

7 October 2014

**Re: Parliamentary Joint Committee on Intelligence and Security:
Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014**

Dear Committee,

The Islamic Council of Victoria (ICV) is a not-for-profit, peak body organisation representing Muslims in Victoria. We write to provide feedback on the proposed Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014. Anti-Terrorism measures have been used almost exclusively on the Muslim community even though they claim not to target any particular group. They raise a host of concerns for Australian Muslims of all ethnicities and backgrounds.

While the ICV believes there should be measures which address terrorism and radicalisation to keep all Australians safe, we feel that the proposed measures are counterproductive to this aim and in fact could be a source of discontent and marginalisation for members of the Australian Muslim community. Many of these laws are so intrusive and rely on such a low level of evidence as a basis to target citizens that it is not difficult to see how Australians who are subjected to these laws could encounter them as a provocation to act out.

The following feedback is based on the ICV's insight into the Muslim community and understanding of dealing with members of the community who already feel marginalised, singled out and targeted by their politicians, their media and even the wider community. We feel that these measures do not address the drivers and the social conditions which lead to terrorism.

We thank the committee for considering our submission. Please feel free to contact myself directly on [redacted] if you require any further information or clarification on the points raised.

Regards,

Nail Aykan
General Manager

Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014

1- Remaining in a 'declared zone'

This measure criminalises the act of travelling and remaining within a zone designated by government as being illegal to travel to. It therefore subjects anyone who falls within this scope, even if they are completely innocent of fighting with or supporting a terrorist group to prosecution where their sole act was to travel to perhaps visit a loved one, a dying family member or partner or perhaps tending to urgent business matters.

The ICV opposes this on the grounds that it strips a large section of Muslim community of the freedom of movement. In this respect, this law is discriminatory against the Muslim community because it could potentially deem many parts of the Middle East and other parts of the Muslim world which are currently experiencing a great deal of political turmoil as “no go zones”. This directly impacts large sections of the Muslim community who have family and other business in the region and who may need to travel to that region without wanting to be involved in any conflict or violence.

Recommendation:

Where the government is unable to demonstrate that a person travelling to any part of the world has engaged in violent or harmful behaviour, criminalising the mere presence of a citizen in any part of the world cannot be justified. The ICV recommends that the government reconsider submitting this measure to parliament.

2- Offences for 'advocating terrorism' and Amending the Definition of “Terrorist Act”

Many parts of the Muslim world, particularly the Middle East experience political and social volatility. This volatile climate continues to produce groups which have to take up armed struggle, in many cases to resist oppressive governments such as the Assad regime in Syria (factions of which Western nations such as the US supports) and the struggle against the occupation of Palestinian territory and Palestinian right to self-determination in the face of Israeli aggression. Many in the Muslim community support such movements and deem them to be legitimate forms of armed struggle.

The broad definition of “terrorism” and the way in which it is sometimes selectively applied to such groups is problematic in and of itself. In addition to this, the power of the Attorney General to list terrorist organisations without oversight and consistency exacerbates this problem. Broadening this definition to include “foreign incursions” and “treason” when Australia already has laws which deal with these further muddies the water on the issue of what can be considered terrorism and what should be considered legitimate resistance to oppression.

Criminalising the act of “advocating terrorism” adds another layer of complexity to this issue. The scope of what constitutes ‘advocating terrorism’ is unclear. What are the parameters of this act and what safeguards exist to ensure it doesn’t impinge on the right of a citizen to freedom of speech, the right to voice dissent and support legitimate armed struggle. If the government is to decide what legitimate armed struggle is and what terrorism is and which groups are considered

terrorists, then this measure could see to it that there are no voices of disagreement or debate on the subject for fear of prosecution.

Criminalising speech which promotes this or promotes support for this could place members of the Muslim community in a precarious position and could create a culture of conformity rather than a society with the ability and freedom to express critical thought and opinion.

Recommendation:

The ICV opposes these measures on the basis that it is likely to limit freedom of speech and thought and could deny citizens the ability to voice dissent and support for legitimate armed resistance against potentially oppressive governments both in the Middle East and in other parts of the world. It also stifles debate on the issue of terrorism.

Freedom of thought and opinion particularly the right to support legitimate political dissent are basic rights which should not be stripped from citizens. Given the vague scope of these measures, it is imperative that the government consider the limitations this will impose on our freedoms and our civil rights. The ICV recommends that such a measure not be considered by parliament in order to preserve our right to freedom of speech and thought.

3- Lowering the Threshold for Control Orders and Detention Orders to Mere “Suspicion”

The draconian and intrusive nature of control orders and detention orders has been of great concern to the Muslim community who have been the only community targeted by these measures since the measures were legislated in 2005. The degradation of fair legal processes which these measures pose to anyone subjected to them is alarming. The loss of civil liberties and freedoms as a result of this legislation as it currently stands has been disturbing for the Muslim community who was looking forward to an end to the ten year sunset clause which was due in 2015.

The government’s announcement to renew the sunset clause on these laws for another ten years has shattered hopes of regaining the procedural fairness which were lost, but also goes a step further in announcing that such orders can now be exercised as a result of mere “suspicion.”

The ICV has great concerns that subjecting Australian Muslims to these oppressive and draconian measures based only on suspicion will create anger, tension and discontent. Far from addressing radicalisation these measures can act as a source of radicalisation, provoking those subjected to such socially and legally repressive measures to act out.

The ICV is opposed to lowering the threshold of Control Orders and Detention Orders to being applied to citizens who are merely suspects without sufficient evidence to demonstrate a basis for exercising such draconian laws on any citizen.

Recommendation:

Where laws allow authorities to target individuals who authorities merely “suspect” as posing a threat to national security, they deny citizens basic freedoms and subject them to horrendous social conditions which come with detention and control orders. Control orders and detention orders as they currently stand should be repealed.

The ICV strongly recommends against further degradation and erosion of the social and legal rights of citizens by lowering the threshold of exercising these measures on citizens, based on mere “suspicion,” especially Australian Muslims who may already feel marginalised.

4- Lowering the Threshold for Police Arrest Powers to Mere “Suspicion”

The ICV opposes lowering the threshold for arrest to mere “suspicion” for the same reasons that it opposes control orders and detention orders. This measure lowers the legal standard of proof and erodes the rights of citizens to procedural fairness.

Recommendations:

The ICV recommends that the government abandon this measure as it does for control orders and detention orders.

5- Admission of Foreign Evidence

The ICV recognises that evidence obtained from overseas in particular nations which do not have sound and ethical practices in policing could undermine Australian standards for gathering evidence. The ICV further recognises that although this measure rules out evidence gained by torture, it is still possible for foreign evidence to be obtained by means of coercion that does not entail torture.

Recommendations:

The ICV opposes this measure as it does not sufficiently safeguard a high standard of evidence gathering and could ultimately water down evidence gathering processes. This could implicate a suspect who deserves due process based on evidence obtained legally and ethically. Where the government is unable to safeguard the standard of evidence gathering processes obtained through foreign countries, it should reconsider this measure.

6- Cancelling Welfare Payments of Persons of Security Concern

The ICV is extremely concerned that the welfare payments of citizens could be cancelled without evidence that these payments are being used to support criminal activity or funding terrorism.

The ICV is particularly concerned because such decisions can lead to severe consequences of poverty for the individual and his/her family where their visas or passports have been cancelled-

not due to any evidence of their involvement in terrorism or even support for terrorism. These harsh measures which seek to degrade the wellbeing of citizens and potentially their families- their children, go beyond reasonable action to address terrorism.

Not only is this an unreasonable way to address terrorism, but far more concerning is the societal ramifications of subjecting citizens and their families to poverty in this manner.

Recommendations:

Where the government is unable to provide evidence of the misuse of welfare funds in terrorism related activities, it should avoid causing unnecessary harm or subject citizens and potentially their families and children to poverty, which can lead to a range of other social and health conditions.

7- Cancelling Visas, Suspending Australian Passports and Seizing Foreign Passports

Such measures infringe on the rights of citizens to movement and to travel. The interests of national security which can be used to exercise this measure are too broadly defined, the evidence threshold too low to consider this a reasonable and warranted measure.

Many members of the Muslim community have felt targeted under these measures without sufficient cause or evidence that intention to travel is for the purposes of fighting in a foreign conflict or even the intention of travelling to a conflict zone.

Further, the Muslim community has experienced a double standard in government actions to cancel passports for Muslims wanting to go overseas to Syria or Iraq to perhaps assist with aid while ignoring the travel of Zionist Jews wishing to travel to Israel – a state which illegally occupies Palestinian territory with intention of fighting in a war against Gazans and has been accused of war crimes.

The additional measure to deny citizens information regarding the reason for the cancellation of their visa and suspension of their passport only further inflames the situation and frustration of a citizen affected by such a decision. It deprives them of the right to take action or recourse to reverse the situation where the citizen has been unfairly subjected to this measure.

Recommendation:

The ICV recognises that such measures, when applied unfairly to Australian Muslims can be a source of further marginalisation of an already marginalised group of people who may want nothing more than to visit a sick family member or a partner. The government needs to reconsider the way in which it seeks to curb radicalisation and ask itself if tough and unwarranted measures such as this- measures which clearly target the Muslim community will increase discontent and therefore perhaps be a cause for radicalisation. The government therefore needs to reconsider this approach and adopt an approach which deals with the source of radicalisation.

8- Border Security

The powers of Border Security/Customs Officers are unclear. In past weeks, members of the Muslim community have been targeted at airports and detained and questioned for hours by Border Security for no valid reason or risk to national security. Australian Muslims going about their business have felt particularly targeted by Border Security at airports based on their faith identity. Several members have missed flights and have endured financial setbacks to restore travel arrangements which were interrupted due to Border Security questioning. This, for the most part has been unwarranted and discriminatory in its targeting of Muslim travellers.

Recommendations:

The ICV is deeply concerned about this and recommends against any measures which further the ability of Border Security to detain travellers without evidence of any security risk. The ICV further recommends against allowing Border Security to detain travellers in a fashion which disrupts their ability to travel in a timely manner or in any manner which financially disadvantages travellers due to this disruption.

The ICV also strongly objects to the manner in which the Muslim community has been particularly targeted at airports for detention and questioning and urges the government to address this.

Sunset Clauses

The renewal of sunset clauses for control orders and detention orders and the application of a ten year sunset clause for arrest orders and “no go zones” is too long a duration to apply such intrusive measures which strip citizens of basic rights and fair legal processes.

The ICV finds it particularly unacceptable to criminalise travel for possibly a whole decade to parts of the world where citizens have loved ones that they need to see.

Recommendations:

Whilst the ICV does not support the renewal of detention orders, control orders or the concept of ‘no go zones’ the ICV would consider a more reasonable duration for these measures to be a maximum of two years.