

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

24 January 2005

Dear Secretary,

Re: Submission to the enquiry of the listing of certain terrorist organisations

The Australian Muslim Civil Rights Advocacy Network (AMCRAN) is dedicated to preventing the erosion of the civil rights of all Australians, and, by drawing on the rich civil rights heritage of the Islamic faith, provides a Muslim perspective in the civil rights arena. It does this through political lobbying, contributions to legislative reform through submissions to government bodies, grassroots community education, and communication with and through the media. It actively collaborates with both Muslim and non-Muslim organisations to achieve its goals.

We thank the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) for the opportunity to make a submission with respect to the review of the listing of certain organisations as terrorist organisations under the *Criminal Code*. As to the six organisations whose listing is being reviewed, we have little to say as we know little beyond what is publicly known about these organisations.

However, there are broader issues to be considered. We have had the benefit of reading the submission by Mr Joo Cheong Tham, and we are in full support of the arguments put forward. We join him in congratulating the Committee on fully meeting its obligations under Section 102.1(A)(1) of the *Criminal Code* with respect to the need for a review of the listing of terrorist organisations.

In our submission, we raise the following issues as additional to those made by Mr Tham. Firstly, we wish to bring to the Committee's attention the mundane impact on the lives of Australian Muslims that result from the lack of transparency involved in the proscribing of terrorist organisations. As pointed out in a Research Note by the Parliamentary Library (*The Politics of Proscription*, Parliamentary Research Note 63, 2004), the proscription of terrorist organisations would superficially appear to be both subjective and arbitrary. This leads to two impacts on the Muslim community.

Firstly, it leads to the perception that Muslims are deliberately being targeted by the anti-terrorism legislation. So far, all 17 of Australia's proscribed terrorist organisations are

Muslim-linked. This appears to be something unique to the Australian context; in the United States, for example, there were, at last count 37 listed terrorist organisations, of which 22 were Muslim-linked.

Many Muslims ask, for example, why Kach (and the related Kahane Chai), a Jewish-linked organisation considered by the United States as a terrorist organisation that operates largely in Israel and Palestine, is not proscribed under Australian law. The Kahane Chai has targeted innocent civilians (most notably a massacre in a mosque in Hebron that led to the death of 29 Palestinians at the hands of Kach member Baruch Goldstein in 1994), is not listed as a terrorist organisation, while Palestinian Islamic Jihad is proscribed as a terrorist organisation. Similarly, why are independence movements such as ETA, Shining Path, the Tamil Tigers and the Real IRA (who have in the past assassinated Australian citizens) not proscribed terrorist organisations, while Lashkar-e-Taiba is?

Lord Hewart said (*Rex v Sussex Justices; Ex parte McCarthy*) that: "it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done." This is especially the case in certain areas, such as the listing of terrorist organisations, where there seems to be subjective criteria applied.

This apparent bias in the proscription, combined with other current social phenomena manifested as increased levels of racism and discrimination highlighted by the *Isma'* report (HREOC, *Isma' - Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians*, 2004) has led to the Muslim community feeling isolated and discriminated against. This does not help in creating a cooperative environment for addressing and fighting the modern challenges of terrorism, not to mention the adverse impact it is having on the sense of security and safety of the Muslim community.

Making public the criteria, procedures and evidence upon which the proscription of terrorist organisations is based would help to alleviate the perception of discrimination based on religious background. Further it would present the evidence that a particular organisation was involved in terrorism, providing an explanation for why the Australian government sees it as necessary that a particular organisation needs to be proscribed. Doing so would help dissuade any persons considering involvement in the activities of such an organisation the reasons why membership of such an organisation should be avoided, rather than seeing it as a subjective decision made by the Australian government.

Secondly, there is great confusion surrounding exactly what constitutes a terrorist organisation within the Muslim community. As has been discussed in AMCRAN's previous submissions to the Senate Legal and Constitutional Committee, the definition of "terrorist act" in Section 100.1 is overly broad; and many legitimate activities are covered by this definition. The definition of "terrorist organisation" in Section 102.1 further broadens and makes subjective the criteria for deciding whether an organisation is a terrorist organisation.

The difficulty for the Muslim community -- especially at this stage where the common law interpretation of Sections 100.1 and 102.1 are non-existent - is that it may adversely impact on legitimate activities, and lead to *de facto* retrospectivity as to the status of a terrorist organisation.

For example, the Muslim community, like the wider Australian community, has been generous in donating to support victims of the tsunami of 26 December 2004 that struck South Asia, particularly the area of Aceh in Indonesia, where more than 150,000 people perished, and there are hundreds of thousands of displaced people, including more than 70,000 orphaned children. It is possible that some of the funds donated by the Muslim community, some of which was delivered through personal contacts, may be distributed through individuals who are connected through “informal membership” (S102.1, Criminal Code) with the Free Aceh Movement (GAM). GAM’s is currently not a proscribed terrorist organisation; but should a court find that GAM was and/or is a terrorist organisation, hundreds of Muslims in Australia could find themselves exposed to conviction under various charges under Section 100-102 of the Criminal Code.

If the Committee were to make its criteria, procedures and evidence public, this would greatly assist the Muslim community by creating a set of guidelines against which Muslims could “test” organisations in a practical and structured manner. This would be of great help to the community and allow legitimate community support activities.

To summarise, AMCRAN calls on the Committee to make public the Criteria, Procedures and Evidence upon which the proscription of terrorist organisation is based.

Should you choose to make public the criteria, procedures and evidence upon which proscription is based, AMCRAN will endeavour through its extensive links in the Muslim community to disseminate this information.

Please do not hesitate to contact us if there is anything further we can do to assist the Committee in its deliberations.

Yours sincerely,

Dr Waleed Kadous
Co-convenor, AMCRAN