



Australian Government

Australian Government response to the
Parliamentary Joint Committee on Intelligence and Security report:
Review of the re-listing of five organisations and the listing of two
organisations as terrorist organisations under the Criminal Code

JULY 2020

Recommendations

Recommendation 1:

The Committee recommends that the Australian Government agencies engage further with Kurdish communities and provide specific advice on the conduct that would fall within the ambit of criminal conduct under the *Criminal Code*. The advice should also detail the types of communications that, in accordance with the implied right of political communication, would not engage provisions of the *Criminal Code*.

Response:

The Government accepts this recommendation, noting that Government agencies are unable to provide legal advice and that individuals and organisations should seek independent legal advice in relation to their specific circumstances.

The Australian Government agrees that engagement with the community is important to ensure there is an understanding of Australia's counter-terrorism laws and the rights of individuals and organisations. Government departments and agencies, including the Australian Federal Police, Australian Security Intelligence Organisation and the Department of Home Affairs, undertake a range of community engagement and liaison programs, and will further engage with the Kurdish community regarding concerns raised in the course of the Committee's inquiry.

The Government is currently updating the *Australian National Security* and *Living Safe Together* websites to include appropriate information on the scope of the terrorist organisation offences under the Criminal Code and relevant exceptions.

Recommendation 2:

The Committee recommends that in the development of any future listings or re-listings under section 102.1 of the *Criminal Code* that may be considered, the Australian Government give consideration to the application of international humanitarian law in circumstances of international or non-international armed conflicts, and that written advice be provided to the Parliamentary Joint Committee on Intelligence and Security to that effect.

Response:

The Government notes this recommendation.

The key objective of the terrorist organisation listing regime is to send a clear message that the Government does not condone the use of violence by any group to achieve political, religious or ideological objectives. An organisation's engagement in a non-international armed conflict does not negate the classification of a group as a terrorist organisation.

The application of International Humanitarian Law (IHL), does not preclude the application of Australia's domestic counter-terrorism legislation to acts of terrorism that occur within an armed conflict. IHL is the body of law which governs the conduct of hostilities between parties to an armed conflict. A non-State actor may simultaneously constitute a party to a non-international armed conflict and a terrorist organisation under Division 102 of the *Criminal Code*. IHL does not preclude and is not relevant to the assessment of whether a particular group meets the legislative threshold for listing as a terrorist organisation under Australian domestic law.

The current non-legislative factors outlined in the *Protocol for listing terrorist organisations under the Criminal Code* are sufficient to guide the consideration of organisations for potential listing or re-listing, and provide an appropriate basis for the Statement of Reasons accompanying a listing. The agreed non-legislative factors are:

- the organisation's engagement in terrorism;
- the organisation's ideology;
- links to other terrorist groups;

- links to Australia;
- threats to Australian interests;
- listing by the United Nations or like-minded countries; and
- engagement in peace or mediation processes.

In circumstances where the relevant organisation may be involved in an armed conflict in a foreign country, IHL considerations may be taken into account where they are relevant to other non-legislative factors, such as the organisation's ideology, threats to Australian interests, or engagement by the organisation in peace or mediation processes. In such circumstances, the Government could indicate to the Committee that it has considered the application of IHL.

Recommendation 3:

The Committee recommends that, within 18 months of tabling this report, the Parliamentary Joint Committee on Intelligence and Security receive a regional briefing, either orally or in writing, by the Australian Security Intelligence Organisation regarding the activities that have been the subject of this re-listing.

Response:

The Government accepts this recommendation.

The Australian Security Intelligence Organisation (ASIO) will provide a briefing to the Parliamentary Joint Committee on Intelligence and Security on the matters that have been the subject of the re-listing of the Kurdistan Workers' Party, within 18 months of the Committee's report being tabled.

Security agencies actively monitor developments relating to terrorist organisations, and advise the Minister for Home Affairs of any significant developments. Listings are also formally reviewed every three years to ensure they remain appropriate.