



Committee Secretary
Joint Committee on Intelligence and Security
Parliament House
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FECCA Submission in relation to the proscription of the *Kurdistan Workers Party (PKK)*

Submitted by:

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Authorised by:

Ms Voula Messimeri
FECCA Chairperson

Dear Secretary,

We appreciate the opportunity to lodge a submission to the Review of the listing of the Kurdistan Workers Party (PKK) as a Terrorist Organisation under the Criminal Code Act 1995. FECCA is the national peak body representing Australians from diverse cultural and linguistic backgrounds. Our role is to advocate, lobby and promote issues on behalf of our constituency to government, business and the broader community. Our charter includes promoting full access and equity, advocating community harmony and the celebration of diversity, championing human rights and arguing that Multiculturalism is central to the social, economic and cultural health of Australia.

We wish to express the following concerns regarding the listing of the PKK under the *Criminal Code*.

General concerns relating to the proscription of organisations under the *Criminal Code*

We are concerned that the proscription power relies on guilt by association, by imposing criminal liability on whole groups and on those who associate with them. It therefore imposes criminal liability on individuals who may have no proven or provable connection to violent acts which threaten the safety of the public. We believe that this proscription is inconsistent with Australia's international obligations under the *International Covenant on Civil and Political Rights*, most notably those obligations relating to freedom of association (Article 22). We believe the listing power places a greater restriction on the right to freedom of association than is necessary in a democratic society to maintain national security.

Whilst we do not support the activities of the PKK, banning organisations who do not pose a direct threat to Australia's domestic national security reflects a politicised process. We are concerned that the listing of the PKK was made one week after the visit of the Turkish Prime Minister, leading to perceptions that that this proscription serves mainly to criminalise domestic support for the political opponents of an Australian ally.

Broad Listing Criteria

The criteria for listing organisations are overly broad, which in turn creates issues of inconsistent application and wide ministerial discretion. Given this wide ministerial discretion, this power must be exercised in an open and transparent manner to ensure due process and executive accountability, and should involve public disclosure of all criteria, evidence and processes involved in its exercise. In this case we argue that the Attorney General has not made public sufficient verifiable and credible grounds for proscription of the PKK.

Lack of justification for proscription of the PKK

The government's case for proscribing the PKK makes no claims and presents no evidence of any threat of violence in Australia by the PKK. Organisations with no links to Australia should not be listed.

No consideration is given to contemporary politics in Turkey and the pressure from international human rights organisations and the European Union for Turkey to engage

with the PKK for a peaceful solution, and the critical role of the PKK in current and future negotiations for peace.

Political context of the proscription of the PKK

It is widely acknowledged that Turkish-Kurds have been and continue to be persecuted, dispossessed and have their human rights violated by the Turkish government.

Turkey imputes a range of human rights organisations and democratic parliamentary parties as PKK 'sympathisers'. There is extensive evidence from human rights organisations that individuals associated with the PKK and organisations imputed as supporters of the PKK are subject to state surveillance, harassment, torture, disappearance, and extra judicial killings. 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.

Effect of Proscription of the PKK

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

The PKK is a complex organisation with both non-violent objectives to pursue Kurdish rights through parliamentary means as well as a military arm. The objective of advancing Kurdish rights is likely to be shared by a large number of Australians. Remembering that no link to any terrorist act is required, and the broad range of associated offences, virtually any support in relation to these objectives leaves Australians open to prosecution. The security assessment provides no analysis of the nature of the relationship of Kurdish people or Kurdish organisations in Australia to the political objectives of the PKK, and fails to address the potentially devastating impact of proscription on communities in Australia.

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

Further concerns relating to the process of proscription of the PKK

We note that there is no information program for community groups who may be potentially affected by the listings despite Recommendation One of the Committee's March 2005 Report.

We are concerned about the lack of adequate notice and time given for public submissions, with the timing over the holiday break particularly counter-productive to an open and accountable process.

In the absence of publicly available, verifiable and credible grounds for proscription beyond discretionary foreign policy motivations, we oppose the listing of the PKK.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'V. Messimeri'.

Voula Messimeri
Chairperson
Federation of Ethnic Communities' Councils of Australia (FECCA)

19th January 2005