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**Human Rights and
Equal Opportunity Commission**

**President
The Hon. John von Doussa, QC**

June 2007

Margaret Swieringa
Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
Canberra ACT 2600



Dear Ms Swieringa,

**RE: REVIEW OF THE PROSCRIPTION OF TERRORIS ORGANISATIONS:
REQUEST FOR FURTHER INFORMATION**

At the hearing of the Parliamentary Joint Committee on Intelligence Security Inquiry (the Committee) into the Terrorist Organisations Listing Provisions of the *Criminal Code Act 1995* on 4 April 2007, the Human Rights and Equal Opportunity Commission (HREOC) took two questions on notice. We provide the following information, by way of response. We also seek to make a correction to HREOC's submission to the Committee.

1. PROVISION OF REPORTS PREPARED BY HREOC

On 4 April 2007, the Committee requested a copy of the *Isma* Report. A copy of this report is attached.

HREOC also undertook to provide a report on a subsequent project conducted with the Muslim communities and police.

There are two relevant reports on projects HREOC has conducted with Muslim communities since the *Isma* Report:

- a. *Unlocking Doors: Muslim communities and police tackling racial and religious discrimination and abuse Report*; and
- b. *Living Spirit: Muslim Women and Human Rights Project Report*.

Both projects were funded by the Department of Immigration and Citizen (DIAC) and HREOC is currently waiting for approval to publish the reports from DIAC. HREOC understands from DIAC that the Reports will be ready for release by 22 June 2007. HREOC will notify the Committee if our advice from the DIAC about the availability of the reports for release changes.

2. THE PROSCRIPTION PROCESS IN THE UNITED KINGDOM

On 4 April 2007, HREOC took the following question on notice:

Mr Byrne- There is a comparable situation in the UK with a merits review judge. Have you seen how the system in the UK has work?

Mr von Doussa – I think we need to take that on notice

Mr Byrne – Could you get back to us with the number of cases that have proceeded to merits review following proscription.

Mr von Doussa – Yes certainly.

Summary of Response

In summary, HREOC's response to the question on notice is:

- (a) The proscription and deproscription process in the United Kingdom is set out in the *Terrorism Act 2000* (UK) (the Terrorism Act).
- (b) The Secretary of State's decision to refuse an application for deproscription is subject to judicial review. Where an application for deproscription has been refused, the organisation or person affected by the organisation may appeal to the Proscribed Organisations Appeals Commission (POAC) under the Terrorism Act on the grounds that the decision is flawed in light of the principles of judicial review. An organisation or affected person could also appeal to POAC on the grounds that the decision to proscribe an organisation is unlawful under the *Human Rights Act 1998* (UK). A party to an appeal to POAC may bring a further appeal for judicial review to the Court of Appeal.
- (c) HREOC contacted the United Kingdom Tribunal Service to ascertain the number of appeals made to POAC. In a response to request for information from the Tribunal Service, POAC confirmed
 - A total of two appeals have been made to the Proscribed Organisations Appeal Commission.
 - One of these appeals was withdrawn before reaching a substantive hearing and the other is outstanding, thus none have been either successful or unsuccessful yet.¹

HREOC observes that a fundamental difference between the process of challenging a decision to proscribe an organisation in the United Kingdom and the process of challenging such a decision in Australia is that in the United Kingdom an affected person can seek judicial review under *Human Rights Act 1998* (UK). Further information about the proscription and deproscription process in the United Kingdom is set out below.

Proscription in the United Kingdom

The *Terrorism Act 2000* (UK) enables the Secretary of State to proscribe an organisation if he believes that it is concerned in terrorism. An organisation is concerned in terrorism if it:

- Commits or participates in acts of terrorism
- Prepares for terrorism
- Promotes or encourages terrorism, or

¹ Email from Mr Ross Nibet of the Tribunal Service to HREOC, 8 June 2007.

- Is otherwise concerned in terrorism.²

Following the introduction of the *Terrorism Act 2006* (UK) cases in which an organisation 'promotes or encourages terrorism' will be taken to include the unlawful glorification of the commission or preparation (whether in the past, in the future, or generally) of acts of terrorism or the activities of the organisation ensure that the organisation is associated with statements containing such glorification.³

The proscription of a terrorist organisation may result in criminal sanctions as the *Terrorism Act 2000* (the Terrorism Act) contains a number of offences that depend on an organisation being proscribed.

There are currently 44 international terrorist organisations proscribed under the *Terrorism Act 2000* (UK). Of these, two organisations are proscribed under powers introduced in the *Terrorism Act 2006*, as glorifying terrorism. Fourteen organisations in Northern Ireland are proscribed under previous legislation to proscribe terrorist organisations.⁴

Deproscription in the United Kingdom

An organisation or a person affected by an organisation's proscription may apply to the Secretary of State for an organisation to be deproscribed.⁵ The Secretary of State must determine an application for deproscription within 90 days.

Where an application for deproscription has been refused, the person or organisation who applied for the deproscription may appeal to POAC. This appeal can be brought under section 5(3) of the Terrorism Act or section 7(1) of the *Human Rights Act 1998* (Cth).

Section 5(3) of the Terrorism Act provides that POAC shall allow an appeal 'if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review'. Section 5(3) does not empower POAC to conduct a merits review of the decision.

The *Human Rights Act 1998* (UK) provides that it is unlawful for a public authority to act in a way which is incompatible with the rights set out in the *European Convention on Human Rights* unless as a result of the provisions of the primary legislation or the provisions made under primary legislation, the authority could not have acted differently.⁶

A person or organisation who claims that a decision to proscribe an organisation is incompatible with human rights can bring proceedings before POAC under section 7(1) of the *Human Rights Act 1998* (UK).⁷

POAC is an independent tribunal established in accordance with Schedule 3 of the Terrorism Act.⁸ POAC has the power to hear closed evidence in camera with the applicant

² *Terrorism Act 2000* (UK), s 3(5).

³ *Terrorism Act 2006* (UK), s21.

⁴ Home Office, 'List of Proscribed Terrorist Groups', available online at <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups>

⁵ *Terrorism Act 2000* (UK), s 4.

⁶ *Human Rights Act 1998* (UK), s 6.

⁷ *Human Rights Act 1998* (UK), s 7(1); *Terrorism Act 2000* (UK), s 9.

⁸ One of the three tribunal member is a current or past holder of judicial officer. The other members are not judicial officers, and are appointed by the Lord Chancellor. The tribunal members are cleared to see intelligence material: *Terrorism Act 2000* (UK), Schedule 3.

and their representatives excluded. Schedule 3, paragraph 7, of the Terrorism Act provides for appointment of special advocates to represent the interests of an organisation or other applicant in proceedings before POAC. Paragraph 5 of Schedule 3 empowers the Lord Chancellor to make rules regulating the right of appeal to POAC and prescribing the Practice and procedure to be followed by POAC in hearing appeals.⁹

When POAC allows an appeal, the Secretary of State must lay before Parliament the draft of an order removing the organisation from the list of proscribed organisations in Schedule 2 or make an order removing the organisation from the list in Schedule 2.¹⁰

HREOC wrote to the Tribunals Service in the United Kingdom requesting information about the number of appeals made to POAC. HREOC has received a response from the Tribunal Service, stating that:

- A total of two appeals have been made to the Proscribed Organisation Appeal Commission.
- One of these appeals was withdrawn before reaching a substantive hearing and the other is outstanding, thus none have been either successful or unsuccessful yet.¹¹

The Tribunals Service also stated this information can be made public.

An organisation or a person affected by an organisation's proscription may apply for judicial review under the Terrorism Act or the Human Rights Act.¹² A party to an appeal to POAC may bring a further appeal to the Court of Appeal with the permission of POAC, or the Court of Appeal.¹³

3. CORRECTION

HREOC would also like to make the following correction to its submission to the Committee: remove the reference to 'judicial merits review' in paragraph 9 of HREOC's submission and replace with a reference to 'independent merits review'. HREOC apologises for this error.

Yours sincerely,



John von Doussa QC
President

⁹ *The Proscribed Organisations Appeal Commission (Procedure) Rules 2007*(UK).

¹⁰ *Terrorism Act 2000* (UK), s 5(5).

¹¹ Email from Mr Ross Nibet of the Tribunal Service to HREOC, 8 June 2007.

¹² See for example, *The Queen (On Application of the Kurdistan Workers' Paper and Others), (On Application of the People's Mojahedin Organisation of Iran and Others) and (On Application of Lashkar e Tayyabah and Others) v Secretary of the Home Department* [2002] EWHC 644 where the applicants applied for judicial review under the Terrorism Act of the Home Secretary's decision to proscribe them as terrorist organisations. In the alternative, the applicants submitted that the decision to proscribe them as terrorist organisations was inconsistent with their Convention rights. The application was dismissed.

¹³ *Terrorism Act 2000* (UK), s 6.