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Secretary

Parliamentary Joint Committee on ASIO, ASIS and DSD

Parliament House

Canberra ACT 2600

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Dear Secretary

Comments in relation to listing of Al-Qa'ida and other groups as 'terrorist organisations' under the *Criminal Code Amendment Act 2004*

Combined Community Legal Centres Group (NSW) Inc. (CCLCG) has 42 member community legal centres (CLCs) throughout New South Wales, we are also a member of the National Association of Community Legal Centres, which is the peak body representing the eight state associations of community legal centres and 207 CLCs nationally.

CCLCG works for the public interest, particularly for disadvantaged and marginalize people and communities. We promote human rights, social justice and a better environment by advocating for access to justice and equitable law and legal systems and through the provision of legal services including strategic case work, community legal education and law reform campaigns.

We appreciate the opportunity to submit our comments to the Parliamentary Joint Committee on ASIO, ASIS and DSD ('the Committee') on the proscription of Al-Qa'ida, Jemaah Islamiyah, Abu Sayyaf, Armed Islamic Group, Jamiat ul-Ansar and Salafist Group ('the proscribed groups') under the *Criminal Code*.

We see the Committee's role of review as essential to ensuring that the government's efforts to prevent politically/ideologically motivated violence, are undertaken in manner that is transparent, accountable and consistent with the rule of law. To this end we commend and support the Committee's efforts in adopting protocols that ensure a *merits review* of *each* listing.¹ We encourage the Committee to further its role of review and would welcome the strengthening of the Committee's capacity for review.

In essence, we support the points made the Public Interest Advocacy Centre (PIAC) and Mr Joo-Cheong Tham in their respective submissions. PIAC is a member of CCLCG and has been working on ensuring that security measures are applied in a manner consistent with people's human rights. Mr Tham is a respected academic with La Trobe University, Melbourne who has been researching the impacts of security laws on people's rights for several years. In particular we would concur with the following issues raised in these two submissions:

- We urge the committee to proactively review listings of an organisation as a 'terrorist organisation' with a view towards evaluating the desirability or otherwise of the proscription power under the *Criminal Code*. We see this as an important means of the Committee being able to conduct its review functions from an informed position.
- We urge the committee to call for the criteria and procedures relied upon by the Attorney-General and ASIO in the process leading to a proscription of a group to be made fully public² and the evidence relied upon by the Attorney-General and ASIO in relation to specific proscriptions should generally be made public. We see both

¹ Parliamentary Joint Committee on ASIO, ASIS and DSD, *Review of the listing of the Palestinian Islamic Jihad (PIJ)* (2004) ('PIJ report') [2.9].

² The process followed by ASIO in relation to the proscription of Palestinian Islamic Jihad have been detailed at PIJ report [3.16].

measures as being important to ensure that the proscription power is exercised in a transparent and open manner.

Promoting transparency and accountability within the process will lead to more public confidence in the process and ensure that the interests of security are balanced with the rights of marginalized groups and people in Australia.

We also wish to bring to the Committee's attention the following concerns regarding the current scope and impact of the proscription powers under the *Criminal Code*:

We note that in practice the proscription power under the *Criminal Code* is *superfluous* in its efforts to prevent politically/ideologically-motivated violence, because such acts (i.e. 'murders, bombings, extortion and kidnap-for-ransom'; 'hijackings, bombings'; 'hijackings, bombing and abductions'; murders, kidnappings, bombings, robbery, extortion and looting' and 'suicide attacks and car bombs'.) are already illegal under Australian laws.

The current 'broad generic definition of a terrorist organisation', leaves it open for many non-terrorist organisations to be mistakenly classified as such, by indirect association. For example, in light of the tsunami-disaster, an aid worker providing legitimate training to the Tamil Liberation Tigers, groups that are known to have resorted to acts of ideological/political violence, could be culpable under this offence despite having no direct involvement with such violence and could face the prospect of 25 years in jail.

- It is recommended that the proscription power should only be used:

- against groups whose principal activities involve extreme acts of political/ideological violence (and the Inspector-General of Intelligence and Security be obliged to review the veracity and credibility of any such evidence); and
- after considering the impact of any proposed proscription on freedom of political speech and association.

- One of the critical pillars of a democratic society is the rule of law, and a critical requirement of that is the right to a fair trial. To this end it is important that groups accused of being involved in politically/ideologically motivated violence have an opportunity for the matter to be taken to court and to present their defence.

- While there are inconsistencies between the list of proscribed groups under the *Criminal Code* and those that have been listed by the Foreign Minister under the *Charter of UN Act*, in Australia and the UN, of most concern is the fact that all the organisations proscribed under the *Criminal Code* are Muslim groups. This has raised significant concern and apprehension that Muslims are being targeted by the government in the 'War on Terror', which would be in contradiction with Australia's obligations under the International Convention on the Elimination of Racial Discrimination.

Yours sincerely,

By Email

Meredith McLaine

Convenor, Law Reform and Policy Sub-Committee

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