



Briefing

PROPOSED DESIGNATION OF THE BASE AND THE PROUD BOYS AS TERRORIST ENTITIES

Rt Hon Jacinda Ardern, Prime Minister

Date	4/11/2021	Priority	Routine
Deadline	N/A	Briefing Number	2122NSP/064

Purpose

1. This briefing provides detail on how The Base and The Proud Boys meet the criteria for designation as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA). It seeks your agreement to consult with the Attorney-General on the proposed designations as required under Section 22(4) of the TSA.

Recommendations

On behalf of the Security and Intelligence Board, I recommend that you:

1. **Note** that The Base is considered to meet the criteria for designation as a terrorist entity, under the Terrorism Suppression Act 2002;
2. **Note** that The Proud Boys is considered to meet the criteria for designation as a terrorist entity, under the Terrorism Suppression Act 2002;
3. **Note** the Terrorism Suppression Act 2002 requires that you consult with the Attorney-General before designating an entity;
4. **Sign** the letter to the Attorney General at Attachment C;

YES / NO

- 5. **Note** that pending agreement by yourself and the Attorney-General, DPMC will provide you with paperwork to complete the designations.

<p>Tony Lynch Chair, Security and Intelligence Board</p>
<p>...../...../2021</p>

<p>Rt Hon Jacinda Ardern Prime Minister</p>
<p>...../...../2021</p>

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Tony Lynch	Chair, Security and Intelligence Board	Section 9(2)(a)	✓
Katie Reid	Senior Policy Advisor, National Security Group		

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

PROPOSED DESIGNATION OF THE BASE AND THE PROUD BOYS AS TERRORIST ENTITIES

Purpose

1. This briefing provides detail on how The Base and The Proud Boys meet the criteria for designation as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA). It seeks your agreement to consult with the Attorney-General on the proposed designations as required under Section 22(4) of the TSA.

The value in designating entities under the Terrorism Suppression Act

2. Designation under the TSA is one practical measure taken by New Zealand to contribute to the international campaign against terrorism, in line with obligations deriving from United Nations (UN) Security Council Resolution 1373.
3. The UN process only requires the designation of Al-Qaeda, Islamic State in Iraq and the Levant (ISIL), the Taliban and their associated individuals and entities. This is as UN Security Council Resolutions 1267, 1989, 2253 and 1988 Committees relate to specific threats. Terrorist groups falling outside these stated entities need to be designated under our domestic regime.
4. Designating an entity under the TSA has the effect of criminalising various forms of interaction with that entity. For example:
 - a) It is an offence to knowingly deal with a designated entity's property (Section 9) or provide the entity with property, material support, or financial or related services knowing that the entity is a designated terrorist entity (Section 10); and
 - b) It is also an offence to knowingly recruit for a designated entity (Section 12), or participate in a group for the purpose of enhancing its ability to carry out a terrorist act, knowing, or being reckless as to whether, the group is a designated entity (Section 13).
5. The TSA also enables action to be taken against designated entities' property. For example, the TSA permits an application by the Attorney-General to the High Court for orders that property owned or controlled by designated entities be forfeited to the Crown (Section 55).

White supremacist and right-wing extremist groups are more challenging to designate as terrorist entities

6. Identity-Motivated Violent Extremism, including white supremacy and right-wing extremism, is one of the two largest types of violent extremism and terrorism in New Zealand. This is not, however, reflected in the number of entities that have been designated under the TSA.
7. Of the twenty entities designated under New Zealand's domestic legislation, the individual responsible for the 15 March 2019 terrorist attack on Christchurch mosques is the only white identity extremist designated under the TSA. No entities associated with extremist right-wing politics or ideology have been designated.
8. While evidence indicates that violent right-wing extremism is growing both trans-nationally and within Five-Eyes countries, it can be challenging to designate white identity extremist

groups as terrorist entities. There are contemporary difficulties that arise when evaluating whether groups meet the tests for designation. In particular, the lack of a singular leader and organisational structure often means that attempts to link the actions of members of an Identity-Motivated Violent Extremist to a group are unsuccessful. This challenge is in part because the legislative regime was designed in response to Al-Qaeda terrorism in the aftermath of 9/11 and hasn't kept pace with changes in terrorism.

9. The Terrorism Designation Working Group (TDWG) has considered several groups against the legislative criteria in the TSA. To date, The Base and The Proud Boys are the only candidate entities regarded to have carried out a qualifying terrorist act under New Zealand law. How the proposed groups meet the required criteria is discussed below.

The Base and The Proud Boys meet the criteria for designation

10. Section 6(a) [REDACTED] SIB considers that The Base and The Proud Boys meet these criteria for designation.
11. The paragraphs below, and evidence found in the attached Statements of Case (Attachments A and B), analyse these criteria in more detail. The Statements of Case have been prepared by New Zealand Police, with input from the TDWG.

Legislative Criteria

12. Section 22 of the TSA requires that the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.
13. Section 5 of the TSA defines a 'terrorist act' as an act intended to cause one or more outcomes, including, for example, death or serious injury with the intention of intimidating a civilian population, or coercing a government or international organisation to do or abstain from doing any act, and are carried out for one or more purposes, that are or include, advancing an ideological, political or religious cause.¹
14. For the purposes of designating an entity as a terrorist, Section 25 provides that the "carrying out" of a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not.

The Base

15. The Base is a neo-Nazi, accelerationist², paramilitary, survivalist group seeking to bring about the collapse of the United States (US) Government with an aim to establish fascist and/or white supremacist rule. The initial membership formed in mid-to-late 2018 during a recruitment drive by Russia-based US Citizen Rinaldo Nazzaro.

¹ The Terrorism Designation Working Group assessed that The Base and The Proud Boys met the legislative criteria prior to the passing of the Counter-Terrorism Legislation Bill on 4 October 2021. Consequently, both groups met the higher *mens rea* threshold, which required intention to 'induce terror in a civilian population' or to 'unduly compel or force a government or an international organisation to do or abstain from doing any act'.

² Accelerationist groups believe that modern societies, typically Western liberal democracies, are corrupt and on the verge of collapse. They use specific destabilising activities, such as terrorist violence, to 'accelerate' their demise.

16. The Base significantly radicalised in 2019, where members were pressured to attend meet-ups and 'hate camps', train, acquire weapons, and prepare for a forthcoming race war. Between 2019 and 2020, members were linked to a series of ideologically-motivated direct actions and harboured other members from authorities.
17. The Base made two interrupted efforts to conduct terrorist activity in the Eastern US in early 2020, where several members were arrested.
 - a) The first intended attack was the planned assassination of an anti-fascist (Antifa) activist couple in Georgia, US. Here members extensively planned and prepared to murder individuals perceived as enemies of The Base. These acts were intended to "send a message" and induce terror in Antifa supporters.³
 - b) The second was an intended attack on a gun rights rally in Virginia, US, where members extensively planned and prepared to shoot and kill civilians and police officers. This attack was intended to spark "civil war".⁴
18. More detail on how the actions undertaken by The Base satisfy the TSA designation criteria can be found in the Statement of Case at Attachment A.

The Proud Boys

19. The Proud Boys is a group of western chauvinist extremists, who exhibit deep-seated misogyny. The Proud Boys were founded 2016 and have adopted a crypto-fascist⁵ approach to increase their appeal to a broader audience of American men.
20. The Proud Boys, who are self-described as 'patriots', have repeatedly used rallies and protests as a means to intervene in public events and raise the profile of the group. They uphold violence against opponents as an acceptable solution to solving political disputes and recognise and reward members who successfully harm ideological opponents (especially Antifa).
21. On 6 January 2021 the US Capitol Building (the Capitol) in Washington D.C. was assaulted and breached by a large mob as elected representatives attempted to certify the election of Joseph Biden as President. While several militia groups attended, at key points in the assault it was the Proud Boys who planned in advance to undertake violent activities, incited crowds, coordinated attacks on law enforcement protecting the Capitol, and who instrumentally led non-members into positions where they could break into the Capitol and threaten US elected representatives.⁶
22. The Proud Boys' use of violence with intent to cause the death or serious bodily harm of people, including political figures, for the purpose of preventing the proper functioning of democratic government, in opposition to what they perceive as the liberalisation and diversification of US society, meets the threshold for designation under the TSA. The exception for acts of protest, advocacy, or dissent in the definition of terrorist act does not apply, as the violent acts on 6 January 2021 (from which the requisite ideological/political

³ Discussion begins in paragraph 53 of the Statement of Case at Attachment A, starting at page 10.

⁴ Discussion begins in paragraph 63 of the Statement of Case at Attachment A, starting at page 12.

⁵ Crypto-fascism is a tactic where an extremist group deliberately conceals their fascist worldview in order to evade and/or minimise detection by 'normal' people and authorities, to minimise the severity of the repercussions of a group's actions, and to provide plausible deniability to members.

⁶ Discussion begins in paragraph 74 of the Statement of Case at Attachment B, starting at page 14.

purpose and intent can be inferred) went further than protected protest, advocacy or dissent.

- 23. More detail on how the actions undertaken by The Proud Boys satisfy the TSA designation criteria can be found in the Statement of Case at Attachment B.

Section 6(a) [Redacted]

- 24. Section 6(a) [Redacted]

Section 6(a) [Redacted]

- 25. Section 6(a) [Redacted]

- 26. Section 6(a) [Redacted]

Section 6(a) [Redacted]

Section 6(a) [Redacted]

Section 6(a) [Redacted]

Section 6(a) [Redacted]

Section 6(a) [Redacted]

Released under the Official Information Act 1982

Section 6(a)

Section 6(a)

30. Section 6(a)

31. Section 6(a)

32. Section 6(a)

Section 6(a)

33. Section 6(a)

34. Section 6(a)

Other considerations

The first Identity-Motivated Extremist groups designated in New Zealand

- 35. There will be domestic and at least some international interest in the designation of The Base and The Proud Boys. These designations are noteworthy as they will be the first white identity extremist groups designated as terrorist entities in New Zealand. The Christchurch terrorist is the only other designated individual with a white identity extremist ideology.
- 36. Of our Five Eyes partners, only Canada has designated both The Base and The Proud Boys as terrorist entities and The Base has been designated by the United Kingdom.
Section 6(a) Pending your agreement to designate, officials will advise Five Eyes partners of our intent to designate these groups.
- 37. Following the New Lynn Attack on 3 September 2021, it can be assumed that there will be enhanced domestic media interest on terrorism developments generally. A media package will be prepared for you if you decide to designate the groups as terrorist entities.

The condemnatory value of the designation of white identity extremist groups

- 38. As indicated in paragraph 8, it can be challenging to designate white identity extremist groups as terrorist entities. The Base and The Proud Boys are the only candidate entities regarded to have carried out a qualifying terrorist act under New Zealand law.

Section 6(a)

Section 6(a)

40. The two attached statements of case reference a range of ideologies held by The Base and The Proud Base that are currently also motivating a range of white identity extremist attacks worldwide. While they are included as a specific requirement for designation, the statements of case will likely provide public condemnatory value against the types of violent extremist views they represent.

Engagement with international partners

Section 6(a)

Section 6(a)

Risks

Border and enforcement concerns

Section 6(a)

44. Section 6(a)

45. In New Zealand there is no discrete offence of membership in a terrorist entity. Under section 13 (1)(a) of the TSA, participation in a designated terrorist entity is a crime, but the offence requires that participation be for the purposes of enhancing the ability of the entity to carry out one or more terrorist acts. Therefore, any person known to be a member of either The Base and The Proud Boys' would not be subject to law enforcement action unless specific evidence was available to warrant it.

Judicial Review, and revocation

46. Designations are subject to judicial review under section 33 of the TSA, which can be triggered by a broad range of people. This includes a member of either group were the group designated, a lawyer on their behalf, or by a third party.

- 47. Likewise, a party with an interest in the designation or either entity itself could request revocation of the designation almost immediately after the gazetting of the Prime Minister's decision.
- 48. Section 6(a) [REDACTED] requirement to publicly notify the designation, increases the likelihood that group members will become aware of the designation. It may also increase the likelihood that an interested party would apply for judicial review or revocation.

Requirement to consult

- 49. Section 22(4) of the TSA requires you to consult with the Attorney-General before designating an entity for the first time. A draft letter to the Attorney-General is at Attachment C, seeking his consideration of the proposed designations.

Next Steps

- 50. Once the Attorney-General has provided feedback, DPMC will provide you with a final briefing package, which will include the necessary paperwork for finalising the designation.
- 51. The package will also include a media statement and Q&A, to support any queries received. This material will provide a succinct narrative outlining the Government's rationale for designating The Proud Boys and The Base at this time and will also include messaging to Call partners and the general public.

Attachments:		
Attachment A:	Unclassified	Statement of Case to designate The Base as a Terrorist Entity
Attachment B:	Unclassified	Statement of Case to designate The Proud Boys as a Terrorist Entity
Attachment C:	Unclassified	Letter to Attorney-General

Briefing

Designation of The American Proud Boys and The Base as terrorist entities

To: Rt Hon Jacinda Ardern
Prime Minister

Date	14/06/2022	Priority	Routine
Deadline	24/06/2022	Briefing Number	DPMC-2021/22-2290

Purpose

This briefing seeks your agreement to designate The American Proud Boys and The Base and as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA).

Section 9(2)(h)

Recommendations

On behalf of the Security and Intelligence Board, I recommend that you:

1. Section 9(2)(h)
2. Section 9(2)(h)
3. Section 6(a)
4. **Agree** to designate The American Proud Boys as a terrorist entity under the Terrorism Suppression Act 2002, and **sign** the letters to the Commissioner of Police and the Intelligence and Security Committee (Attachment B and D).

YES / NO

5. **Agree** to designate The Base as a terrorist entity under the Terrorism Suppression Act 2002, and **sign** the letters to the Commissioner of Police and the Intelligence and Security Committee (Attachment C and D). **YES/NO**

Tony Lynch Chair, Security and Intelligence Board	Rt Hon Jacinda Ardern Prime Minister
...../...../2022/...../2022

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Tony Lynch	Chair, Security and Intelligence Board	Section 9(2)(a)	✓
Katie Reid	Senior Policy Advisor, National Security Group		
Sheridan Webb	Policy Advisor, National Security Group		

Minister's office comments:


- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Designation of The American Proud Boys and The Base as terrorist entities


Purpose

1. This briefing seeks your agreement to designate The American Proud Boys and The Base and as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA).


Section 9(2)(h)




Section 9(2)(h)



Section 9(2)(h)



Sections 6(a) and 6(b)(i)



5. This designation of The Proud Boys is specific to the United States chapter. As noted in our previous advice, this is consistent with other geographic-specific terrorist designations.

6. In the amended SOC, officials have taken the opportunity to rename the group “The American Proud Boys” and explicitly explain why this designation is specific to United States. Sections 6(a) and 6(b)(i)

[Redacted]

7. Sections 6(a) and 6(b)(i) the following paragraph entitled “Proud Boys in other countries”
Sections 6(a) and 6(b)(i)

[Redacted] s found at paragraph 50 of the SOC.

“In addition to the ‘core’ Proud Boys chapters operating in the United States of America, Proud Boys organisation has also been observed in Canada and Australia. While these chapters adhere to Proud Boys ideology, they are considered to be separate entities to The [American] Proud Boys. This is because while Tarrio and other current leaders of the APB have influence in the American chapters, no credible direct link or coordination between chapters in Canada, Australia, or elsewhere has been observed.”

Section 9(2)(h)

Section 6(a)

[Redacted]

Designation of The Base

10. The SOC and supporting detail for The Base was considered by the Attorney-General to meet the requirements of the TSA when it was considered in March 2022. Accordingly, no changes have been made to the SOC for The Base, and this entity can now also be officially designated and publicly announced.

Next steps

11. Officials now seek your decision to designate The American Proud Boys and The Base as terrorist entities under Section 22 of the TSA. If you agree to designate The American Proud Boys and/or The Base, you are required to sign the appropriate enclosed letter(s)

INTS-35-1745

to the Police Commissioner to finalise the process (Attachments B and C). Additionally, a letter is attached to advise the Intelligence and Security Committee of your decisions (Attachment D). Although this is not legally required, we recommend you advise them due to the high-profile nature of the proposed designations.

12. A draft media statement is provided at Attachment E to support you when your decision is made public. We recommend you issue this media statement on the same day as notification is published by the Commissioner of Police in the New Zealand Gazette. The Department of the Prime Minister and Cabinet's communication team will liaise directly with your office to provide further support.

Section 6(a)



14. No further action is required if you decide not to designate a group as a terrorist entity. If you wish you to consider a group again in future, the process will have to be completed again.

Attachments:	Classification	
Attachment A:	Unclassified	Revised Statement of Case to designate The American Proud Boys as a terrorist entity
Attachment B:	Unclassified	Letter to the Commissioner of Police, confirming the designation of The American Proud Boys.
Attachment C:	Unclassified	Letter to the Commissioner of Police, confirming the designation of The Base.
Attachment D:	Unclassified	Letter to the Intelligence and Security Committee, advising of the designation of The American Proud Boys and The Base.
Attachment E:	Unclassified	Draft Media Statement

Briefing

Decision to Designate The Base and The Proud Boys as terrorist entities

To: Rt Hon Jacinda Ardern, Prime Minister

Date	28/03/2022	Priority	Routine
Deadline	8/04/2022	Briefing Number	DPMC-2021/22-1614

Purpose

This briefing seeks your agreement to designate The Base and The Proud Boys as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA), following advice from the Attorney-General.

Recommendations

On behalf of the Security and Intelligence Board, I recommend that you:

- Note** the Attorney-General's support for designating The Base and The Proud Boys as terrorist entities under the Terrorism Suppression Act 2002;

Section 9(2)(h)


Section 9(2)(h)


Section 9(2)(h)


- Agree** to designate The Base as a terrorist entity under the Terrorism Suppression Act 2002, and **sign** the letter to the Commissioner of Police (Attachment C). YES / NO
- Agree** to designate The Proud Boys as a terrorist entity under the Terrorism Suppression Act 2002, and **sign** the letter to the Commissioner of Police (Attachment D). YES/NO

<p>Tony Lynch Chair, Security and Intelligence Board</p>
<p>...../...../2022</p>

<p>Rt Hon Jacinda Ardern Prime Minister</p>
<p>...../...../2022</p>

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Tony Lynch	Chair, Security and Intelligence Board	Section 9(2)(a)	✓
Katie Reid	Senior Policy Advisor, National Security Group		
Sheridan Webb	Policy Advisor, National Security Group		

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by
Minister
- Overtaken by
events
- Referred to



Released under the Official Information Act 1982

Decision to Designate The Base and The Proud Boys as terrorist entities

Purpose

1. This briefing seeks your agreement to designate The Base and The Proud Boys as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA), following advice from the Attorney-General.

Background

2. On 4 November 2021, you received advice from the Security and Intelligence Board (SIB) which proposed that you designate The Base and The Proud Boys as terrorist entities under Section 22 of the Terrorism Suppression Act 2002 (TSA). The proposals are noteworthy because, if designated, they would be the first identity-motivated violent extremist groups designated as terrorist entities in New Zealand.
3. You considered the **Section 6(a)** risks in designation for both proposed groups with the above SIB advice.
4. Section 22(4) of the TSA requires you to consult with the Attorney-General before designating an entity for the first time. On 15 November 2022, you wrote to the Attorney-General to consult him on the proposed designations.
5. On 18 March 2022, the Attorney-General wrote to you to indicate his support for the proposed designations **Section 9(2)(h)**

The Attorney-General supports the designation of The Base as a terrorist entity

6. The Base is a neo-Nazi group based in the United States that seeks to establish fascist and/or white supremacist rule. In 2020, United States Police interrupted the planning of attempts to assassinate ideological enemies and conduct an accelerationist attack at a gun-rights rally.

7. **Section 9(2)(h)**

Section 9(2)(h)

8. As you are aware, to be designated as a terrorist entity, Section 22 of the TSA requires the Prime Minister to believe on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.

Section 9(2)(h)

10. The definition of a terrorist act is found in Section 5(2) of the TSA, which sets out a three-stage test relating to intention. Each element of the test is required to be met for an act to be considered a terrorist act. The three components include:
- The act is intended to cause one or more “outcomes”. The section’s listed outcomes include, for example, death, serious injury, or the destruction of, or serious damage to, property of great value or importance; and
 - The act is carried out with the intention of intimidating a population OR coercing a government or international organisation to do or abstain from doing any act; and
 - The act is carried out for the purpose of advancing an ideological, political or religious cause.
11. Section 5(5) of the TSA provides that the fact a person engages in any protest, advocacy or dissent is not, in itself, a sufficient basis for inferring any of the three components outlined in a-c in paragraph 8. This is because a protest is inherently designed to coerce a government to do or not do something. Something more than protest, and even violent protest, is necessary to constitute a terrorist act.
12. Section 5A of the TSA provides that the “carrying out” of a terrorist act can include an attempt, planning or other preparations, and/or a credible threat to carry out the act, whether it is actually carried out or not.

Section 9(2)(h)

13. The Proud Boys is a group of western chauvinist, white ethno-nationalist, crypto-fascist¹ extremists who are opposed to the liberalisation and diversification of the United States’ society. They endorse and reward the use of violence to further their political aims and have repeatedly used rallies and protests to intervene in public events.
14. The event that forms the basis of the Statement of Case is the 6 January 2021 assault on the United States Capitol Building and the deliberate attempt to halt the certification of the presidential vote results.

Section 9(2)(h)

¹ Crypto-fascism is a tactic where an extremist group deliberately conceals their fascist worldview in order to evade and/or minimise detection by ‘normal’ people and authorities, to minimise the severity of the repercussions of a group’s actions, and to provide plausible deniability for members.

Section 9(2)(h)

Section 9(2)(h)

Section 9(2)(h)

18. Section 9(2)(h)

The key facts include:

- a. Prior to the 6 January event, members of The Proud Boys:
 - i. Repeatedly stated their intention to weaponise, utilise and enable the anger of the 'Stop the Steal' movement to halt the certification of the presidential vote results;
 - ii. Encouraged members to attend the 'Stop the Steal' event and specifically stated an intention to conduct violence; and
 - iii. Discussed online the things they hoped non-Proud Boys member would do at the event (including burning the city down and killing police).
- b. During the event, members of The Proud Boys:
 - i. Coordinated non-lethal attacks on security and law enforcement protecting the Capitol and led non-Proud Boys members into positions where they could threaten, and potentially harm or kill, US elected representatives; and
 - ii. Appear to have been part of a crowd demanding Police bring Mike Pence to them and in which members of that crowd chanted "Hang Mike Pence" while moving through the building looking for him.
- c. Following the event, a witness for the Federal Bureau of Investigation gave evidence that members of The Proud Boys said they would have killed anyone they got their hands on, including Nancy Pelosi and Mike Pence.

Section 9(2)(h)

Section 9(2)(h)

Designation is important to address the under-representation of identity-motivated extremist groups sanctioned under the TSA

21. Identity-Motivated Violent Extremism, including white supremacy and right-wing extremism, is one of the two largest types of violent extremism and terrorism in New Zealand. However, the contemporary challenges in applying a legislative regime that has not kept pace with terrorism developments have resulted in Identity-Motivated Violent Extremists being under-represented in the number of entities designated under the TSA.

22. There has been a general recognition (including amongst New Zealand's partners) that the designation of identity-motivated entities needs to keep pace with ongoing terrorism trends. This has also been noted in the United Nations system. On 19 January 2022, a joint communication from eight United Nations Human Rights Council Special Procedures² specifically noted that the New Zealand Government had only designated one such entity: the Christchurch terrorist.

23. Since our previous advice,³ Australia has formally added The Base to its national terrorist listings. Section 6(b)(i)

This designation of The Proud Boys is specific to the North American chapters, and this will be made clear in media reporting Section 6(a)
Section 6(a)

24. In the United States, the leader of The Proud Boys, Henry Enrique Tarrio, was indicted on a non-terrorism-related conspiracy charge in March 2022 for his role in coordinating The Proud Boys' plan to assault the Capitol Building, and a number of The Proud Boys leaders remain imprisoned pending trial. The United States Government has not elected to prosecute offending members of The Proud Boys under terrorism legislation, however this does not restrict you in making your decision on designation, given the Attorney-General has advised that the definition of terrorism has been met under New Zealand legislation. Section 6(a)

² Special Procedures are individual independent human rights experts, or groups of such experts, who report and advise on human rights.

³ Section 9(2)(h)

25. The designations of The Base and The Proud Boys are noteworthy as they will be the first identity-motivated extremist groups designated in New Zealand. This step is important to not only demonstrate New Zealand's continued condemnation of terrorism and violent extremism in all their forms internationally, but it will signal ongoing commitment to addressing inequities in the system to the affected Christchurch, and wider, communities.

Risks

26. As noted in previous advice, the key risks that emerge from these proposed designations relate to judicial review and revocation, and border and enforcement concerns.

Judicial review and revocation

27. Designations are subject to judicial review under section 33 of the TSA, which can be triggered by a broad range of people. This includes a member of either designated group, the group itself, or by a third party with sufficient interest in the designation.

28. Likewise, a party with an interest in the designation or either entity itself could request revocation of the designation almost immediately after the gazetting of the Prime Minister's decision

Border and enforcement risks

Sections 6(b)(i) and 6(c)

30. In New Zealand there is no discrete offence of membership in a terrorist entity. Under section 13(1)(a) of the TSA, participation in a designated terrorist entity is a crime, but the offence requires that participation be for the purposes of enhancing the ability of the entity to carry out one or more terrorist attacks.

Section 9(2)(g)(i)

Section 9(2)(g)(i)

Next steps

- 32. If you agree to designate The Base and/or The Proud Boys as terrorist entities under Section 22 of the TSA, you must sign the appropriate enclosed letter(s) to the Police Commissioner to finalise the process (Attachments C and D).
- 33. A draft media statement is provided at Attachment E to support you when your decision is made public. We recommend you issue your media statement on the same day as notification is published by the Commissioner of Police in the New Zealand Gazette. The Department of the Prime Minister and Cabinet's communication team will liaise directly with your office to provide further support.
- 34. Section 9(2)(h) [Redacted]
- 35. Section 6(a) [Redacted]
- 36. No further action is required if you decide not to designate a group as a terrorist entity. If you wish you to consider a group again in future, the process will have to be completed again.

Attachments:	Classification	
Section 9(2)(h)		
Attachment C:	Unclassified	Letter to the Commissioner of Police, confirming the designation of The Base.
Attachment D:	Unclassified	Letter to the Commissioner of Police, confirming the designation of The Proud Boys.
Attachment E:	Unclassified	Draft Media Statement