 However, in this rare instance, achieving unanimity has not been possible.
- 1.5 This short minority report recommends that the Government review the proposed listing of the PKK as a proscribed organisation.
- 1.6 A summary of the reasons that have led to that conclusion are set out below.

Criteria not met

- 1.7 No evidence has been placed before the Joint Committee that the proposed listing meets the criteria previously submitted by ASIO and adopted by the Joint Committee as a template for its previous reports. Those criteria were intended to justify discrimination between those organisations which have resorted to the use of political violence that should be listed as terrorist organisations under Australian domestic law (in which case membership or support of those organisations, without more, becomes a crime), and those (the larger majority) which should not.

- 1.8 The Joint Committee has outlined the evidence that was put before it in support of the proposed listing. It is plain that that evidence does not address those template criteria. Implicitly accepting that conclusion, those advocating the listing instead argued that the PKK fell within the literal terms of the statutory definition of a terrorist organisation. The Attorney General's Department and ASIO argued that a prior statement of policy cannot limit the power to make regulations conferred by statute.
- 1.9 That is of course true as a strict matter of legal entitlement – because proper implementation of a policy must allow for the examination of exceptional cases--but it says nothing of the wisdom of the proposed course of action in this particular instance.
- 1.10 There has been no rationale developed in this case to justify a departure from the policy ASIO identified in earlier hearings and which this Joint Committee has endorsed. As both ASIO and the Attorney General have acknowledged, not every organisation that has resorted to political violence can or should be proscribed under Australian domestic law. Once that is conceded, it makes sense to consistently limit the use of the power to those circumstances justified by sound policy – as articulated by ASIO itself. No special circumstances (except perhaps the point discussed under point 2 below) were advanced by those proposing the listing.
- 1.11 The Joint Committee has a statutory obligation, *inter alia*, to review proposed listings. The Parliament relies on this Committee to ensure that the quite extraordinary legal step of making it a crime to support or belong to an organisation is not taken in inappropriate circumstances.
- 1.12 If the Joint Committee accepts justifications for new listings without a proper basis and that are inconsistent with the reasoning of its own prior reports and not based on existing (or any) stated policy we invite inconsistency. It would permit ad hoc decisions, incapable of justification on rational grounds, to be reached. That would be inconsistent with the Joint Committee's obligations to the Parliament.

No direct security benefits

- 1.13 Second, the Joint Committee received nothing by way of evidence or submissions that would justify a conclusion that the proscription would have any direct positive security benefits for Australia. Australia already has strong laws to criminalise actual conduct involving terrorism.
- 1.14 Actions giving direct assistance to any acts of terrorism are already unlawful. Sending money out of Australia to aid the PKK is already prohibited and it is already an offence under Australian domestic law for

- any Australian to serve an organisation seeking to overthrow a foreign government by force. No Australian has been charged with such existing offences.
- 1.15 What the proposed proscription would do would be to take a further step and create a criminal offence which would be complete if a person belonged to or gave any support to the PKK. The offences so created would be disconnected from the need to prove any act of or support for terrorism.
- 1.16 When asked to identify any direct conduct in Australia by Australians of Kurdish origin, ASIO responded with four incidents: in 1992, where stones and paint and stones were thrown at the Turkish Consulate-General in Melbourne in protest at the killing of Kurds in Turkey; in 1994 when 70 Kurds occupied the German Consulate-General in Melbourne, protesting at the treatment of Kurds in Germany (a window was smashed and a police officer assaulted); in 1999, on the arrest of the PKK leader, Abdullah Ocalan, when 65 Kurds broke into and occupied the office of the Greek Consulate-General causing extensive damage (some charges of assault were laid); and in 1999, in Sydney a young protester set himself alight. Since 1999 Kurdish PKK protest has been peaceful.¹
- 1.17 None of these matters reported to the Committee about previous acts of violence remotely resemble acts of terrorism.
- 1.18 In only one remote regard was the Joint Committee taken to any suggestion of a link between the PKK and contemporary threats to Australian interests. There was no evidence to suggest that Australians or Australian interests in Turkey have ever been targeted by the PKK or its military wing – but some evidence that attacks on tourism infrastructure could cause risk to Australians visiting Turkey.
- 1.19 To date no Australian tourist has been injured or killed as a result of any PKK related activity.
- 1.20 When pressed to identify why a risk to tourists in Turkey placed the situation of the PKK in any different position to that of other organisations involved in political violence overseas where incidental violence can always spill over to affect innocent third parties, including tourists – for example such as in Sri Lanka with the Tamil Tigers (which is not a proscribed organisation), it was faintly suggested that the number of Australian tourists in Turkey is much larger than that to Sri Lanka.
- 1.21 The facts however are to the contrary. More Australians visit Sri Lanka than visit Turkey. The rationale does not stand up.
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¹ ASIO, answers to questions on notice, 2 March 2006, pp. 1-2.

- 1.22 There is also some doubt, because of the paucity of evidence as to the nature of any current threat to Australia's security interests as to whether the proposed regulations meet the intended statutory criteria.
- 1.23 The Explanatory Memorandum to the legislation which introduced the proscription regime appears to support a reading of the statute that would limit the circumstances in which it is legally available, to those where the conduct of the organisation proposed to be banned directly affects Australia's current security interests. Whether the statements in the Explanatory Memorandum could be used to assist in interpreting the statute in such a way remains untested and ASIO's internal legal advice is to the contrary – but, whatever may be the ultimate legal resolution of that question should it be litigated, there is no doubt that the government's own explanatory materials issued to the parliament with the bill clearly set out that intention. This Parliament is entitled to expect the government to act in accordance with those statements

Blunt instrument—the option of limiting proscription to the PKK's military wing requires further examination

- 1.24 In previous proposed listings in which the Government and ASIO has examined an organisation having not only the aspects of a terrorist organisation but also the character of a national liberation movement or a revolutionary political party, only its military wing has been banned. That makes sense. It has allowed Australians to exercise their democratic right to freely express their political support for organisations such as Hamas and Hezbollah (however disagreeable to most in our community their aims may be) but at the same time to crack down and treat membership of their military (terrorist) wings as a criminal offence.
- 1.25 Given that the Attorney General's considered public statement of reasons issued in support of this proposed proscription also refers to the PKK's military wing the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan, HRK) there appears no sufficiently articulated reason for the Government and the Parliament not to follow the well established precedents established in the cases of Hamas and Hezbollah. Even assuming that proscription of elements of the PKK involved in political violence is justified the Government should reconsider limiting the banning to the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan, HRK) the PKK's military wing.

Potentially catastrophic community impact on persons of Kurdish origin in Australia

- 1.26 Fourth, but related to the third point above, the proponents of the listing have not evaluated or given any consideration to the possibility that the proposed listing, if implemented, might expose many (potentially thousands) of Australians of Kurdish background to severe criminal penalties--people who live perfectly ordinary lives in Australia and who themselves have had nothing to do with terrorism but who identify the PKK as 'their party' in the sense that they see it as fighting a liberation struggle for the freedom of the Kurdish people in Turkey. In this regard it is quite different in character to any previous listing – in no previous case was there any reasonable hypothesis open that the banning of an organisation might catch up large numbers of Australians or trench on their civil rights.
- 1.27 This minority report notes and relies on evidence given by senior officers of the Attorney General's Department that the practical impact of imposing severe criminal penalties on large numbers of Australian residents who support organisations they see (even if we do not share their views) as national liberation struggles is a proper consideration for the Joint Committee to take into account.
- 1.28 Having being advised that the Joint Committee should seek information about the number of those holding such views from ASIO the Joint Committee was told that ASIO regarded this factor as irrelevant and that it could not assist its members by providing any assessment of the breadth of support for the PKK amongst Australians of Kurdish descent. That left the Joint Committee having to guess at the likely impact.
- 1.29 Given the terrible history of conflict and the role that the PKK has taken in leading uprisings in support of Kurdish independence, sometimes leading to widespread loss of life on both sides it is possible, indeed likely, that the PKK may be seen by many Australians of Kurdish origin--certainly not all but perhaps a majority – not as a terrorist organisation but as a legitimate national liberation movement. In the absence of evidence on this point from those providing evidence to the Joint Committee it is impossible to reach definitive conclusions on this matter².

2 To check that the impressions set out above were not completely unrealistic one member of the Joint Committee contacted three people from Kurdish backgrounds whose names were suggested to him by a member of the House of Representatives representing an electorate in NSW with a large population of people of Kurdish background. The three, representing something of the diversity of views of that group, were simply asked to give their views about how the PKK was seen by Australians of Kurdish background. . The first person spoken to referred to the PKK as 'their own party' and offered an invitation to the Kurdish national day celebrations to be held on 18 March at the Blacktown Civic Hall where 'everyone at the national day would be a supporter of the PKK'. He was aware of and troubled by the proposed proscription – but appeared to have no awareness of its seriousness. The second person spoken to said 'we believe the PKK is fighting for the freedom of the Kurdish people'. The third person was the

- 1.30 On the evidence before the Joint Committee it is clear that what was once a hot war between the PKK and Turkey with many tens of thousands of victims is now at a much lower level of intensity – even accepting that there has been a relatively recent breakdown of the former truce. It seems clear that there are ongoing divisions of opinion within the PKK about tactics--and there is no reason to suppose that every member of the PKK even within Turkey supports a renewal of armed conflict – or terrorist tactics such as renewed attacks on Turkish economic infrastructure.
- 1.31 Outside of Turkey, and particularly in Australia, support for the PKK seems as likely to be for its aims as for its tactics. It seems possible, indeed likely that significant numbers of the 5000 Australians of Kurdish origin who have nothing to do with terrorism who would, notwithstanding, see the PKK as 'their party' in the sense that they would view it as fighting for the freedom of the Kurdish people in Turkey.
- 1.32 Such people, and many other Australians, would be horrified by the idea that such general support – disassociated from any other conduct on their part--if not repudiated, could cause them to be charged with crime and if convicted face a term of imprisonment.

Conclusion

- 1.33 To give effect to the above considerations the following alternative recommendations are proposed.

Recommendation 1

The Minority recommends that the Government reassess this listing.

exception. He said that he had once been a PKK supporter but no longer identified with them. He said he now saw the PKK as terrorists and was avoiding all Kurdish cultural events. He said he no longer identified as part of a Kurdish community--and thought that ethnic community identification was wrong. He made it clear that he was putting his view as the opinion of a person who had taken himself outside of, and no longer had much connection with, the Kurdish Diaspora.

Recommendation 2

In undertaking the reassessment the Minority requests the Government to take into account, inter alia:

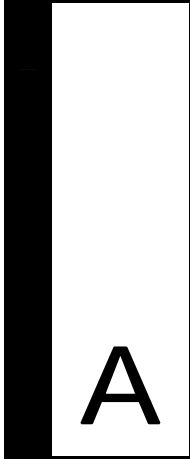
- the number of Australians of Kurdish origin who may peacefully support the broad aims of the PKK;
- whether it would be sufficient to proscribe the PKK's military wing, the Kurdistan Freedom Brigade (Hazen Rizgariya Kurdistan, HRK); and
- the fluid state of moves towards possible ceasefires.



Hon Duncan Kerr SC, MP



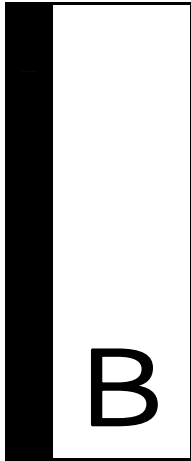
Senator the Hon John Faulkner



Appendix A – List of Submissions

1. The Hon Philip Ruddock MP, Attorney-General
2. Mr David Brown
3. Mr Dalit Kaplan
4. Mr George Dale Hess
5. Federation of Ethnic Communities' Councils of Australia
6. Liberty Victoria
7. Ms Camilla Pandolfini
8. Freedom Socialist Party
9. Mr David Littlewood
10. Victoria Legal Aid
11. Combined Community Legal Centres Group (NSW) Inc
12. Federation of Community Legal Centres (Vic) Inc
13. RMIT Refugee and Asylum Seeker Project Community and Regional Partnerships – Royal Melbourne Institute of Technology
14. Australian Muslim Civil Rights Advocacy Network (AMCRAN)
15. Attorney-General's Department
16. Dr Tania Dreher
17. Refugee Advice and Casework Service (Aust) Inc
18. Mr Patrick Emerton

19. Australian Security Intelligence Organisation - SECRET
20. Department of Foreign Affairs and Trade - CONFIDENTIAL
21. Attorney-General's Department
22. Australian Security Intelligence Organisation - SECRET



Appendix B – Witnesses appearing at private hearing

Canberra

Monday, 6 February 2006

Federation of Community Legal Services (Vic)

Ms Vicki Sentas – Anti Terrorism Laws Working Group

Attorney-General's Department

Mr Geoff McDonald – Assistant Secretary, Security Law Branch

Ms Kirsten Kobus – Acting Principal Law Officer, Counter-terrorism section, Security Law Branch

Department of Foreign Affairs and Trade

Mr Andrew Goledzinowski – Assistant Secretary, Counter-terrorism Branch

Ms Annabel Anderson – Assistant Secretary, Northern Southern and Eastern Europe Branch

Australian Security Intelligence Organisation

Mr Paul O'Sullivan – Director-General of Security

Director – Government Communications

Manager – National Threat Assessment Centre

Legal Adviser

