



المجلس الإسلامي لولاية نيوساوث ويلز

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Submission No: 809
 Date Received: 7-4-05
 Secretary:

Ms. Margaret Swieringa
 Parliamentary Joint Committee on ASIO, ASIS and DSD
 Parliament House
 Canberra ACT 2600

Dear Ms. Swieringa

Re: Review of Division 3 Part III of the ASIO Act 1979 - Questioning and Detention Powers

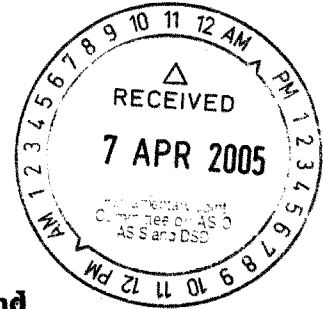
We would like to thank the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) for the opportunity to participate in the review of the ASIO Act ('the Act'). We have had the benefit of reading the submission of the Australian Muslim Civil Rights Advocacy Network ('AMCRAN') and we specifically endorse their recommendations to the Committee.

The Islamic Council of New South Wales is a community-based organisation which was established in 1976 to address and respond to the settlement and religious educational needs of the first generation of Australian Muslims. As a peak state umbrella body representing over 20 Muslim organisations from diverse ethnic, cultural and linguistic backgrounds living in NSW, the Council's objectives are to facilitate the integration and participation of Australian Muslims into Australia's culturally and religiously diverse society through the promotion of education, training and community development, community relations and harmony.

Through community education, interaction and dialogue between all stakeholders, the Council works in collaborative partnership with a view to enhance, cultivate and facilitate the coordination of vital programs and services that respond to the diverse and changing needs of the Australian Muslim community.

Impact of the Legislation on the Muslim community

As a peak Muslim body in NSW, we work with members of the Muslim community as well as other Muslim organisations closely on a number of issues, and we submit that the effect of the anti-terrorism laws on the community is unprecedented. Many of our members have expressed anger and frustration at the anti-terrorism laws which they perceive are being used against the Muslim community.



The Muslim community in Australia is in a particularly vulnerable position at present. There is a mounting feeling of fear within the Muslim community, many of them feeling helpless over the government's perceived focus on Muslims.

The Human Rights and Equal Opportunity Commission report *Isma*¹ found that "Several consultation participants felt the Muslim community in Australia had been unfairly targeted in investigations by ASIO officers and Australian Federal Police officers following the Bali bombings in October 2002."² The report also documented concern about the treatment of Muslims in counter terrorist investigations. In addition the report documented that "some consultation participants believed their human rights were at risk of violation under these new laws"³.

During consultation with nine young people in Adelaide, four of the participants reported being questioned by ASIO in their homes following the wake of the January 2002 national security public campaign, and believed this was done solely on the basis that they are Muslim.

"There is a fear in the community that one day you will wake up and your husband will be taken away under the new ASIO laws. The way the government treated people who underwent the raids was shocking..."⁴

Our regular consultations with the Muslim community confirm the findings of the report and identified some startling concerns. There is a general perception within the Muslim community that the terrorism-laws are "100% directed at Muslims"; there is some underlying assumption that Muslims are not wanted, that they are targeted by these laws, and that they are being used as scapegoats.

Whether the perception is justified or not, these laws reinforce it, and to an observer it certainly appears to be the case, as so far only Muslims have been targeted by these laws. In Australia, all of the organisations that have been proscribed as terrorist organisations have some link to the Islamic faith. This is in stark contrast to the situation in the United States where only 22 out of the 37 proscribed organisations are connected to Muslims. In view of the wide range of offences associated with 'terrorist organisations', we submit that most, if not all, of ASIO's investigations will involve members of the Muslim community.

This is further confirmed by our regular contact with members of the Muslim community. In our contacts, we have heard many accounts of members of the Muslim community being approached by ASIO officers for questioning. Many of these people do not disclose any details, but our general observation is that they are confused or nervous about the prospect of being questioned by 'officials', as they do not understand what is involved.

In some cases where they advise the ASIO officers that they would prefer not to speak to them, they are often told that the laws authorise the issuing of warrants (section

¹ Human Rights and Equal Opportunity Commission, "*Isma - Listen: National Consultations on eliminating prejudice against Arab and Muslim Australians*", 2004.

² *Isma* at 67

³ *Isma* at 68

⁴ *Isma* at 67

34D of the Act) which would compel them to cooperate. These statements are sometimes accompanied by the further explanation that under a warrant, the person's passport would be confiscated (section 34JBA) in the form of a veiled threat. We submit that a person's cooperation under these circumstances could more closely be identified as cooperation under duress, and that the use of the laws in such a manner should not be allowed.

Secrecy Provisions

Under the Act, a person detained pursuant to an ASIO warrant is prohibited from talking to anyone about the fact that a warrant has been issued against them (during the period of the warrant), or disclosing any 'operational information' within a two-year period. They can not even tell their spouse or their employer. If they do so within a two-year period, then they are liable to five years in prison.

We submit that this is likely to have an extremely debilitating and destabilising effect, especially for someone who was not even involved in terrorism. It is extremely impractical that a person may disappear for up to a week and not be able to tell anyone where he or she was and still maintain 'normal' social or working relationships.

In addition, we are most concerned that these secrecy provisions will hamper the work that the Islamic Council and other Muslim welfare organisations are able to provide. It is our mission to assist members of the community in times of uncertainty or instability such as would be caused by detention under the Act, and to provide support to them and their family members. Yet how can we possibly provide assistance to our members when they are prohibited from approaching our organisation or anyone for help, counselling or other assistance?

We submit that the people who have been questioned by ASIO or the police, whether or not under an ASIO Act warrant, and are more fearful of being involved in any social activity. As a result, they are more fearful for the safety of their children, discouraging them from engaging in social activities, or any thing that can be seen as political. This is an alarming phenomenon which we have felt helpless to improve, since the secrecy provisions effectively discourage these people to openly discuss their experiences.

In addition, many Muslim organisations may not in a position to participate in law-reform process such as this because the laws are complex. It has been extremely difficult to keep up to date with the laws, or to know how we could get our views across. This has resulted in these laws, which are mainly aimed at Muslims, being introduced with us having little opportunity to provide input and comments. We are not adequately resourced to hire lawyers or consultants to explain these laws or to lobby against them, and hence a report that provides an overview of the laws would be extremely useful for us to know how to combat the problems.

Withdrawal of passport

Under the Act, if ASIO applies for a warrant, a person's passport is taken away immediately. We submit that this is an extremely broad power that may be invoked by ASIO to prevent travel and may be based on very thin evidence. In addition, as discussed above, we are concerned that this provision will be used specifically as a means of coercing members of the community to cooperate where no warrant has been issued for their questioning or detention.

The ASIO detention powers build on the broad and discretionary definition of terrorism

The Act refers to the broad definition of terrorism in the Criminal Code. It has been suggested that some of the activities that may be classed as terrorist acts under this definition include activities associated with legitimate freedom movements that oppose tyranny (for example, organisations like the African National Congress in South Africa).

The breadth of this definition means that many legitimate activities may be covered by the Criminal Code definition of terrorist activity. Furthermore, this legislation gives ASIO, other government agencies, and the government a lot of discretion, which means they can target specific communities or groups based on, for example, religion or race. This makes the laws potentially divisive and extremely discriminatory in its application.

Detention is not limited to people directly suspected of involvement in terrorism

The Act does not require someone to be suspected of involvement in terrorism either directly or indirectly before they may be detained or questioned. This means that people who are not involved in terrorism may be held because they have "information". Those held could include innocent people who had no involvement or intention of involvement of a terrorist act but who are nonetheless deemed "guilty" by (inadvertent) association. A free society should not permit the detention of a person who has no involvement with terrorism.

Duration of detention and questioning is extremely long

Under the Act, people can be detained for up to 7 days and questioned for up to 48 hours. In ASIO's annual report 2003-2004, there was one person who was questioned for more than 42 hours. As mentioned above, the person being questioned does not even have to be involved or suspected of involvement with terrorism.

On the other hand, when the police reasonably suspect someone of having committed a crime, they may detain the person for a maximum of 12 hours without charge or for 20 hours in terrorism related cases. It appears excessive that ASIO may detain a

person who is not even suspected of having committed a crime for 8 times as long the police.

Proving you don't know or don't have something

When being questioned under an ASIO warrant, you no longer have your common law right to silence, and you *have to* answer all questions put to you. If you do not answer, then you may go to prison for five years. A further grave concern is that it is up to the detainee to prove that he or she doesn't know something. It is very difficult – if not impossible - to prove that you don't know something. The detainee, for example, might have had no knowledge of an issue until ASIO raised the matter or alternately may have had a fleeting or superficial knowledge of the matter or may have genuinely forgotten some details. In summary it is very difficult – if not impossible in these circumstances - to prove that you do not have or know something.


Presence of lawyers

It is a very long-established principle that a person should be permitted to have a lawyer there to assist him/her particularly when there are complex legal issues with severe consequences. The terrorism and ASIO related laws are very complex, with more than 20 pieces of legislation and over 200 pages of law. A lay detainee clearly needs a lawyer to assist him/her in this situation, to act as an advocate and to provide clear legal advice and information. However, under the Act, ASIO may question the detainee in the absence of a lawyer; and even if a lawyer is present he or she may be replaced if they are being "unduly disruptive". It is extremely unfair and one sided that ASIO may have a team of lawyers while the detainee may not even have the assistance of a single lawyer.

Conclusion

As leaders of the Muslim community, we believe that the anti-terror laws are tearing at the fabric of society and are doing more harm than good in setting Muslims apart from the wider community. For the reasons outlined above, we believe that there are fundamental problems with the detention and questioning powers of the Act. We urge the committee to excise Division 3 of the Act in order to minimise the infringements against the civil liberties of all Australians.

Yours sincerely,


Ali Roude
Islamic Council of New South Wales

7th April, 2005