Submission to the Parliamentary Joint Committee on Intelligence and Security

REVIEW OF THE POWER TO PROSCRIBE ORGANISATIONS AS TERRORIST ORGANISATIONS

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INTRODUCTION

UnitingJustice Australia, the Justice and International Mission Unit, Synod of Victoria and Tasmania (JIM), and Uniting*Care* NSW.ACT welcome this opportunity to contribute our voice to this review of the Governor-General's powers to proscribe terrorist organisations.

The authors of this submission are agencies of the Uniting Church in Australia. All three agencies have in the past made comment on anti-terrorism policy direction and legislation, and we make this submission jointly as part of our ongoing work to ensure that the civil and political rights of all people are recognised and upheld.

The Uniting Church in Australia is unequivocally opposed to terrorism in all circumstances, and abhors the loss of human life produced by terrorist acts. We recognise the need for anti-terrorism legislation that strikes an appropriate balance between protecting the rights of individuals and protecting lives from terrorism.

However, as our agencies' submissions around recent anti-terrorism legislation have noted, we believe that much of the Government's response to the threat of terrorism has been disproportionate. It is a strongly held belief of the Uniting Church that human rights are not divisible from the human beings who express them in their daily lives, and that these rights exist regardless of whether the state recognises them. It is our concern, in commenting on the process of proscription of terrorist organisations, that the rights and needs of all people involved are taken into account, in the service of a healthy democratic society.

The Uniting Church regards peacemaking as an integral part of its mission of reconciliation. The Uniting Church's Tenth National Assembly pledged the Church to work for peace through justice and genuine security, living out our strong belief that:

> true justice can only be achieved through means that do not consist of violence, nor perpetuate the cycle of violence; true security can only be achieved through non-violent means that seek to build trust and relationships of understanding and acceptance between nations and people[1].

Through the Gospels, Jesus calls on his disciples to reject the ways of violence and instead put their efforts into radical peace-making initiatives. We welcome and seek to encourage Government and community actions to end terrorism through ways that aim to remove any injustices that may motivate people to commit acts of terrorism. In this spirit, we offer this submission to the committee.

[1] *Uniting for Peace* statement of the 10th National Assembly, Uniting Church in Australia, 2003

THE SHELLER REPORT

We commend to the committee the high quality *Report of the Security Legislation* of June 2006 by the Security Legislation Review Committee, also known as the Sheller Report. Both UnitingCare NSW.ACT and JIM made submissions to the Sheller inquiry, and Dr Mark Zirnsak of JIM spoke before the committee in relation to his submission.

We believe that the Sheller Report provides a measured and prudent response to the complex issues surrounding the anti-terrorism legislation of recent years, and we believe that its approach balances the need to prevent terrorist activities with basic respect for civil and political democratic rights, which we strongly believe must underpin any outcomes of this Committee's review process.

While the scope of the current inquiry is necessarily very brief, we would seek to reiterate our earlier concerns around the sections of the *Criminal Code* in question. We continue to seek changes which make the process of proscription of terrorist organisations more transparent, in the interest of community confidence and democratic process. As such, we would like particularly to support the specific findings and recommendations of the Sheller Report to the Committee that have relevance to the scope of the current inquiry, in the following areas.

TRANSPARENCY AND THE DEMOCRATIC PROCESS

One of the key issues identified by the Sheller Report, and by our own past submissions, is the lack of transparency and community consultation attached to the proscription of an organisation as "terrorist".

We endorse the assessment of the Report, that the process of proscription should be reformed to promote community confidence, and to ensure that there is less chance that a member of the community might unintentionally or unknowingly commit an offence in relation to a proscribed terrorist organisation. We support the Sheller Report's recommendations that:

- the process should be made more transparent and should provide organisations, and other persons affected, with notification, that it is proposed to proscribe the organisation and with the right to be heard in opposition to the proposal; and

- once an organisation has been proscribed, steps be taken to publicise that fact widely with a view, in part, to notifying any person connected to the organisation of their possible exposure to criminal prosecution.[2]

In addition, while S102.1 (4) and S102.1 (17) both appropriately refer to situations in which the Minister must delist an organisation or consider delisting an organisation respectively, there is no requirement that the Minister must attend to these duties within a reasonable time period. As such, although this does not appear to be the intention of the law; it may be difficult to ensure that organisations who should be delisted are in fact delisted within an appropriate time period. These clauses should be amended to make clear the intention that the minister must delist, or consider delisting, an organisation under their auspices within a reasonable period of time.

[2] *Report of the Security Legislation Review Committee* June 206

DEFINITIONS ARE TOO BROAD

We believe that the Governor-General's power to proscribe an organisation under S102.1(2) is far too broad. It is our strong belief that it should be amended so as to exclude the possibility that particular organisations are not targeted without just cause.

The Sheller Report raises one particular area of concern pertinent to this; particularly, the definition of the word "advocates" in S102.1 (1A) (c) as it is used to describe the activities of a terrorist organisation under S102.1 (2). Under this definition, an organisation is said to "advocate the doing of a terrorist act" if:

> the Organisation directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment… that the person might suffer) to engage in a terrorist act.

This particular definition has substantial implications for freedom of speech, posed as it is without even the assertion that there must be a "substantial" or "defined" risk of terrorist activity proceeding from the praising of a terrorist act. We also agree with HREOC, that this definition of an organisation that "advocates" a terrorist act is so broad as to confuse the statements of one member of a group with the views of the organisation as a whole:

> under the definition as it is currently drafted, a person who is a member of an group could be liable under the derivative offences (such as membership) where another member of that group 'praises' a terrorist act, even where that person who did the action is not the leader of the group, or the statement is not accepted by other members as representing the views of the group.[3]

We strongly endorse the Sheller Report's recommendation that S102.1 (1A) (c) be removed from the legislation on review, governing as it does the Attorney-General's power to proscribe organisations as being "terrorist".

THE PROCESS OF PROSCRIPTION

We would like to take this opportunity note that, as per previous submissions, we support any move to make the process of proscription more transparent and accountable. As such, we support the Sheller Report's recommendations that process of proscription be amended to either:

- constitute an expert independent advisory committee to the Governor General on matters concerning the proscription of terrorist organisations; or
- become a judicial process involving a hearing in open court and wider community advertisement.

In the interest of optimum transparency, we would support the second option, with full judicial process, right of reply to the affected organisation and open proceedings. It is clear that a system with only partial reliance on the judiciary would be inappropriate:

[3] *Submission to the Security Legislation Review* HREOC June 2006

> Any form of independent involvement must be at the decision-making stage because, once an Attorney makes a decision on national security or other grounds, the court simply is not well equipped to review such a decision, even if you gave it the power to do so on the merits.[4]

A fully judicial system for the proscription of terrorist organisations would provide an expert, independent and transparent method of proscription, reflective of community standards, and providing adequate opportunity for input from the affected parties.

IN CONCLUSION

In supporting the conclusions of the Sheller Report, the authors of this submission are concerned with achieving an appropriate balance between respect for human rights, particularly civil and political rights, and the need to protect people from terrorism. As it stands, we believe that the proscription regime is flawed in its broad definition of what constitutes "advocating terrorism", opaque in its operation and not in the best interests of members of the community who might accidentally be caught up in its processes. We recommend that the process be replaced by a more transparent, ideally wholly judicial process, as per the recommendation of the Sheller Report.

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[4] Prof George Williams, Legal and Constitutional Committee *Hansard* 8 April 2002