



**Islamic Information & Support Centre of Australia  
(IISCA) Inc.**

*In association with Ahlus Sunnah Wal Jama'ah Association*

*ABN: 50592 814755*

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The Inquiry Secretary  
Parliamentary Joint Committee on Intelligence and Security  
Parliament House  
Canberra ACT 2600

Friday, 2<sup>nd</sup> February 2007

Dear Sir/Madam

We would like to thank you for your letter dated 6<sup>th</sup> December 2006, requesting a submission from our organisation on the review of the operational aspects, effectiveness and implications of the laws and/or amendments under the Criminal Code 1995, PJCIS<sup>1</sup> concerning the subsections 102.1 (2), (2A), (4), (5), (6), (17) & (18).

As you are aware, ASWJ (Ahlus Sunnah wal Jama'ah Association) was established around twenty years ago as a national body with seven affiliated organisations in Melbourne, Sydney and Perth. The primary directive of the ASWJ association is to serve the local communities around its various branches. In this sense, the ASWJ association operates at a grassroots level. ASWJ promotes understanding and awareness of Islam amongst various communities and organisations throughout Australia. It has many affiliates like the Islamic Information and Support Centre of Australia (IISCA). As a mainstream organisation, it has ties with a vast array of Muslim leaders, organisations, communities, and so forth.

The entire organization is managed and staffed by volunteers. Mohammed Omran<sup>2</sup> is the national leader of ASWJ, and is well known for his scholarly knowledge and jurisprudence amongst Muslims. ASWJ is proud of its political independence from external governments and political movements.

This document is a continuation of previous submissions from ASWJ of Australia to the Parliament of Australia. ASWJ made a submission to the PJCIS regarding the proscribing of organisations as a terrorist organisation, in July 2006. We are resubmitting these issues as Appendices A and B.

In principle, our organisation supports the position of the Australian Muslim Civil Rights Advocacy Network – AMCRAN. In general, ASWJ agrees with AMCRAN and has the following additional concerns and recommendations for the provisions regarding the power to proscribe organisations as terrorist organisations:

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<sup>1</sup> PJCIS – Parliamentary Joint Committee on Intelligence and Security

<sup>2</sup> Sheikh Mohammed Omran is also known Sheikh Abu Ayman.

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***1.0 Unilateral power given to an individual and/or department under the direct control of the Minister or government.***

The current legislation does not provide sufficient guarantees that the separation of powers in this case will remain free from political influence and from the direct control of the government. We believe that due to this lack of separation, the outcomes can be influenced by:

- External political lobbyists from foreign governments and/or regimes using financial, business, trade and/or other means to influence outcomes.
- Internal political lobbyists, opposition groups and/or residents, active in their political pursuits to influence outcomes.
- Unscrupulous media personalities<sup>3</sup> and/or media outlets

ASWJ suggests that the power to decide whether a group/organisation is a terrorist organisation be removed from the Minister and be given to a fully authorised and independent authority rather than an oversight type committee. An example of such an authority could be a Security Reference Group (SECREG). The independence of this authority would safeguard the integrity of the proscription process from external influence. The SECREG should consist of qualified individuals from members of the political parties in federal government, leading members of the retired judiciary and expert consultants from ASIO, AFP and State Law Enforcement agencies giving evidence as required.

Only the SECREG group should have the power, independent to the government of the day, to proscribe organisations as being terrorist organisations. The decisions<sup>4</sup> made by the group should be submitted to parliament for debate under the normal parliamentary privilege rules, to further remove the possibility of influencing the listing of legitimate groups.

In recent times, the debate on Hizb ut-Tahrir has reignited the issue surrounding the objectivity and impartiality of the Attorney General. Although the Minister did correctly state that the laws concerning proscribing terrorist organisations did not

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<sup>3</sup> Unscrupulous media personalities – As has been evident by recent comments by Philip Ruddock and Morris Iemma regarding the non-proscribing of Hizb ut-Tahrir under the federal Anti-Terrorism legislation and that NSW would have to “go it alone” and create state-specific legislation to proscribe Hizb ut-tahrir as being a terrorist organisation. Various well known TV and radio “shock-jocks” have used their media powers to inflame the public and manipulate politicians during political campaigning to consider and possibly further limit constitutional freedoms and legitimate discussion/debate.

<sup>4</sup> Decisions submitted for debate – after removal of confidential information.



apply to Hizb ut-Tahrir in Australia, he did not clearly make a stand for the right of the organisation to exist in Australia as the group was having legitimate discussion/debates. Unfortunately, the Minister's soft stance had the effect of egging on radio "shock-jocks" and encouraging the Premier of NSW in the current climate and in the court of public opinion to further limit the average Muslim Australian's right to freedom of speech and to practice religious beliefs.

## ***2.0 Transparency of process - the manner in which an organisation is defined as being a terrorist organisation.***

The legislation regarding the proscribing process has been used by the government to further exacerbate the notions that Muslims and Islam are to be feared. The Prime Minister launched this legislation himself, sensationalising the "fear factor" at the COAG meeting and insinuating that Australian Muslims themselves were on the verge of committing terror in Australia. A perception was created for the average Australian under the guise of "protecting Australia from would-be-terrorists", that secrecy, clandestine process and a responsible Minister within Government would be the vanguards of Australia. These provisions would apparently protect Australians against these highly organised and sophisticated individuals who intend to create terror in Australia.

Unfortunately, the resulting effect was a reduction in the accountability requirements typically associated with laws concerning constitutional freedoms. Furthermore, there was a loss of transparency of the process for proscribing and reviewing decisions. Perhaps the most significant concern to ASWJ is the absence of any safeguards to protect against the skewing of facts and figures against Muslims due to the intrinsic bias present in well-meaning professionals. ASWJ would like to point out the increasing likelihood that supposedly impartial evidence will not be scrutinized for bias and is therefore likely to be influenced by prevailing perceptions existing in the community.

ASWJ would like the proscription process to be reviewed with the purpose of including conventional checks and balances as would be the case with other government departments and agencies charged with making decisions of "National interest". These checks and balances should still ensure the protection of information "in the Nation's national security interest" and ensure openness of government decision-making, subject to the scrutiny and investigative powers that protect the



integrity of the process. The current process of making an application to the Minister and being reviewed by the Minister is prone to influence and error<sup>5</sup>.

The transparency of process would reaffirm the governments resolve to protect Australia and all Australians, whilst ensuring impartiality. Furthermore, a transparent process will empower individuals/groups to challenge unfair decisions and improper usage of political power to limit rights and curtail freedoms.

ASWJ would further suggest different classifications for listed organisations in order that they have automatic sunset clauses that would require delisting from the proscribed list, or at the very least, a full review after a period of time has elapsed eg. 48 months – employing independent reviewers and evaluating fresh information from all agencies involved as to the threat likelihood and practices of the group and/or participants in question. ASWJ believes the proscribing of a group and classification should be done by an independent group or commission and then re-tabled for parliamentary discussion/debate as per point ***1.0 Unilateral power given to an individual and/or department under the direct control of the Minister or government.***

ASWJ also recommends a standard be agreed upon for annual reviews by the relevant agencies, whose findings would be submitted to the independent group or commission for review and consideration at the sunset period or before.

### ***3.0 Implication of the proscribing process affecting legitimate debate.***

Unfortunately, of the 19 current organisations listed in the proscribed terrorist organisation list, 18 are self-described Muslim groups with the PKK being the only non-Muslim group that refers to itself as a quasi-communist type organisation. The government appears to have solely concentrated on the terrorism threat from an “Islamic” perspective. It is nonsensical to suggest there are only Muslim terrorists in the world.

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<sup>5</sup> Error – refer previous submission Jul/06 regarding the issues surrounding section 34VAA of the ASIO act “...there is also a belief that elements of the government are capable of abusing their powers by skewing these cases against the defendants using a range of tools at their disposal. These include severe financial penalties to gag/suffocate individual opinion (eg. section 34VAA of the ASIO act) and selective leaking of sensitive and frequently inaccurate information to local media outlets. This misinformation frequently results in the dramatic loss of credibility of individuals involved in these cases to which the Muslim community may not seek redress. The very act (deliberate or inadvertent) of releasing such information into the public domain may result in a denial of natural justice to the accused individual or organisation.



The government is not doing enough to combat the fear of Muslims in the community and their inaction is further fuelling hatred that ultimately limits the rights of Muslim Australians to legitimate free speech<sup>6</sup>. The Government needs to actively promote harmony and make a stand for the rights of all Australians, including making a clear stand for Muslim Australian rights, to undo the damage done to date. The general perception is Muslim Australian have lesser rights than non-Muslim Australians.

#### ***4.0 Collection of funds and volunteer workers for legitimate charitable works***

Since the introduction of these new laws, legitimate Muslim organisations have borne the brunt of the backlash within the general Australian community. The media, politicians and restrictive laws have acted together to create the effect of confusion and concern amongst Muslims towards supporting legitimate charitable organisations in volunteer time and donations.

Law-abiding organisations have seen funding reduce to a trickle, in part due to the confusion created by the new laws, and in part due to the media hype surrounding the groups sharing similar names i.e. anything with Islam or Muslim terminology in the name. Furthermore, rather than educating the general community and Muslims, some politicians have called for further legislative restrictions and bans. As a result, many Australian Muslims are reluctant to make charitable donations of time or money.

ASWJ recommends the government actively promote the benefits of the charitable activities of the Muslim community to the wider Australian community. Furthermore, government Ministers and Senior Public Servants should stand up against the constant negative media coverage about Muslim Australians and the groups representing them. The government needs to do a lot to repair the image imbalance resulting from years of relentless media attacks and inaction by elected representatives.

We appreciate the efforts of the PJCIS and we welcome further involvement in matters that can assist the Muslim community. You may contact our organisation to confirm our ability to send representatives to attend the scheduled committee hearings.

Yours Sincerely

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<sup>6</sup> Refer to Philip Ruddock and Morris Iemma debate on restricting the rights of Hizb ut Tahrir.



## **APPENDIX A** – *As submitted in July 2006*

***Issues concerning individual, group and/or organisational relationship(s), especially with regard to informal membership and/or financial support to such an organisation (in the past, present or future).***

Although the committee plans to review this provision in 2007, we believe the committee should have an understanding of the issues concerning Muslims especially “memberships” and financial support for Muslim organisations.

If a Muslim does not have religious knowledge pertaining to an affair, he/she is required to seek guidance from those who have the requisite knowledge (Islamic Scholars). Muslims are required to pray five times a day at appointed times, preferably in a Mosque or at least with other Muslims. In addition, Muslim men must attend the Friday midday prayer at a Mosque or place of congregation. At this venue a special sermon is given to the community by an Imam or Sheikh. Muslims view the mosque as being a central part of their daily lives. The activities conducted in the mosque are as important as socialising with their families (extended) and is a part of religious belief. Many Muslim organisations are a part of a Mosque or vice versa and do not have formal memberships. They are open to the public and any Muslim can enter and pray. They generally operate using donated monies, and are managed and run by volunteers or the same people who regularly use the facilities for prayer and worship.

The concept of “informal” membership of an organisation is a particularly important question in this discussion. Muslims in Australia frequently pray in Mosques and donate monies towards the management and administration of facilities used on a regular basis as part of religious activities. We are concerned that a Muslim who is innocently fulfilling his/her basic religious obligations may be considered guilty of association with the activities of the organisation that manages or administers the facilities that he/she utilizes on a regular basis.

Moreover, a Muslim is required to pay Zakat or a poor tax annually of 2.5% of surplus wealth. Most Muslims pay the Zakat directly to the Mosque or community organisation for collection and distribution. Again, it is entirely understandable that there may be concern/fear in the mind of the average Muslim that an individual may become implicated by these new laws merely by having fulfilled their religious obligations.

We believe it is practically infeasible and logically unreasonable to require a practicing Muslim to check a government register before attending, supporting or using a Mosque or organisations’ facilities in the act of worshiping their Creator.



## **APPENDIX B** – *As submitted in July 2006*

### ***The manner in which an organisation falls into one of the categories under the laws concerning the mentioned Act(s) and/or amendments.***

Our organisation believes it is worthwhile stressing the communities' concerns in this regard, even though the committee plans to review this issue in detail in 2007. The lack of apparent transparency of process in identifying terrorist organisations/groups may lead to a general reduction of support by Muslims towards their community groups. Moreover, it is widely believed these laws can and will be applied retrospectively. The perception of the average Muslim is that they may fall foul of the law due to previous attendance, relations or support for such an organisation.

Community support groups, which play a crucial role in society, may be disadvantaged by a lack of volunteers and funding. They survive by receiving monetary donations and volunteer time. As the Treasurer, Peter Costello himself stated in the lead up to the Commonwealth games "it's the volunteers which really make this great country function." Muslim organisations that are providing support services to the community may cease to exist and/or may have to reduce the range of services they offer. This impact will not be limited to the Muslim community and will have a flow-on effect to the wider Australian community. For example, invaluable community services such as Muslim marriage counselling and other social work by people respected by the community for their knowledge in the Muslim traditions of marriage.

It is widely believed amongst the Muslim community, these laws will create a veil of secrecy behind which organisations will be associated with terrorism. There are a number of reasons why this process is believed to be fundamentally flawed. One such reason is the process is not subject to the basic checks and balances that is the norm. Further, these assessments do not seek public or more importantly critical commentary from a wide cross-section of the relevant experts<sup>7</sup>.

The belief amongst Muslims and well-respected members of the legal fraternity is the selection process "is in the hands of a few selected politicians...." and ".... can be subject to lobbyist and other forms of political interference." Furthermore, the determination process is implemented without the normal scrutiny, public debate, advice from experts (from both sides) and consultative processes applying to similar issues of public interest.

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<sup>7</sup> Refer previous AMCRAN submissions in this regard.



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The general lack of confidence in the decision making process, the motivations of decision-makers and the extent of their even-handedness all culminate in a perception that the process is very subjective, with little or no hope for redress once the decision is made.

The handling of immigration and detention by the federal government lends credibility to the aforementioned perceptions. Due to the secretive processes and an on-going culture of unchecked bias within the department, Australian citizens were incarcerated for many months on end and even deported. The extent of abuse of unchecked power has left many lives shattered, leaving a somewhat justified and lasting impression.

These concerns together with those previously mentioned, creates unnecessary angst in the community such as is evident from the commonly quoted perception that “if the government wants to get you, they will”! It is widely believed that an organisation is first associated with terrorism, and then a case is built against it with an underlying assumption of guilt. The onus is then on the organisation to prove its innocence.

Muslims feel that they may be accused of terrorism offences and charged as having committed a crime despite abiding by the law and practicing their constitutional rights to freedom of speech and religious expression.

We believe that although Muslims may have views that differ from mainstream Christian views, they have the same right to express and share their opinions with mainstream society.

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