

**SUBMISSION OF THE FEDERATION OF COMMUNITY
LEGAL CENTRES (VIC.) INC**

**TO THE PARLIAMENTARY JOINT COMMITTEE ON ASIO,
ASIS AND DSD**

**REVIEW OF THE LISTING OF HAMAS' IZZ AL-DIN AL-
QASSAM BRIGADES, HIZBALLAH'S EXTERNAL
SECURITY ORGANISATION (ESO), LASHKAR-E-
TAYYIBA (LET), AND PALESTINIAN ISLAMIC JIHAD (PIJ)
AS TERRORIST ORGANISATIONS UNDER THE
*CRIMINAL CODE ACT 2004***



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This submission was prepared by members of the Anti-terrorism laws Task Group in consultation with individual member centres including, on behalf of the Federation of Community Legal Centres (Vic).

Inquiries to Sarah Nicholson, Policy Officer, Federation of Community Legal Centres (Vic) on 9654 2204 or Sarah_Nicholson@fcl.fl.asn.au.

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The Federation of Community Legal Centres

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for forty-nine Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres provide free legal advice, information, assistance, representation and community legal education to more than 60,000 Victorians each year. We also work on strategic research, casework, policy development and social and law reform activities.

Community Legal Centres have expertise in working with excluded and disadvantaged communities and people from culturally and linguistically diverse backgrounds. We operate within a community development framework. We provide a bridge between disadvantaged and marginalised communities and the justice system. We work with the communities of which we are a part. We listen, we learn, and we provide the infrastructure necessary for our communities' knowledge and experiences to be heard.

The Federation, as a peak body, facilitates collaboration across a diverse membership. Workers and volunteers throughout Victoria come together through working groups and other formal and informal networks to exchange ideas and strategise for change.

The day-to-day work of Community Legal Centres reflects a 30-year commitment to social justice, human rights, equity, democracy and community participation.

Introduction

The Federation continues to be seriously concerned with the proscription powers under the *Criminal Code Act 1995* (Cth). The powers breach fundamental principles of our criminal law system and fundamental civil and political rights outlined in International Conventions to which Australia is a party. These concerns have previously been outlined to the Committee and we do not propose to reiterate them.¹ In this submission we will discuss our concerns with the proscription powers, with a particular focus on the individual organisations whose status is being reviewed.

The Federation does not support the activities of any of the organisations whose listing status is under review. The Federation is concerned, however, that the government has not provided sufficient justification for the listing of these four organisations, in light of the serious nature of the offences associated with the listing of organisations.

The Federation urges the Committee to see that a rigorous approach is taken to the review of the listing of organisations. This is necessary given the breadth of the definition of a terrorist organisation, the lack of other forms of merits review of listing, and the seriousness of related offences set out in the *Criminal Code*, some of which do not require the knowledge that an organisation is listed.

The Federation firmly believes that in deciding whether to list an organisation, regard should be had to the links that the organisation has to Australia and to the threat posed to Australian national security. Organisations with no links to Australia should not be listed. This is particularly important given the legal consequences that flow from proscription, including the creation of serious offences, and the lack of independent merits review of decisions to list organisations which effectively provides the executive with immunity from any sort of review.

The Federation believes that the listing of organisations is not necessary in order to protect the public from politically and ideologically motivated violence, unless the link between the accused or the relevant organisation and the 'terrorist acts' could not be established to the satisfaction of a court. If these organisations are responsible for the kinds of politically and ideologically motivated violence

¹ *Submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD Inquiry into the listing of the Abu Sayyaf Group, the Armed Islamic Group, the Jamiat ul-Ansar, the Salafist Group for Call and Combat, Al-Qa'ida and Jemaah Islamiyah, as Terrorist Organisations under the Criminal Code Act 2004*, January 2005; Federation of Community Legal Centres (Vic) Inc.; *Submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD Reviews of the Listing of Ansar Al-Islam, Islamic Army of Aden, Islamic Movement of Uzbekistan, Jaish-e-Mohammad, Lashkar- Jhangvi and Egyptian Islamic Jihad as Terrorist Organisations under the Criminal Code Act 2004*, April 2005, Federation of Community Legal Centres (Vic) Inc.

alleged, then the offences reasonably required to protect the public from such actions are already available to law enforcement authorities.

All the groups to be re-listed have also been banned under the *Charter of the United Nations 1945*. However, none of the reasons provided by the government offers any justification for going beyond this proscription to the more significant, and arguably unnecessary, step of listing the organisation under Australian legislation.

If we assume that the proscription power is warranted, this power must be exercised in an open and transparent manner in order to ensure due process, executive accountability and public confidence in the executive. To achieve this there must be public disclosure of all criteria, evidence and processes involved in its exercise.

The Federation notes that Recommendation 1 of the Committee's Report on the Review of the listing of six terrorist organisations, was that ' . . . a comprehensive information program, that takes account of relevant community interest groups, be conducted in relation to any listing.'² As with previous listings, the government has merely published a media release with a short description of each group to be re-listed, and the reasons for listing the organisation. The Federation has relied upon publicly available information ('the material') in this submission, and considers that this that this information is insufficient in a number of ways.

There is currently insufficient publicly available information relating to the criteria relied upon by the Attorney General in deciding to proscribe an organisation, the supporting information provided by ASIO in recommending proscription and relied upon by the Attorney General in determining whether an organisation should be proscribed. There is also insufficient information about the process for applying the criteria to the relevant supporting information in order to decide whether or not to proscribe an organisation.

² *Review of the Listing of six terrorist organisations* March 2005, Parliamentary Joint Committee of ASIO, ASIS and DSD , Recommendation 1.

Hizballah's External Security Organisation (ESO)

The main objectives of the ESO are said to be armed resistance to the state of Israel, to create an Islamic state in Lebanon, to liberate all Palestinian territories from Israeli occupation and to remove all Western influences from the region. This alone is not grounds for proscription. It could be said of many resistance movements that their aim is to overthrow their government, or of many religious organisations that their goal is to create a religious state in a particular country. It is not, in general, an offence under Australian law to seek to overthrow another government. These aims are not relevant to the listing of this organisation in Australia.

Another ground for proscription of the ESO is that the organisation retains the capability to undertake terrorist attacks at short notice, and has undertaken previous 'major terrorist attacks'. The material presented, however, makes no reference to the organisation's relevance to Australia, or how listing of this organisation in Australia would help prevent such terrorist attacks.

In the government's material, it is noted that the group is a multi-faceted organisation including social, political and military components. Given the breadth of the definition of membership under the *Criminal Code*, and the related offence of association with a proscribed organisation, the listing of this organisation in its entirety could have extreme consequences for members of some communities in Australia. No information is provided about the need for proscription of the entire organisation, or the possible consequences of proscription for the organisation's broader membership.

The Federation believes that the government needs to make publicly available more detailed information about why this organisation should be re-listed and the justification for listing this particular organisation under Australian law.

HAMAS' Izz al-Din al-Qassam Brigades

The stated aims of HAMAS are to establish an Islamic Palestinian state which would include the current state of Israel. The organisation has been proscribed by the UK, listed as a terrorist organisation by the UN, US Canada and the EU, and has coordinated attacks with other Palestinian extremist groups also listed in Australia. However, no specific reference to any link between the organisation and Australia is made.

It is noted that the organisation provides support to the families of HAMAS members who have been 'martyred', however based on the material provided, it is not clear whether this a ground for proscription. This raises the question of why this group has been singled out when there are many other groups that provide similar support that have not been listed as terrorist organisations. More

information needs to be made available about the criteria for proscription of an organisation, and clearer links need to be made between the information provided about the organisation and this criteria.

The organisation of HAMAS has three distinct elements which engage respectively in political, military and welfare activities. The material provided does not describe how linked the three elements are, nor whether those involved with the 'specific charitable organisations' that collect and channel funds into HAMAS could be guilty of an offence under the *Criminal Code*. While it is only the military wing of HAMAS that has been listed, the possible consequences for Australian citizens who may be 'associated' with non-military elements of the organisation is not mentioned by the government.

The government material in relation to this group does not clearly explain the relevance of the activities of this group to Australia, the necessity of proscribing this organisation, or how a distinction would be made between those involved in the different elements of the broader organisation of HAMAS. As such, further explanation is needed to justify the proscription of this organisation.

Palestinian Islamic Jihad

The stated aim of this organisation is to establish an Islamic Palestinian state which would include the territory of the current state of Israel. While it is stated that the organisation believes that Palestinian liberation would inspire a wider Islamic revolution across the Arab and Muslim world, no specific reference to Australia is made. In fact, the organisation has not acted outside the Middle East or deliberately targeted Western interests.

The material provides details of recent terrorist attacks for which Palestinian Islamic Jihad has claimed responsibility, and ASIO assesses that the organisation is continuing to prepare, plan and foster the commission of acts involving threats to human life and serious damage to property. Yet there is no explanation of how listing this organisation will protect the public from these potential acts.

This organisation has been listed by the UN, UK, US, Canada and the EU, but this does not necessarily explain the relevance of Australia listing this organisation under its *Criminal Code*. No explanation is given in the material as to why Australia should proscribe this organisation, or of any specific links to Australia.

Lashkar-e-Tayyiba

The aims and activities of this organisation seem to be confined to a particular political struggle in a specific region. While this struggle may be contrary to Australia's broader foreign policy interests and goals, this is not indicated as a ground for the listing of this organisation. Similarly, while these organisations have been involved in a number of violent crimes, it is not explained how the listing of this organisation in Australia would assist in the prevention or prosecution of these crimes. Greater transparency is again needed in relation to the criteria used by the Attorney-General in proscribing this organisation.

The material states that funding for this organisation is derived through a network of front organisations and charities, and Islamic NGOs. The consequences of listing an organisation with such broad, unnamed funding sources are potentially serious, given that it is an offence in Australia to provide support to, or associate with, a proscribed organisation.³ The Federation believes that the government make publicly available information relating to the way in which the concepts of 'support' and 'association' will be applied in the context of this organisation.

Unlike the other three organisations to be re-listed, the material identifies a link to Australia in that two alleged members of the organisation have been prosecuted in Australia for terrorist activities. It is difficult to comment on the significance of these prosecutions, given that details are not known. Without knowing the charges laid, it is still not clear that significant grounds have been made out for the listing of this organisation.

The Federation believes that more information needs to be provided about the criteria relied upon for proscription of this organisation, as well as clearer information supporting proscription.

³ Ss100 – 102 *Criminal Code Act* .