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Sunday, 13<sup>th</sup> March 2005

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

Dear Sir/Madam,

**Re: Review of Division 3 Part III of the ASIO Act 1979 - Questioning and Detention Powers**

I would like to thank the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) for giving members of the public the opportunity to provide input into the review of the ASIO Act (the Act).

As someone who is a member of the Muslim community, it is part of my belief that I must stand up to unjust laws when they are introduced. Islam is a religion that cherishes freedom and justice. The powers granted to ASIO in the Act have an adverse impact on both freedom and justice. We wish to raise the following concerns with the legislation.

**The ASIO detention powers build on the broad and discretionary definition of terrorism**

The Act makes references to the definition of the terrorism present in the Criminal Code. This definition is very broad. Some of the activities that may be classed as terrorist acts include: legitimate freedom movements that attempt to remove tyranny (previously including organisations like the African National Congress in South Africa) and moral protests about social issues (e.g. abortion).

Because of the breadth of this definition, many people whose activities are done with the intention of restoring justice and freedom are covered by this legislation. Furthermore, because of the breadth of the laws, ASIO and the government have great discretion in who the laws are applied to. They may be used against one particular group within the community and not others.

**Detention is not limited to people involved in terrorism**

The Act does not require someone to be suspected of involvement in terrorism either directly or indirectly. It may cover individuals who are not involved in terrorism but because they have "information". This could include many innocent people who had no intention of involvement of a terrorist act. It should not be possible for someone who has no involvement with terrorism to be detained for up to 7 days, and questioned for up to 48 hours.

### **Duration of detention and questioning is extremely long**

Under the Act, people can be detained for up to 7 days and questioned for up to 48 hours. In ASIO's annual report 2003-2004, there was one person that was questioned for more than 42 hours. This kind of disruption to a person's life can be extremely serious, especially given that, as mentioned above, a person does not even have to be involved with terrorism.

Even the police, when they do suspect someone of having committed a crime, can only hold someone for 12 hours without charging them for normal offences, and 20 hours for terrorism related offences. So how is it possible for ASIO to detain someone who is not even suspected of having committed a crime for 8 times as long?

### **Can't talk about your detention**

When someone is detained under the Act, they can not talk to anyone else about it (excluding certain government and legal officers, and/or parents and guardians in some circumstances). They can not even tell their wife or their employer. If they do so within a two year period, then they may go to gaol for five years. This is likely to have an extremely destabilising effect, especially for someone who was not even involved in terrorism. How is it possible for someone to disappear for a week and not be able to tell anyone where he was and still maintain a normal relationship?

What makes this very unfair is that the Minister in the Act is allowed to disclose the information (after making appropriate applications). So the Minister can make public the information about a detention, but the person who was detained can not.

### **Proving you don't know or don't have something**

When being questioned under an ASIO warrant, you *have to* answer. If you do not answer, then you may go to gaol for five years. Aside from the problem that this is a disregard to the right to silence, an old principle of law that is highly respected, there is another serious problem, which is that it is up to the detainee to prove that he or she doesn't know something. It is very difficult to prove that you don't know something. The detainee, for example, might have genuinely forgotten some details. Similar issues apply to showing that you don't have something – it is very difficult to prove that you do not have something.

### **Presence of lawyers**

It is a very long-established principle that a person should have a lawyer there to assist him there with complex legal issues. The terrorism and ASIO related laws are very complex, with more than 20 pieces of legislation and over 200 pages of law to deal with. A person needs a lawyer to assist him in this situation, to act as an advocate and to provide information to the detainee. But under the Act, ASIO can ask questions without the presence of a lawyer; and he may be replaced if he is "unduly disruptive". It is extremely unfair that ASIO may have a team of lawyers working with its questioners to assist them with the application for the questioning warrant, for telling ASIO officers of their powers and so on, and that the detainee can not even have a single lawyer present.

### **Withdrawal of passport**

Under the Act, if ASIO applies for a warrant, their passport is to be taken away immediately. This is an extremely large loophole that could be used by ASIO to stop anyone they disliked, even on very thin evidence, from leaving Australia for up to 28 days. Such an application for a warrant could be

based on very flimsy evidence, and even before it goes before a Minister, their passport is taken away. Furthermore the grounds for someone to appeal such a withdrawal of a passport is unclear in the legislation

All of the above issues are serious and detrimental to the freedom and justice that I cherish as both an Australian and as a Muslim. I urge the Committee to accept the recommendations of Civil Rights groups, both Muslim and non-Muslim, to amend the law to remove these problems. **These laws go against the democratic fabric that Australia is made up. We should not be swayed by the popular trend currently being spread around the world, for there may come a time when we, as Australians will deeply regret this decision, if taken.**

Yours sincerely,

Jalal Chami

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