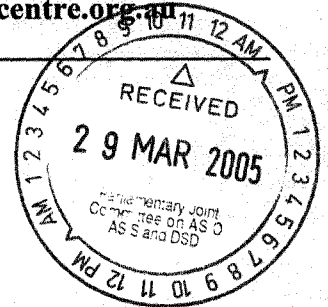


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Submission No: AS
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Secretary: [Signature]



22 March 2005

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

Dear Sir/ Madam

Re: Submission to the Inquiry into the ASIO's detention and questioning powers/ Australia's Anti Terrorism laws

We refer to the above and wish to make the following submission for consideration by the Committee.

Background

The Ilwarrarra Legal Centre is a part of a national network of community legal centres providing free legal advice, information, education, representation, law reform and advocacy to members of the public. The Ilwarrarra Legal Centre is a not-for-profit organisation and is funded by grants from both the State and Federal governments.

The Ilwarrarra Legal Centre services the area covering the Wollongong, Shellharbour and Kiama Local government areas.

Our aim is to provide access to justice for the more disadvantaged sections of society, particularly those people who are disabled, young people, women, people who are from a low socio-economic background or CALD.

Introduction

Following the events of September 2001 in the United States and bombings and explosions in Spain, Bali and many other countries, Australia has tightened its security and anti-terrorism laws. As a not for profit community organisation, we wish to express our view in respect of these laws and we would like to support submissions made by other community legal centres on this topic.

On 8th March 2005 Ilwarrarra Legal Centre held a free community information forum to provide the community and Muslim groups in particular, with information about Anti-terrorism laws. People who attended the forum were invited to participate in the review of these laws. We see it as our responsibility to give voice to issues and concerns that were raised in the course of this forum by writing this submission to the committee.

It is important to note that we consider acts of violence against innocent people as a violation of human rights which deprive people of the very basic yet fundamental right of living in safety and peace. However, in view of the fact that the extent of detention and questioning powers now given to ASIO under the Anti-terrorism laws are so broad and the definition of the elements of a terrorist act are so vague there are serious concerns that these laws may be eroding our human rights.

Matters of concern and the current legislation

There is serious concern that the definition of a *terrorist act* according to the Criminal Code Act 1995 is very broad and inconclusive. Under ss. 100.1(1) and 100.1(2) of the Criminal Code Act a terrorist act occurs if the act is done when:

1. With the intention to advance a political, ideological or religious cause; and
2. with the intention of coercing or influencing by intimidation, the government of the Commonwealth or a State or the public; and
3. the act causes serious physical harm to a person, serious damage to property, causes a person's death, endangers a person's life (other than the life of the person taking the action), creates serious risk to the health and safety, disrupts or destroys an electronic system.

The difficulty of agreeing on a precise definition arises when we examine section 100.1(3) of the Act which states that an act is to be considered a *terrorist act* if it does not constitute a legitimate form of political activity. The section then adds that the act is not a *terrorist act* if it is advocacy, protest, dissent, or industrial action.

The definition is broad and inconclusive because there is a risk that the social and political climate may be ambiguous with regard to the political or religious affiliation of some social groups. Therefore, some political or social protest could be considered as terrorist acts. For example in the course of protests at Woomera detention centre in the year 2002 protesters, both outside and inside the centres, had the intention of making a political statement in respect of the Commonwealth Immigration Laws opposing government's policy to detain and keep asylum seekers in prisons. In the course of these riots a lot of damage was caused to the state property (detention centres). Clearly, the riots were of a political nature but the question is whether they constituted a *legitimate political activity*. We have to be able to define what is exactly the meaning of legitimate political activity.

Another issue of concern is the scope and broadness of the term 'possession of a thing related to a *terrorist act*'. The definition of a 'thing' is not clear and it could make almost anyone a suspect of being involved in a terrorist activity. The main question that remains to be answered is what measure is used by ASIO to determine that a 'thing' is connected or related to a terrorist act.

Furthermore, one could be placed under suspicion for merely meeting or communicating with a member of a listed terrorist organisation. At least two major problems arise from this scenario. Firstly, it is unclear what measures and guidelines the government uses to conclude that a certain group is a terrorist organisation and consequently to be listed as a threat.

Examining the names of the groups listed as terrorist organisations indicates that all the groups have one thing in common and that is the fact that all of them are from Islamic backgrounds. The first thing that comes to mind is whether there is an assumption that most people from middle eastern/Islamic backgrounds are suspected of being terrorists. Does this mean that the government is making a judgement based on people's religious and ethnic background? If this is so, this is contrary to the Australian Anti-

discrimination laws that clearly state that it is against the law to discriminate against a person on the grounds of religion and/ or ethnic background.

The aim of these laws is to protect Australia from attack and terror. However, the elements of a *terrorist act* are so vaguely defined if they are defined at all, and ASIO's powers are so broad that it seems not only are the laws not serving their purpose but they are overriding the basic human rights and freedoms in our democratic society.

The second problem is the mere fact that meeting and/ or communicating with a group listed as being terrorist, is an offence. For example if someone is conducting research on a political or religious topic and arranges one or a series of meetings with a listed group, the person could be considered as an associate of that group and may be arrested and detained for questioning. This is against the basic rights of the citizenry in a democratic society.

Funding and assisting a listed terrorist organisation, whether or not that organisation is active in Australia or overseas, is another factor that gives ASIO the power to detain and question a person. On the last day of the month of Ramadan, the month of fasting within Islam, Muslims donate a portion of their income and/ or food and other kinds of material help to the local religious leader (Imam) who will then distribute the donations among people and/ or organisations in need locally or internationally.

The Muslims who donate the money do it with good will and with the intention of performing their obligations and duties under the Islamic religious laws. If the donations or part of them end up in a listed terrorist organisation it would mean that all the people who donated the money, the Imam who collected it from them and whoever helped in the distribution could be considered as supporters of terrorism and arrested by ASIO.

ASIO's powers to detain and question someone on these grounds are so broad that the Muslim community is concerned whether they will be able to continue with their practices and obligations under the Islamic religious laws without the fear of being arrested.

Furthermore, there is a serious concern about the procedures adopted by ASIO after a person is arrested for questioning. As the law now stands it is unclear whether a person has the right to have a lawyer present after a questioning warrant has been issued. Also, in cases where a detention warrant has been issued a person may be refused legal representation which is contrary to the rights given to people arrested under the Crimes Act. We believe that the same rules should be incorporated into the ASIO laws and that people detained for questioning must have the right to contact a lawyer, a friend or a relative and that the investigating officers should allow them time to contact a person of their choice.

The powers given to ASIO to strip search suspects are among the long list of concerns in relation to ASIO's questioning powers. If the prescribed authority approves a strip search then it will be carried out and the fact that the authority for such a search can be given over the telephone is a cause for great concern. There is always the possibility that the person giving the authorisation over the telephone might abuse his/ her position to issue orders. The rules governing issuing orders for a strip search must be carefully formulated and addressed and the risk of an abuse of powers must be severely curtailed and limited if not eliminated.

Conclusion

There is a serious concern in the community, particularly amongst the Muslim community, that the Australian Anti-terrorism laws are too broad and that the terminology that defines a *terrorist act* in its present definition is vague under various Acts. Also, the guidelines that are used by the government to list a group as a terrorist appears to be targeting only the people from Islamic/ Middle Eastern backgrounds. Furthermore, the extent of powers given to ASIO to issue warrants to question and detain suspects are in our opinion too broad and there is a risk that an individual's basic human rights might be violated.

We strongly believe that the safety and security of all Australians must be ensured by way of enacting and implementing rules and regulations that are not harsh, stigmatising and discriminatory.

Yours faithfully



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