

Committee Secretary  
Parliamentary Joint Committee on ASIO, ASIS and DSD  
Parliament House  
CANBERRA ACT 2600  
pjcaad@aph.gov.au  
January 24, 2005.

Dear Secretary,

**Review of 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**

The Civil Rights Network (Melbourne) appreciates the opportunity provided by the Committee to participate in this Review.

If you have any questions about this submission, please contact Jess Whyte

Yours sincerely,

Jess Whyte  
(for the Civil Rights Network)

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# Civil Rights Network

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**Civil Rights Network (Melbourne) Submission to the Review of the listing of**

- **the Abu Sayyaf Group,**
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## **About the Civil Rights Network (Melbourne)**

The Civil Rights Network (CRN) is a group of concerned individuals who aim to bring the increasing erosion of civil liberties in the ‘War on Terror’ to the attention of the broader Australian public. Its membership draws upon a wide cross-section of society with trade unionists, lawyers, academics and members of faith organisations being part of the CRN.

### **Introduction**

The focus of the Civil Rights Network’s submission is on the implications for civil and political rights of the proscription powers under the Criminal Code (‘the proscription power’). Therefore, this submission will not comment on the specific organisations listed as “Terrorist Organisations” (‘the listed organisations’), or on the merits, or otherwise, of their listing under the proscription powers. Rather this submission will focus on broader issues concerning the existence and application of the proscription powers.

These concerns are primarily about the extent to which the proscription powers and their application threaten civil and political rights, in particular the right to free association.

We note that the Committee’s examination of the application of the proscription power provides an important forum to evaluate the overall desirability, or otherwise, of the proscription power itself. In this respect, we are of the view that the Committee should review both the merits of each listing, *and* the desirability, or otherwise, of the proscription power itself.

### **No Necessity for the proscription power**

It is the view of the Civil Rights Network that the power to proscribe organisations is not necessary to protect the public from politically and ideologically motivated violence. On the contrary, such acts are already illegal under criminal law.

This point is illustrated in the cases of the listed organisations. The key acts which give grounds for listing the Abu Sayyaf Group, for example, are ‘murders, bombings, extortion and kidnap-for-ransom’.<sup>1</sup> This is replicated for each of the listed organizations. Murder, kidnapping, hijacking, extortion, robbery, bombing etc. are all offences under the criminal law. Deliberately assisting with such offences is also illegal, and would be covered by offences of conspiracy or incitement.<sup>2</sup>

The point was generally made in 2001 in Australia’s first report to the UN on the implementation of Security Council Resolution 1373, which stated that Australia already had in place “a highly coordinated domestic counter-terrorism response strategy incorporating law enforcement, security and defence agencies.”<sup>3</sup> The report further stated that Australia, “already had in place extensive measures to prevent in Australia the financing of, preparation and basing from Australia of terrorist attacks on other countries.”<sup>4</sup> We submit that this was the case, and would still be the case without the existence of the proscription power under the criminal code. We further believe that unlike existing criminal law, which has the strong advantages of transparency, consistency and credibility of evidence, the proscription power holds serious dangers for civil and political rights.

### **Guilt by Association.**

The ability to punish specific offences under the criminal law raises important questions about what the proscription power enables that is not already enabled by existing criminal law. We submit that the proscription power breaches the fundamental principle of criminal law, whereby guilt is attributed to individuals on the basis of their own individual actions in causing harm or damage. In place of this principle, the proscription power relies on guilt by association, by imposing criminal liability on whole groups and on those who associate with them. It therefore imposes criminal liability on individuals who may have no proven or provable connection to

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<sup>1</sup> Attachment A: Abu Sayyaf Group.

<sup>2</sup> See, for example, *Criminal Code* ss 11.2 & 11.4-11.5.

<sup>3</sup> Report of Australia to the Counter-Terrorism Committee of the United Nations Security Council pursuant to paragraph 6 of security council resolution 1373 (2001) of 28<sup>th</sup> September 2001, quoted in Department of the Parliamentary Library, Information and Research Services, Research Paper No.12, 2001-02 at pp.29-30.

<sup>4</sup> *Ibid.*

any act causing harm or damage. Further, it imposes guilt on people who may have very marginal connections to a listed organization, and none whatsoever with a criminal act. The CRN has serious concerns about imposing criminal liability on individuals in such circumstances, particularly given the severity of the sentences imposed for such offences.

### **Secrecy and Arbitrariness**

The concerns that CRN hold with respect to the civil rights implications of the proscription power have been exacerbated as a result of the secrecy and arbitrariness involved in listing the proscribed organizations. This process has been both opaque and inconsistent. In terms of secrecy, the precise criteria and rationale for listing these organizations has not been made public. Neither has the evidence relied upon been made public, or subjected to any public test of credibility. Given that the definition of a terrorist organization draws upon a broad definition of a “terrorist act”<sup>5</sup>, which could potentially include common forms of political protest, the lack of transparent criteria and publicly assessable evidence is particularly concerning.

As well as being secretive, the application of the powers has been inconsistent. Of particular note, is the great inconsistency between the groups proscribed under the *Criminal Code* and those that have been listed by the Foreign Minister under the *Charter of UN Act*.<sup>6</sup> Of particular note, is the fact that, while the listings under the *Charter of UN Act*, include organisations like the *Real IRA*, and the *Shining Path*, all the groups listed under the *Criminal Code* are Muslim organizations. Already, in the current political climate, we have seen Muslims and Islamic organisations vilified and labelled as terrorists. We are concerned that the inconsistency in the listings under the proscription power will lead to increased vilification and strengthen community perceptions that the war on terror is a war on Islam. We are particularly concerned that the proscription power appears to have been used in a discriminatory fashion, to specifically target Islamic organisations. The perception that the power has been used in a discriminatory fashion is only reinforced by the secrecy surrounding the criteria and evidence used to list organisations under the *Criminal Code*.

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<sup>5</sup> *Criminal Code Act* s 100.1.

<sup>6</sup> For latter, see [http://www.dfat.gov.au/icat/persons\\_entities](http://www.dfat.gov.au/icat/persons_entities).

## Conclusion

During the initial consideration of the proscription power, many groups and individuals opposed the power on the basis that they believed it would threaten civil and political rights.<sup>7</sup> In its submission to the “Inquiry into Security Legislation Amendment (Terrorism) Bill 2002 [No.2] and Related Bills” the *Law Council of Australia* argued:

“The Law Council considers the proposed proscription to be, in their entirety, to be draconian, a serious departure from the principle of proportionality, unnecessary in a democratic society, subject to arbitrary application, and contrary to a raft of international human rights standards...”<sup>8</sup>

With the ability to reflect on the application to date of the proscription power, the CRN believes this view to be correct. The proscription power violates civil and political rights and established principles of criminal law and procedural fairness. The application of the power to date has occurred in a manner that is both secretive and inconsistent. For these reasons, we oppose the proscription power itself, and recommend that the committee re-evaluate the necessity of the power in light of the considerable dangers it holds for political and civil rights. In this vein, we submit that:

- **The proscription power is unnecessary, as existing criminal law is sufficient to deal with terrorist offences.**
- **The proscription power endangers civil and political rights that are essential to any democratic society.**
- **The proscription power threatens established principles of criminal law by imposing guilt by association.**
- **The power has been exercised in secrecy and in an inconsistent fashion to date, raising serious concerns about the erosion of civil and political rights.**

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<sup>7</sup> See [http://www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/terrorism/submissions/sublist.doc](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/terrorism/submissions/sublist.doc)

<sup>8</sup> Law Council of Australia, Submission to the “Inquiry into Security Legislation Amendment (Terrorism) Bill 2002 [No.2] and Related Bills”, April 2002, <http://www.lawcouncil.asn.au/sublist.html?section=LCA&year=2002>, pp50-51.

