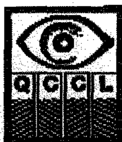

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
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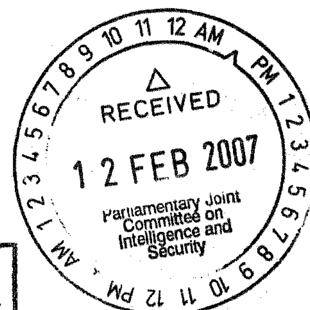
9 February, 2007



The Enquiry Secretary
Parliamentary Joint Committee on Intelligence
Security and Security
Parliament House
CANBERRA ACT 2600

Submission No: 20
Date Received: 12-2-07
Secretary: ....

via email: picis@aph.gov.au

Dear Madam/Sir

Review of the Power to Proscribe Organisations as Terrorist Organisations

I write to you on behalf of the Queensland Council for Civil Liberties ("the QCCL").

I thank you for your letter dated 1 December 2006 received by us on 14 December 2006 inviting us to make a submission to this enquiry.

Statement of Principle

The Council opposes this legislation. In our view it should be repealed.

The Council makes 3 points against proscription:

1. It is actions that should be the subject of criminal sanctions not indications of support or involvement in political organisations. All of the conduct which is alleged against the organisations to be proscribed which is said to justify that proscription could be the subject of an ordinary criminal charge.

2. Proscription introduces into our law the principle of guilt by association. In doing so it undermines one of the fundamental principles of our criminal legal system. By doing so proscription makes it more likely that innocent persons will be convicted of offences.

3. Finally, the relevant sections are extremely vague and grant to the Attorney General a power which is capable of being used in the most arbitrary manner.

There are serious questions about the effectiveness of proscription. The British *Inquiry into legislation against terrorism* while putting a case for proscription in the end conceded "that the primary purpose of proscription was to give a legislative expression to public revulsion and reassurance that fair measures were being taken." [1]

Proscription Powers in Practice

Australian history is replete with examples of the arbitrary misuse of proscription powers. The first being the proscribing of the Industrial Workers of the World in 1916 [2]

The parliamentary library [3] has described the inconsistency in the approach of the Australian Government to proscribing organisations.

The recent decision of the government to proscribe the Kurdistan Worker's Party (PKK) illustrates many of the concerns that have been raised by opponents of this legislation.

There are no criteria specified in the legislation against which a decision can be measured. Under legislation the Attorney General may make a declaration that an organisation is a proscribed organisation where the attorney is satisfied on reasonable ground that it:

(a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
(b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

The Council notes with great concern that the government disregarded the set of criteria which had been agreed between it and the Committee. One of the key criteria agreed upon between the Committee and the government was that organisations would only be proscribed if it could be established that they had links to Australia and that it would pose a threat to Australian interests. In the PPK case that had not been established by the government.

The attitude of ASIO as described in paragraph 1.28 of the minority in the report of the review PPK proscription is truly alarming. In our respectful submission it indicates that ASIO has contempt for this Committee. It is very concerning that an organisation that carries out its processes under a cloak of secrecy appears to have arrogated to itself the right to determine what is or is not relevant to the Committee's consideration

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[1] Quoted in "Terrorism and the Law in Australia: Legislation Commentary and Constraints" Department of the Parliamentary Library Research Paper No. 12 2001-02 See also the Report of the Security Legislation Review Committee June 2006 at paragraph 7.1.
[2] PJ Rushton "The revolutionary ideology of the Industrial Workers of the World in Australia" *Historical Studies* volume 15 page 424 at page 435 I Turner *Industrial Labour and Politics* pages 123-138 and 214-5 and Raymond Evans *Loyalty and Disloyalty: Social Conflict on the Queensland Home front* 1914-18 Sydney Allen & Unwin
[3] "The Politics of Proscription in Australia" Research Note No. 63 21 June 2004

The discussion in the report of both the majority and the minority clearly illustrates the underlying difficulty of proscribing an organisation which may be considered by some as terrorists and by others as freedom fighters. As the Committee observes the Universal Declaration of Human Rights itself recognises that people have as a last resort a right to rebel against tyranny. The report of the Security Legislation Review Committee at paragraph 5.4 reminds us of the following remarks of the President of the Supreme Court of Israel:

> "Regarding the state's struggle against the terror that arises up against it, we are convinced that at the end of the day, the struggle according to the law will strengthen her power and her spirit. *There is no security without law. Satisfying the provisions of the law is an aspect of national security* (italics added)." The President acknowledged that sometimes this meant that a democracy might fight with one hand tied behind its back, but pointed out that a democracy still has the upper hand from the strength and spirit and engendered by the rule of law and individual liberties".

It is we would say a trite proposition of political science at least since Machiavelli wrote his *Discourses* that pluralism *is* not a source of weakness but is in fact a source of strength.

Suggestions for reform

Accepting that this committee is unlikely to recommend the repeal of the proscription powers we make the following suggestions for reform.

1. The Council fully supports all the recommendations of the Security Legislation Review Committee as a minimum set of reforms.[4] The Council is extremely disappointed by the response of the Attorney General to the recommendations of the Security Legislation Review Committee. In our view at the very least all of those recommendations should be implemented as a matter of priority.

2. The Council takes the view that more specific criteria for the proscription of organisations need to be included in the legislation itself.

   The criteria agreed to between the Committee and ASIO as set out in paragraph 2.2 of the Committee's report into the review of the PKK are entirely inadequate for the reasons set out by Mr Emerton in paragraph 2.4 to 2.6 of the report. We would submit that criteria should be inserted in the legislation along the lines proposed by Mr Emerton in paragraph 2.7 of the Committee's report.

3. It is in our view that if no criteria are inserted into the legislation and there is no provision for a judicial hearing on the merits any agreed criteria ought to be the subject of judicial scrutiny.

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[4] Supra at paragraph 9.1 sub paragraph 10

4. Of particular concern is the extraordinarily broad definition of "terrorist organisations" which itself draws upon the extraordinarily wide definition of "Terrorist Act". Extensive criticisms were made of these definitions before the Senate Parliamentary enquiry into the legislation in 2002 and we do not intend to repeat them here. But we would adopt the view that power should only be used to proscribe organisations whose principle *activities* are acts of political and/or ideological violence or the direct funding of such organisations. Mere membership of the organisation should not in itself be a crime. Active involvement in the commission of a crime should be a requirement for a member to be liable.

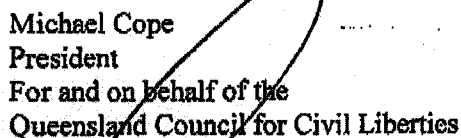
5. The power to proscribe should be vested in a Court and not in the Attorney General so that the Court can determine the matter on the merits.

6. We would also take the view that the Attorney General or Court should be specifically required to take into account the impact of proscription on human rights in particular freedom of political association and communication.

7. A person or organisation who might be affected by a decision to proscribe an organisation should be entitled to be heard according to the principles of natural justice prior to proscription. In our view for the reasons ennunciated by the Security Legislation Review Committee [5] this is an obligation of law in any event.

8. Once an organisation has been proscribed steps should be taken to publicise that widely so that individuals may dissociate themselves from the organisation. There should be a defence to a charge that an individual has taken all reasonable steps to dissociate themselves from a proscribed organisation.

Yours faithfully



Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties

[5] Ibid paragraph 8.2 – 8.30

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