

Process for Review of the Designation of a Terrorist Entity Serving a Sentence of Imprisonment

Where a designated entity is imprisoned

The Terrorism Suppression Act 2002 (TSA) provides that where a designated entity is serving a sentence of imprisonment:

- 1.1 the designated person cannot apply for a revocation under section 34(3)(b) while in prison;
- 1.2 expiry of the designation is paused while the designated person is in prison (section 35C). Throughout the length of imprisonment, the Prime Minister must, every three years, review whether the designation is no longer justified.

Three-yearly review

Every three years, the Prime Minister is required to review the designation of an imprisoned and designated person (a designated person) to determine whether the designation is no longer justified - a "periodic review" (section 35E). The periodic review must be completed within three years of the designation coming into force, and every three years thereafter, while the designated person remains in prison.

Factors considered

The Prime Minister can determine that a designation is no longer justified only if satisfied that none of its effects is necessary or desirable for the prevention, or other suppression, of terrorism (section 35E).

Without limiting future considerations, the Prime Minister will consider any relevant information about:

1. the behaviours and actions of the designated person that may be relevant for the review;
2. the behaviours and actions of individuals or groups associated with, or who support the actions of, the designated person, who are or may be directly affected by the designation;
3. the enduring impact of the designated person's acts; and
4. any wider effects of the designation that may have relevance for the prevention or suppression of terrorism, such as on New Zealand's international obligations, or the access to and circulation of terrorist material.

Process

The Prime Minister must take reasonable steps to allow the designated person, and any third parties with an interest in the designation that, in the Prime Minister's opinion, is an interest apart from any interest in common with the public (section 35F), to make available relevant information to inform the review.

The Chair of the Terrorist Designation Working Group will, on behalf of the Prime Minister:

1. notify the designated person (or their representative) of the periodic review and advise of the opportunity to make available to the Prime Minister relevant information for the periodic review; and

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2. notify potential third parties via a notice in the New Zealand Gazette that informs the public that the periodic review has commenced, sets out the legislative test for a third party and advises of the opportunity to make available to the Prime Minister relevant information for the periodic review.

Under section 34 (without limiting section 34(1)(b)), a party may have an interest in a designation apart from any interest in common with the public through:

- a) possessing or controlling, or having an interest in, property to which section 9 (*prohibition on dealing with property of, or derived or generated from property of, designated terrorist entity*) applies as a result of the designation; or
- b) making available property or support to which section 10 (*prohibition on making property, or material support, available to designated terrorist entity without lawful justification or reasonable excuse*) applies as a result of the designation; or
- c) having an especially close association with the designated entity or its interests or objectives.

Notification of outcome of review

The Prime Minister will:

1. notify the designated person of the outcome of the review, and
2. notify third parties who meet the legislative test of the outcome of the review via a notice in the New Zealand Gazette.

If the Prime Minister relies on classified information in determining the outcome of a periodic review the Prime Minister is required to inform the designated person that this was the case, and that the designated person has the right to apply for an unclassified summary of the information.