22 March 2005

Committee Secretary
Parliamentary Joint Committee on ASIO, ASIS and DSD
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

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

I would like to thank the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) for giving members of the public the opportunity to provide input into the review of the ASIO Act ('the Act').

As a Muslim member of the community, it is part of my belief that I must stand up to unjust laws. Islam is a religion that cherishes freedom and justice and obliges its followers to stand up for the poor, the oppressed and the voiceless. I believe that the extraordinary powers granted to ASIO under the Act have an adverse impact on both freedom and justice not just for Muslims – who will in this instance be particularly affected - but all Australians. Specifically, I wish to express my concerns with following aspects of the Act.

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

The Act refers to the definition of terrorism in the Criminal Code. This definition is very broad. 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.

Can't talk about your detention

A person detained under the Act may not talk to anyone else about it (excluding certain government and legal officers, and/or parents and guardians in some limited circumstances). 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. This is likely to have an extremely debilitating and destabilising effect, especially for someone who was not even involved in terrorism. How is it possible for someone to disappear for a week and not be able to tell anyone where he or she was and still maintain 'normal' social or working relationships?

What makes this even more unfair is that the Minister may disclose the relevant information (after making appropriate applications). Thus the Minister can make public the information about a detention, but the person who was detained may not!

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.

Withdrawal of passport

Under the Act, if ASIO applies for a warrant, a person's passport is to be taken away immediately. This is an extremely broad power that may be invoked by ASIO to prevent travel and may be based on very thin evidence. Furthermore, procedural rights and grounds of appeal against the withdrawal of a passport is unclear in the legislation

For the reasons outlined above, I believe that the Act is detrimental to the freedom that I cherish as both an Australian and as a Muslim. I urge the Committee to accept the specific recommendations of Civil Rights groups, both Muslim and non-Muslim, and to amend the law to minimise these infringements against our civil liberties.

Yours sincerely,

Roslinah Rasdi