

## Implications for the Muslim Community

4.1 Under Division 3 Part III of the ASIO Act, so far, there have been fourteen questioning warrants issued and no detention warrants. From the evidence taken during this review, it was argued strongly to the Committee that the anti-terrorist laws have had a significant, negative impact on Australia's Muslim community.

4.2 Mr Roude from the Islamic Council of New South Wales summed up the impact on the Muslim community when he said:

We want to live in a country where we have rights like any other people and where we are seen in a good light as Australian citizens, not always targeted and seen as possible threats to Australian security. This is the feeling at the moment. We are seen as possible terrorists. If you talk to members of the community, that feeling exists. We have to allay the fears somewhat.<sup>1</sup>

4.3 The Australian Muslim Civil Rights Advocacy Network (AMCRAN) stated:

There is little doubt that the Muslim community bears the brunt of the legislation; indeed, evidence of this is already apparent. At the time of publication, all people arrested under the legislation have been Muslim, and all of the 17 proscribed terrorist organisations are linked to Muslim organisations.<sup>2</sup>

4.4 The Equal Opportunity Commission of Victoria made the point in its submission, that anti-terrorism measures may be seen by some sections of the community as:

... justifying harsher treatment of groups more readily identified as the 'recipients' of those measures. Sadly, the brunt of hostility

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1 ICNSW transcript public hearing 6 June 2005, p. 44.

2 AMCRAN 2004, *'Terrorism Laws: ASIO, the Police and You'*, p. 6.

in this context has been borne by Australia's Islamic and Arab-speaking communities.<sup>3</sup>

4.5 In similar vein, the Islamic Council of New South Wales believed that 'the effect of the anti-terrorism laws on the community is unprecedented'.<sup>4</sup> The Australian Muslim community has suffered an increased level of race and religious vilification resulting from local and global events. At the hearing, the Council stated:

The Australian Muslim community need to feel protected and involved within the fabric of Australian society. The current ASIO laws and any proposed increase in powers will only act to reinforce anti-Muslim sentiments that are not in the best interests of a harmonious society.<sup>5</sup>

4.6 The Islamic Council of Victoria also believed that the legislation had a negative impact on the Muslim community:

... despite assurances to the contrary, it is a fact that any laws that increase the powers of a clandestine organisation such as ASIO in connection with this threat of terrorism have a particular and pronounced impact on the Australian Muslim community.<sup>6</sup>

4.7 Four specific areas of concern were identified from the many submissions and evidence given to the Committee in relation to the impact on the Muslim community, namely:

- The Act's impact on civil liberties and democratic rights;
- Lack of information about the Act;
- Apprehension in the Muslim community; and
- The perception that the Act specifically targets the Muslim community.

4.8 These are discussed below in detail.

## Impact on civil liberties and democratic rights

4.9 Many submissions and witnesses dealt with questions relating to civil liberties and democratic rights as they affect the whole Australian community and these are dealt with in Chapters 2, 3 and 5. However, only Muslim organisations have been listed as terrorist organisations and, so far, only members of the Muslim community have been subject to

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3 Equal Opportunity Commission of Victoria submission no.68, p. 10.

4 Islamic Council of NSW submission no.89, p. 1.

5 ICNSW transcript, public hearing 6 June 2005, p. 43.

6 ICV transcript, public hearing, 7 June 2005, p. 61.

questioning warrants. Therefore, the Muslim community feels most acutely restrictions to their democratic rights and civil liberties. Their concerns include such matters as freedom from discrimination, freedom of speech, a legal right against self-incrimination, freedom from fear and a right to seek assistance and support from the community. These concerns as they specifically affect Muslims are dealt with in this Chapter.

- 4.10 The National Association of Community Legal Centres (NACLC) raised the question as to whether these laws actually indirectly discriminate against the Australian Muslim community. NACLC pointed out that singling out one group could be discriminatory under the United Nations Convention on the Elimination of All Forms of Racial Discrimination. NACLC stated:

... the impact of these laws on Muslim and Arab communities in Australia ... may amount to indirect discrimination and, therefore, may be inconsistent with the Convention.<sup>7</sup>

- 4.11 The Islamic Council of Victoria (ICV) argued that many Australian Muslims have come from countries in which there is little respect for human rights and now they believe that their civil liberties are being eroded in Australia by non-disclosure and secrecy provisions in laws. For example:

... where a person who may not have committed any offence disappears for seven days. They cannot tell family or friends or religious leaders or employers. They cannot receive counselling for what would be a highly traumatic experience for fear of five years imprisonment.

- 4.12 The ICV submitted that the secrecy provisions should be repealed, stressing the social impact when persons are not permitted to speak about the traumatic experience of detention or questioning:

That level of secrecy – not being able to talk to religious leaders, counsellors or one's family – has a really debilitating effect on the community.<sup>8</sup>

- 4.13 The Islamic Council of New South Wales (ICNSW) was similarly concerned about its inability to provide assistance to the Muslim community owing to the secrecy provisions:

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

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7 NACLC transcript, public hearing 7 June 2005, p. 27.

8 ICV transcript, public hearing 6 June 2005, p. 70.

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. 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?<sup>9</sup>

- 4.14 The ICV also believed that the secrecy provisions removed an important mechanism by which ASIO is held accountable according to democratic principles. If the secrecy provisions are not to be repealed, the ICV requested that the Act be amended so that the onus for showing the necessity for nondisclosure be shifted to the prescribed authority:

The authority should make a case-by-case assessment of the necessity of nondisclosure of information on the basis that it is in the interests of national security.<sup>10</sup>

- 4.15 The absence of the right to silence was also of concern to the ICV which stated that this absence made the right to 'unfettered' legal advice and representation critical, given that:

... a number of criminal offences may flow as a result of the questioning. This right to access is all the more imperative in view of the fact that many Australian Muslims come from non-English-speaking backgrounds.<sup>11</sup>

## Lack of information about the Act

- 4.16 In its submission to the Committee, the Law Institute of Victoria (LIV) noted a general lack of information about the Act and commented that this lack of information:

... limits the capacity of organisations, such as the LIV, to provide informed comment on the operation, effectiveness and implications of ASIO's questioning and detention powers.<sup>12</sup>

- 4.17 The Federation of Community Legal Centres (FCLC) spoke of a number of examples which, it believed, illustrated the lack of available information on the laws. On one occasion it informed a member of the Muslim community in Victoria who was involved in sending charity money overseas that he should contact the Australian Federal Police and the Attorney-General's Department to disclose his activities.

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9 ICNSW transcript, public hearing 6 June 2005, page 42.

10 ICV transcript public hearing 6 June 2005, p. 70.

11 ICV transcript, public hearing 6 June 2005, p. 70.

12 LIV submission no. 82, p. 5.

- 4.18 The FCLC noted a 'real lack of factual, neutral information about the new legislation' and contrasted the lack of information about the anti-terrorism laws with changes to family law for which it has found 'reams of information'.<sup>13</sup>
- 4.19 In an attempt to address the lack of information on Australia's anti-terror legislation, the Australian Muslim Civil Rights Advocacy Network published, in conjunction with the NSW Council for Civil Liberties and the UTS Community Law Centre, an information booklet called *Terrorism Laws: ASIO, the Police and You*. AMCRAN is currently producing a second edition of the booklet, which will also be produced in Arabic, Bahasa Indonesia and Urdu.<sup>14</sup>
- 4.20 The Attorney-General's Department commented in its submission to the Committee that:
- In recognition of the importance of accurate information concerning Australia's terrorism laws, this Department provided comments on the Australian Muslim Civil Rights Advocacy Network booklet *Terrorism Laws: ASIO, the Police and You*. We understand that AMCRAN regarded our comments as constructive and will incorporate most of these comments into the second edition of the booklet.<sup>15</sup>
- 4.21 The (then) Director-General of ASIO, Mr Richardson, informed the Committee that ASIO had been co-operating and working with community groups to ensure there was dissemination of information about the Act. One option, currently being considered, is to 'disseminate information in more languages than we do'.<sup>16</sup>
- 4.22 The Chief Executive Officer of the Islamic Council of Victoria praised Mr Richardson for his 'integrity' and the 'measured and restrained way in which ASIO has, under his guidance thus far, exercised its powers under division 3'; however, Mr Gould stated:
- ... his presentation to the community merely served to highlight how vague the circumstances that could trigger these coercive powers really are. At the end of a significant period of questions the audience had no greater clarity on how division 3 operates in practice. It is important to reiterate that it is not a lack of

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13 FCLC transcript, public hearing 7 June 2005, p. 55.

14 AMCRAN submission no.107, p. 3.

15 AGD supplementary submission no.102, p. 22.

16 ASIO transcript, public hearing, 19 May 2005, p. 27.

understanding of these laws that creates fear and distrust in our community, but the laws themselves.<sup>17</sup>

- 4.23 ASIO accepted that the Muslim communities today are more concerned about ASIO's activities compared with prior to September 11 and ASIO stated that it was trying to address these concerns, but that:

... beyond a certain point our job is such that I think it would be naïve of us to assume that we would ever be the most popular organisation with everyone.<sup>18</sup>

- 4.24 Regarding attempts by the Australian Federal Police to keep the community informed, the Committee heard that Commissioner Keelty has been:

... very active in engaging senior members of the Islamic community around the country, ... trying to lay out exactly what our procedures are and why we are doing what we are doing. Each of our office managers around the country is required to have regular meetings with the Islamic community councils or their equivalents. They do that and they are establishing very good relations with those groups. We have also incorporated a range of material in our training courses, particularly for the people involved in the counterterrorism area but also more broadly on Islamic culture, society and religion.<sup>19</sup>

- 4.25 The Australian Federal Police saw a need to facilitate an understanding of why and how the AFP operated in the community on counter-terrorism and it, therefore, had a lot more formal and informal contact with members of the community, particularly the Islamic councils. The AFP stated:

... I think there is a greater level of understanding of what we are trying to achieve, that we are acting within the law and that we do have a job to do.<sup>20</sup>

## Apprehension in the Muslim community

- 4.26 Mr Richardson, gave evidence that he was not aware of any sentiment that the Act was creating fear within the Muslim community.<sup>21</sup>

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17 ICV transcript, public hearing 7 June 2005, p. 62.

18 ASIO transcript, public hearing 19 May 2005, p. 27.

19 AFP transcript, public hearing, 19 May 2005, p. 27.

20 AFP transcript, public hearing, 19 May 2005, p. 28.

21 ASIO transcript, public hearing 19 May 2005, p. 26.

- 4.27 However, the Committee heard from various Muslim organisations that, although ASIO has so far used its new powers responsibly, the Act had created widespread fear and suspicion in the Muslim community towards ASIO.<sup>22</sup>
- 4.28 The Federation of Community Legal Centres advised that the legislation ‘leads to genuine fear in the community’ because it does not clearly state how powers are to be exercised.<sup>23</sup> It is very ‘important that all legislation is very clear’ about what it does and does not allow.
- 4.29 It was the experience of the Federation of Community Legal Centres that the level of fear within Melbourne’s Muslim community was such that people would not attend information sessions about ASIO’s powers simply because they feared showing interest in anything to do with terrorism:
- There is no way for us to get information to or discuss these laws within those communities, which is a concern for us. ... we are all experiencing how the laws are impacting on people in the community from that particular background. ... With the people we have tried to engage, the fear is not about terrorism so much but about the impact the laws might have on them or their communities. This is coming straight from workers who work with people in the field.<sup>24</sup>
- 4.30 It has also been the experience of the National Association of Community Legal Centres in Sydney that:
- ... attendance at community legal centre public education forums has been low, and we have been informed that this is because of fear of and a reluctance to attend forums that focus on counter-terrorism.<sup>25</sup>
- 4.31 In its submission, the Attorney-General’s Department expressed its belief that:
- While lack of relevance to individual circumstances is a more likely factor in non-attendance at forums, if fear is a factor for some, it is more likely that misinformation about the legislation rather than its actual impact is the cause of the problem.<sup>26</sup>
- 4.32 Speaking about the breadth of ASIO’s powers under division 3 of part III of the ASIO Act, Mr Gould said that the uncertainty that pervades division
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22 FCLC transcript, public hearing, 7 June 2005, p. 45.

23 FCLC transcript, public hearing, p. 47.

24 FCLC transcript, public hearing 7 June 2005, p. 53.

25 NACLC transcript, public hearing 7 June 2005, p. 31.

26 AGD supplementary submission no. 102, p. 22.

3 is a matter of significant concern to the Muslim community and the laws have created fear and distrust within the community. As an example of why members of the Muslim community may feel afraid of the new laws, Mr Gould noted that:

... as a predominantly migrant community many Australian Muslims have a practice of sending money back to family members overseas or visiting extended family in their ancestral villages. Further, at certain times of their religious calendar charitable giving is a prescribed part of the Muslim faith. Although these are legitimate charitable donations, what certainty does the community have that the broad discretions under the Act are not triggered in those circumstances?<sup>27</sup>

4.33 Inevitably, he said, people in the Muslim community now feel frightened of running foul of the new laws and this is creating 'a climate of fear, apprehension and a fundamental distrust of the government'.<sup>28</sup> Mr Gould went on to say that it is not a fear of being the subject of criminal proceedings but rather:

... it is that they are going to be picked up off the street and disappear for seven days, they are not going to be able to speak to anyone about it and the media cannot report it.<sup>29</sup>

4.34 This opinion from the Islamic Council of Victoria was reinforced by a lawyer for a subject of a warrant when commenting on lawyer-client confidentiality:

... there is a great feeling of paranoia in that community that ASIO is listening to you even when you are just walking down the street if you have your mobile phone in your pocket.<sup>30</sup>

4.35 According to the ICNSW, people who have been questioned by ASIO or the police, whether or not under an ASIO warrant, are more fearful of being involved in any social activity:

... they are more fearful for the safety of their children, discouraging them from engaging in social activities or anything 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 experience.<sup>31</sup>

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27 ICV transcript, public hearing 7 June 2005, p. 62.

28 ICV transcript, public hearing 7 June 2005, p. 62.

29 ICV transcript, public hearing 7 June 2005, p. 66.

30 Transcript, classified hearing 7 May 2005, p. 5.

31 ICNSW transcript, public hearing 6 June 2005, p. 43.



- 4.36 The Committee accepts that a climate of fear created by the Act does exist in the Muslim community. The Committee took note of the Islamic Council of Victoria's opinion that 'there is a direct relationship between the level of fear and the expansiveness of ASIO's powers'.<sup>32</sup>

### Perception that the Act targets the Muslim community

- 4.37 The International Commission of Jurists' (ICJ) submission stated that while the legislation under consideration threatens the basic rights and fundamental freedoms of every Australian citizen, the threat is most visible in Australia's Muslim community. The submission stated:

Notwithstanding the fact that many Muslim leaders in our community have come out strongly against terrorism and have declared that such acts have no place in Islam, many Muslims feel shock and fear at the way they are portrayed in the media, and feel they bear the brunt of this legislation.<sup>33</sup>

- 4.38 The Australian Muslim Civil Rights Advocacy Network drew the Committee's attention to the Human Rights and Equal Opportunities Commission's *Ismae - Listen* report, which surveyed 1,400 people and found that it was a common belief amongst Muslims that the legislation under review is targeted at Muslims. The submission cited one respondent who said:

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.<sup>34</sup>

- 4.39 This fear in the Muslim community that they are being targeted by the counter-terrorism legislation was compounded because all proscribed organisations are, so far, Muslim organisations.<sup>35</sup> The Islamic Council of Victoria stated:

World events in recent years have impacted on the Australian Muslim community in a manner which is unprecedented in our history. The term 'terrorism' is not value neutral. Ill-conceived and unsupported racial and religious stereotypes have reinforced an intractable link between the term 'terrorist' and people of Islamic faith.<sup>36</sup>

- 4.40 The Council noted that, in its work as the peak body, it found in the Muslim community at large:

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32 ICV transcript, public hearing, 6 June 2005, p. 69.

33 ICJ submission no.60, p. 5.

34 Dr M. Kadous, AMCRAN transcript, public hearing, 6 June 2005, p. 53

35 Ms M. Dias, FLC transcript, public hearing, 7 June 2005, p. 54

36 ICV transcript, public hearing 7 June 2005, p. 61.

a discernible level of distrust of the intentions of and the motivations behind this legislation, which is essentially seen as singling our community out. I hastily reassure you that I am a law-abiding citizen, but if ASIO were to come knocking on my door all I know is that I am a Muslim and the fact that I am a law-abiding citizen has to be proven. That is the perception that a lot of the community has.<sup>37</sup>

- 4.41 The (then) Director-General of ASIO agreed that a perception that the act targets Muslims did exist within the Muslim community and noted 'that there should be such a perception is understandable'.<sup>38</sup> The Director-General advised that:

The government, members of parliament and officials have spoken at length about this. We have sought to reassure that we do not target communities. We target individuals and groups. But it is a very big challenge to retain the confidence of a broader community grouping when you are targeting individuals and groups within that broader community.

## Conclusion

- 4.42 The ICJ pointed out that the legislation under review could have a negative effect on Australia's ability to deal with the threat of terrorism if the laws alienate members of the Muslim community and thus limit ASIO's ability to gather intelligence.<sup>39</sup> The British experience during its long battle with the IRA showed that a government fighting terrorism relies on co-operation from:

... the co-religionists or fellow nationals who decide (or can be persuaded) to provide the state with tips on where to find the terrorists.<sup>40</sup>

- 4.43 The Committee was satisfied that there has been a definite impact on the Australian Muslim community as a result of the anti-terrorism legislation. The Committee found that many in the Australian Muslim community believe the Act has impacted on their civil liberties and democratic rights; that there is a lack of information about the Act; that the Act has created apprehension in the Muslim community; and that there is a perception that the Act specifically targets the Muslim community.

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37 ICV transcript, public hearing 7 June 2005, p. 66.

38 ASIO transcript, public hearing 19 May 2005, p. 26.

39 ICJ submission no.60, p. 6.

40 Thomas, E. & McGuire, S. 'Terror at Rush Hour', *The Bulletin*, p.25.

- 4.44 Following the conclusion of hearings related to this review, Muslim communities in the western world have come under more scrutiny as a result of the bombings in London. Police have used the media to ask Muslims in Australia to work with them to 'keep Australia safe'.<sup>41</sup>
- 4.45 Both the Prime Minister and the Leader of the Opposition have commented on the role of the Muslim community in containing terrorism. The Prime Minister told Muslim leaders to make it their 'absolute responsibility' not to encourage inflammatory attacks or undermine basic community values of tolerance and freedom. In the same news item, it was reported that the Leader of the Opposition also 'called on Muslim leaders to repudiate support for terrorism'.<sup>42</sup> On 23 August 2005, the Prime Minister called Muslim leaders together to a meeting in Canberra to discuss counter-terrorism policies.
- 4.46 However, the Committee suggests that there is also a broad community responsibility to discourage inflammatory attacks which undermine community values of tolerance and freedom. Muslims too are being affected by intolerant and inflammatory opinions which are being aired on talkback radio and such opinions create community conflict, give licence to verbal and physical attacks on Muslim people and alienate Muslim youth from mainstream Australia. Mr Roude told the Committee:

Since the introduction of these laws, we have noticed a sense of fear. We have noticed that, for example, a person who once claimed to be a proud Australian of Muslim faith has stated to ask questions like: 'How am I seen? Am I part of that community?' Particularly when you listen to talkback radio, you feel that you are in a state of war, the way you are criticised, the way you are condemned and the way you are seen by not only people who phone radio announcers but the announcers themselves, who inflame the situation.<sup>43</sup>

- 4.47 In its supplementary submission, the Australian Muslim Civil Rights Advocacy Network noted that:

We note with disappointment that it does not appear that governments or the agencies have taken on this role in any meaningful way.<sup>44</sup>

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41 Clennell, A. and Morris, L. *Police call for Muslim help in safety fight*, Sydney Morning Herald, July 21, 2005.

42 Sydney Morning Herald on-line, *Muslims leaders asked to preach peace*, July 25, <http://www.smh.com.au/news/breaking-news/muslims-leaders-asked-to-preach-peace/2005/07/25/1122143776607.html#>

43 ICNSW transcript, public hearing, 6 June 2005, p. 45.

44 AMCRAN supplementary submission no. 107, p.3.

- 4.48 The Committee is of the view that the Australian government, members of Parliament and the Muslim community all have a responsibility to contain, so far as they can consistent with freedom of speech, inflammatory remarks within the community.