

UNITED NATIONS ASSOCIATION OF AUSTRALIA
INCORPORATED

**REVIEW of POWER to PROSCRIBE ORGANISATIONS AS
TERRORIST ORGANISATIONS**

Submission by UNAA to Inquiry held by Parliamentary Joint Committee on
Intelligence and Security

1. Introduction

1.1 This submission is in response to the invitation by the Joint Parliamentary Committee for comments from interested groups and individuals on the operations, effectiveness and implications of the Attorney-General's power to proscribe organisations under the Criminal Code 1995.

1.2 This submission has been prepared by the United Nations Association of Australia (UNAA). UNAA is a non-governmental organisation with about 2000 members around Australia. It seeks to promote the aims and ideals of the United Nations within Australia, and to encourage the Australian Government to meet its obligations as a member state of the United Nations. The Executive Committee of the UNAA approved this submission for transmission to the Inquiry.

1.3 The submission focusses on general principles, the United Nations framework for responses to terrorism, and the impact of the Australian response. A set of recommendations is included at the end of the submission.

2. Background and General Principles.

2.1 Greater awareness of the dangers of acts of terrorism has led many countries (including Australia) to seek more effective forms of prevention and security. As a result, the range of laws and regulations has expanded greatly, authorising more invasive action by law enforcement authorities.

2.2 The human rights implications of these changes have still to be gauged fully, as nations balance the competing needs for security and justice. Sentencing options need to allow some flexibility in their application to suit the circumstances of different cases.

2.3 As this is a global challenge, it is desirable that a collaborative approach be adopted wherever possible. There is a need to acknowledge the links between economic, social and religious factors and the occurrence of terrorist acts. The response has therefore to include coordinated strategies in all these areas.

3. The United Nations Framework.

3.1 In recent years the United Nations has been a vehicle for international efforts to meet the challenge of terrorism. It has set up numerous mechanisms, protocols, monitoring groups, and recommendations to assist member states.

3.2 On 8 September 2006 the UN General Assembly adopted a global counter-terrorism strategy. According to a summary posted on the UN website, the principal features of the strategy are (a) to build upon a consistency of approach by member states to rejecting terrorism and working to remove conditions conducive to it; (b) to bring together proposals for new action within the UN system and beyond; (c) to support new initiatives like assistance for victims, strengthening civil society's capacity for response, modernising border controls; and (d) to affirm states' responsibility for denial of financial and operational safe havens for terrorists.

3.3 The Plan of Action adopted in September 2006 includes the following aspects:

- Measures to address the conditions conducive to the spread of terrorism
- Measures to prevent and combat terrorism
- Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard.
- Measures to ensure respect for human rights for all and the rule of law as the future basis of the fight against terrorism.

3.4 Part of the UN response has been to emphasise the importance of broadening dialogue across religious, ethnic, cultural and educational lines in order to resist extremist attitudes and intolerance. In addition, the UN has been clear that states should ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law" (UN Security Council resolution 1624 in 2005).

4. Australia's Response.

4.1 The Australian Government has been an active supporter of moves against terrorism, both internationally and within its jurisdiction domestically, and has sought to engage the States and territories in the broader effort. Many legislative and regulatory provisions have been made over the last few years.

4.2 The Criminal Code 1995 has been amended to include detailed offences in

relation to terrorist acts and organisations. Severe penalties ranging from 10 years up to life imprisonment are mandated for offences such as (a) directing, (b) joining, (c) recruiting, (d) training, and (e) funding. Control orders can be obtained to monitor people suspected of associating with terrorist groups.

4.3 Section 102 of the Criminal Code 1995 focusses on terrorist organisations, and allows the Governor-General, on the recommendation of the Attorney-General, to make a regulation proscribing an organisation on the basis that it is engaged in planning a terrorist act or advocates a terrorist act. Such proscribing lasts for two years, then lapses unless renewed.

4.4 There is provision for a request to be made to the Minister to review the decision in any particular case, and for Parliamentary review by the Joint Committee. The Committee has undertaken several such reviews.

4.5 There are now about 20 organisations on the proscribed list. They are primarily groups with links to extremist Islamic movements. Some are well known (eg Al-Qa'ida, Jemaah Islamiyah, Hizballah External Security Organisation, Hamas Izz al-Din al-Qassam Brigades). Others are much less well known (eg Islamic Army of Aden, Salafist Group for Call and Combat, Islamic Movement of Uzbekistan).

4.6 Some of the listed organisations are also listed by the United Nations as terrorist groups. Others are listed by decision of the Australian Government, no doubt in consultation with like-minded nations like UK and Canada. The law allows listing to be based on an Australian Government assessment of an organisation's activities, and is not confined to those listed by the United Nations.

4.7 According to paragraph 2.2 in a report by the Joint Committee on 25 April 2006 reviewing a decision about listing the Kurdistan Workers Party, the criteria used by ASIO in selecting groups for listing include (a) engagement in terrorism, (b) ideology and links to other terrorist groups, (c) links to Australia, (d) threat to Australian interests, (e) proscription by the UN or like-minded countries, and (f) engagement in peace/mediation processes.

4.8 The Parliamentary scrutiny of the legislation and regulations has raised some important questions. The Joint Committee's predecessor (the Parliamentary Joint Committee on ASIA, ASIS and DSD) made a report in March 2005 in relation to the listing of six groups, and recommended that "a comprehensive information program, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation" (7 March 2005). The Minister (Attorney-General Philip Ruddock MP) took this as evidence that "the Committee does not appear to understand the intent of the legislation. A direct linkage to Australia is not required for an organisation to be proscribed under the legislation" (Media release, 7 March 2005).

4.9 The Joint Committee's report on the Kurdistan group (see 4.5 above) recommended that the listing of the Kurdistan Workers Party be kept under active consideration taking into account (a) the number of Australians of Kurdish origin who may support the broad aims of the PKK without endorsing or supporting its engagement in terrorist acts, (b) whether it would be sufficient to proscribe the PKK's military wing, and (c) the fluid state of moves towards ceasefires.

4.10 In a more recent report (December 2006) on the Review of Security and Counter-Terrorism Legislation, the Joint Committee recommended that (a) the Australian Government appoint an independent person of high standing as an Independent Reviewer of terrorism law in Australia; (b) the Independent Reviewer be free to set his or her own priorities and have access to all necessary information; (c) the Independent Review report annually to Parliament; and (d) the Intelligence Services Act 2001 be amended to require the PJCIS to examine the reports of the Independent Review tabled in the Parliament. (Report, 4 Dec. 2006).

4.11 All this needs to be seen in the context of the ongoing detention of an Australian citizen (David Hicks) without trial at Guantanamo Bay at the behest of the US Government and with the support of the Australian Government. This case represents the dangers of anti-terrorism processes that appear to compromise Australia's commitment to ensuring that human rights principles, endorsed repeatedly in UN resolutions on terrorism (see section 3 above), are upheld.

5. UNAA's Perspective.

5.1 UNAA recognises the importance of seeking ways to prevent terrorist acts occurring. At the same time it is concerned to ensure that the rights of all people in Australia are adequately protected. Overall, UNAA believes that the law should err on the side of sustaining rather than restricting established human rights affirmed in the various international instruments to which Australia is a party.

5.2 The proscribing of groups as terrorist organisations is a double-edged sword. On the one hand it identifies groups that have a record of violence, on the other it generates resistance and hostility among people in the Australian community who have links with all kinds of groups that serve a multitude of functions. The example given by the Joint Committee on the Kurdistan Workers Party (see 4.7 above) is a case in point where the organisation may have different parts so that proscribing the whole organisation may generate a backlash that undermines the credibility of the anti-terrorism laws.

5.3 The concerns expressed by the multi-party Joint Committee about the way the proscribing process operates in practice indicates there remain questions to be addressed by Parliament and the Government. Despite the in-built safeguards there seems to be a tendency to proscribe more organisations and to look for more opportunities to add organisations to the list.

5.4 UNAA is attracted by the idea of a more independent procedure, and supports the Joint Committee's recent proposals (see 4.8 above) for an Independent Reviewer as a positive step.

5.5 In principle UNAA believes that, as the United Nations has set up an elaborate set of processes for supporting counter-terrorism globally, the UN agencies should be the main source of advice on the nature and extent of terrorist organisations. The legitimacy of the proscribing provisions in Australia would be enhanced by following the lead of the United Nations in this matter rather than giving the same weight to the views of like-minded countries.

6. Conclusion.

6.1 The response to threats posed by groups that engage in terrorist acts needs to be global, underpinned by widely accepted standards of assessment and protection of rights. The United Nations is the best vehicle for that response.

6.2 The Australian Government has a responsibility to ensure that decisions made under its anti-terrorism laws and regulations are based on comprehensive evidence and are fair and reviewable. The Parliament should have a major role in this, and there is room for additional and more independent checks.

6.3 Accountability for decisions on potentially controversial matters such as proscribing terrorist organisations should be transparent, and processes to challenge decisions should be easily accessible and publicised.

6.4 Given the severity of penalties imposed on those with links with terrorist organisations, it is essential that great care be taken to ensure that convictions under the Criminal Code are just and appropriate to the crime. To this end, judicial discretion should be encouraged and timely appeal/review guaranteed.

7. Recommendations.

7.1 The Australian Government's approach to counter-terrorism policies should be guided by the framework of response established through the United Nations system.

7.2 The listing of organisations as terrorist organisations should follow as closely as possible the United Nations assessment of such organisations.

7.3 Independent research should be commissioned about the impact of the legislation and regulations on the Australian community.

7.4 The idea of an Independent Reviewer of Terrorism, as proposed by the Joint Parliamentary Committee on Intelligence and Security (December 2006), should be adopted as a way of enhancing the operation of the current legislation. Such a Reviewer could also have responsibility for ensuring that the Australian Government responds in line with UN resolutions to cases of the detention of its citizens overseas (eg David Hicks).

7.5 Judges should be given discretion in the imposition of sentences under the parts of the Criminal Code that relate to terrorism offences.

Canberra, ACT
30 January 2007