

## The implications and community impacts of proscription

- 3.1 This chapter discusses the impact of proscription on religious and ethnic communities within Australia. It was clear from the evidence that there continues to be a degree of concern in some sectors about the application and longer terms effects of the new terrorism laws.

### The claim of anti-Muslim bias

- 3.2 There were no objections to the listing of entities such as Al Qai'da but several witnesses argued that the proscription power is exercised inconsistently and is vulnerable to political manipulation.<sup>1</sup> Australian Muslim Civil Rights Advocacy Network (AMCRAN) remains opposed to proscription on the grounds that the terrorist organisation offences do not require any specific intent by the individual to engage in acts of terrorism.<sup>2</sup>
- 3.3 The preponderance of self-declared Islamic groups on the Australian list was significant to many witnesses, who argued that the Australian list reflects an anti-Muslim bias as compared to how proscription operates in like-minded countries.<sup>3</sup> In particular, AMCRAN and Islamic Information and Support Centre of Australia (IISCA) said that because all but one of the organisations is 'Muslim' or 'Islamic', many Muslim Australians feel that they have been

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1 AMCRAN, *Submission 22*, p.1; Associate Professor Hogg, *Submission 6*, p.17.

2 AMCRAN, *Submission 22*, p.1.

3 AMCRAN, *Submission 22*, p.3; IISAC, *Submission 27*, p.3; Associate Professor Hogg, *Submission 6*, p.1; PIAC, *Submission 11*, p.5.

'targeted' by the new terrorism laws.<sup>4</sup> AMCRAN claimed that one of the consequences is that Muslim Australians are likely to be subject to higher levels of surveillance and investigation than the rest of the community.<sup>5</sup> AMCRAN expressed the view that this situation:

... does not help in creating a cooperative environment for addressing and fighting the modern challenges of terrorism, not to mention the adverse impact it is having on the sense of security and safety of the Muslim community.<sup>6</sup>

3.4 Although no organisation has yet been proscribed on the basis of 'advocacy' the power to do so was criticised as infringing freedom of expression, especially of Australian Muslims who are more likely to express unpopular opinions about the Iraq War, the Israel/Palestinian conflict or conflicts in other places such as Afghanistan or Chechnya.<sup>7</sup>

3.5 There was also anecdotal evidence that proscription results in a degree of self-censorship within the Muslim communities.<sup>8</sup> For example, participation in social activities, lawful protest and dissent, financial contributions to charitable organisations and through mosques, were some of the areas of normal civic participation that were said to be affected.<sup>9</sup> IISCA said that:

Law-abiding organisations have seen funding reduced to a trickle, in part due to the confusion created by the new laws, and, in part, due to the media hype surrounding the groups sharing similar names i.e. anything with Islam or Muslim terminology in the name.<sup>10</sup>

## The impact on other ethnic communities

3.6 Similar concerns were raised by the Australian Tamil Rights Advocacy Council (ATRAC) who submitted that if the Liberation Tigers of Tamil Eelam (LTTE) were to be listed under the Criminal

4 AMCRAN, *Committee Transcript*, 3 April 2007, p.44; IISCA, p.27, p.4.

5 AMCRAN, *Submission 22*, p.9; *Telecommunications (Interception) Amendment Act 2006* (Cth); AMCRAN, *Committee Transcript*, 3 April 2007, p.44; Mr Hess, *Submission 3*, p.1.

6 AMCRAN, *Committee Transcript*, 3 April 2007, p.44.

7 AMCRAN, *Submission 22*, p.6.

8 See, for example, AMCRAN, *Submission 22*; IISCA, *Submission 27*, p.5.

9 AMCRAN, *Committee Transcript*, 3 April 2007, p.44.

10 IISCA, *Submission 27*, p.5.

Code, this would cause many Australian Tamils to withdraw from legitimate activities that have non-violent goals. It was argued that connections, through travel, education, family and humanitarian and development work, means that engagement with the LTTE is inevitable.<sup>11</sup> ATRAC said that because of these deep and ongoing connections, listing the LTTE under the Criminal Code was likely to have a significant and adverse impact on normal social, economic and political activities.<sup>12</sup> In particular, ATRAC said that the suppression of the community's deeply held political convictions was inconsistent with pluralist democracy.<sup>13</sup>

## The implications for refugees and asylum seekers

- 3.7 The Committee also received evidence from the Refugee Council of Australia (RCOA) about its concerns that due to real or alleged association with a listed organisation, refugees and asylum seekers may be exposed to prosecution for a terrorist organisation offence for the same reasons they were granted refugee status.<sup>14</sup> RCOA said that, in complex internal conflicts, it is almost impossible for a person not to have some type of connection with a 'terrorist organisation'.<sup>15</sup> Associate Professor Hogg argued that Australia has granted refugee status to people persecuted because of alleged membership and support of organisations, such as the PKK.<sup>16</sup> RCOA explained that because concepts such as 'membership' and 'association' are broad and undefined, listing an organisation means that these offences have the potential to affect large numbers of people.<sup>17</sup> It was said that many refugees may support an organisation's goals (for example, an independence struggle) but not their method of achieving it.<sup>18</sup>
- 3.8 The RCOA and UN High Commissioner for Refugees (UNCHR) submitted that proscription may also increase the risk of exclusion

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11 ATRAC, *Submission 8*, p.10.

12 ATRAC, *Submission 8*, p.10

13 ATRAC, *Submission 8*, p.12.

14 RCOA, *Submission 25*, p.2.

15 RCOA, *Submission 25*, p.2.

16 Associate Professor Hogg, *Submission 6*, p. 2; se also, RCOA, *Submission 25*, p.2.

17 RCOA, *Submission 25*, p.2.

18 RCOA, *Submission 25*, p.2.

or expulsion under the *Migration Act 1958*.<sup>19</sup> RCOA stated that the power to proscribe organisations could:

... expand the grounds for exclusion of refugees and asylum seekers imputed to be members or to support a listed terrorist organisation through:

- adverse security assessments;
- exclusion under Article 1F of the Refugee Convention 1951; and
- visa cancellation under s501(6) of the Migration Act 1958.<sup>20</sup>

3.9 RCOA said that, having consulted with other organisations, there appeared to be an increasing reliance on security assessment that was causing delays. RCOA also questioned the reliability of intelligence about a refugee or asylum seekers involvement in a listed organisation.<sup>21</sup> UNHCR stated that because an adverse security assessment is not disclosable to a non-national, a presumption arising from a connection to a listed entity cannot be rebutted by a person otherwise found to be in need of protection.<sup>22</sup>

3.10 The Committee asked the Government to clarify the situation. The Department of Immigration and Citizenship (DIAC) confirmed that there is no automatic exclusion based on an association with a 'terrorist organisation' and each case is dealt with individually. Whether or not a person is excluded depends upon the existence of an adverse security assessment by ASIO.<sup>23</sup> The Deputy Director-General of ASIO stated that:

Obviously it is case by case, you understand, because you are dealing with individuals; you are not dealing with groups. ... Whether the group is proscribed here or not, it is still a matter of the individual and the extent to which that person might

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19 RCOA, *Submission 25*, p.3, UNHCR; Public Interest Criterion 4002 of Schedule 4 of the Migration Regulations 1994 which requires that: the applicant is not assessed by ASIO to be *directly or indirectly a risk to security*, within the meaning of section 4 of the ASIO Act 1979; See also PIC 4001 (character test as defined by s.501 (6) of the Migration Act 1958) and 4003 (associated with the proliferation of weapons of mass destruction) Schedule 4 of the Migration Regulations 1994.

20 RCOA, *Submission 25*, p. 3.

21 RCOA, *Submission 25*, p.3.

22 UNHCR, *Submission 29*, p.2; Division 2 of Part IV of the ASIO Act; see also Sundberg J in *Parkin v O'Sullivan* [2006] FCA 1413 at [28] –[32]

23 DIAC, *Committee Transcript*, 4 April 2007, p.57.

have engaged in, or is likely to engage in, in Australia, activities prejudicial to security. It is not automatic.<sup>24</sup>

- 3.11 This appears to be consistent with the position advocated by the UNCHR, which submitted that:

In view of the seriousness of the issues and the consequences of an incorrect decision, the application of any exclusion clause should continue to be individually assessed, based on available evidence, and conform to basic standards of fairness and justice.<sup>25</sup>

- 3.12 ASIO publishes information in its annual report on the number of visa security assessments processed in each twelve month period. Thus, for example, in the financial year 2005-06 ASIO conducted 53,147 visa security assessments, resulting in 12 individuals, from a range of nationalities being refused entry due to links to politically motivated violence, terrorism or foreign intelligence services.<sup>26</sup>

## The adequacy of community information

- 3.13 It appears to be a commonly held view that informing the community about proscription and the scope of terrorist organisation offences remains a challenge.<sup>27</sup> The Community Relations Commission did not comment on the effectiveness of proscription but made the observation that:

..it is an offence to fund a terrorist organisation both within and outside Australia, the Commission would suggest that a communication strategy be put in place to ensure that the Australian community is informed of those organisations that are listed, the law, and the possible consequences of breaching that law.<sup>28</sup>

- 3.14 The Committee sought up to date information from AGD about the Department's efforts to promote public understanding of the implications of proscription. AGD reiterated that it publishes information about listings on its website and this includes the

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24 Deputy Director-General of ASIO, *Committee Transcript*, 4 April 2007, p.74.

25 UNHCR, *Submission 29*, p.3.

26 ASIO, *Report to the Parliament 2005-2006*, p.30.

27 See, for example, Professor Williams, *Committee Transcript*, 3 April 2007, p.22; Community Relations Commission, *Submission 1*, p.1;

28 Community Relations Commission, *Submission 1*, p.1.

Statement of Reasons.<sup>29</sup> The Attorney-General also releases a press statement at the time of the listing but the extent to which the various ethnic news outlets are covering such matters has not been monitored and is therefore unknown.<sup>30</sup> As a consequence, the Committee has no way of assessing the effectiveness of these routine steps in informing the wider community.

- 3.15 AGD has also adopted a number of other measures. For example, during the hearing AGD advised that a set of pamphlets produced in 2005 are to be revised to include information about proscribed organisations.<sup>31</sup> The Committee was also informed that these pamphlets have been distributed through some migrant organisations.<sup>32</sup> AGD has also responded positively to invitations to speak at public forums and have made presentations at several such events during the past year.<sup>33</sup>

## Committee View

- 3.16 In a liberal democracy the 'banning' of a political association is inherently controversial. However, proscription of organisations that engage in extreme acts of political violence, while still regarded an exceptional measures, is not entirely new. Few witnesses claimed that proscription *per se* is unjustified as a means to combat terrorism. Provided there is probative material that the entity has adopted terrorism as a strategy to pursue its goals, listing that organisation, regardless of the ideological, political or religious cause it seeks to advance, is a legitimate response by a democratic society.

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29 AGD, *Committee Transcript*, 4 April, 75.

30 AGD, *Committee Transcript* 4 April, p.75; AGD, *Supplementary Submission 10A*, p.5.

31 AGD, *Committee Transcript*, 4 April, p.75.

32 AGD, *Committee Transcript*, 4 April, p.75.

33 AGD, *Committee Transcript*, 4 April, 68; AGD, *Supplementary Submission 10A*, p. 2;27 February 2006 – briefing to the Muslim Community Reference Group on the new counter-terrorism laws; 19 April 2006 – participation in a legislation and policy forum held at Monash University to discuss the counter-terrorism legislation; 17 May 2006 – presentation on the Government's counter-terrorism legislation to Muslim community representatives and Northern Territory police at a National Security and Crisis Management Planning workshop in Darwin; 19 and 20 May 2006 – presentation to a public forum hosted by the Citizens for Democracy in Armidale; 28 May 2006 – presentation to a public forum hosted by the Young Lawyers Association in Sydney; 2 June 2006 – address to the Attorney-General's Non-Government Organisation Forum on Human Rights; 19 July 2006 – presentation on the implications of Australia's new terrorism laws on specific ethnic communities at a conference of The Northern Migrant Resource Centre Inc. in Melbourne.

- 3.17 The Committee does not accept that the preponderance of militant Islamist groups on the current list is a form of discrimination. The selection of entities is not concerned with the religious faith of any group and is not geared toward selecting Islamic organisations. Nor is the proscription power exercisable purely in relation to organisations that promote some form of religious fundamentalism. There have been numerous efforts to make the distinction between Islam the religion and the violent extremism of some militant Islamist groups, whose indiscriminate violence threatens public safety and/or the existing structures of government.
- 3.18 That said, the Committee recognises that there remains a tendency in much of the public debate to conflate Islam the religion with the distorted political theology of groups that use terrorist tactics, and this has fed prejudicial attitudes. A general rise in the level of prejudice experienced by Muslim Australians has been recorded, with Muslim women being particularly vulnerable.<sup>34</sup>
- 3.19 HREOC briefed the Committee on its ongoing work with the DIAC to alleviate the situation. The Committee was especially interested to learn of the *Unlocking the Doors Project* designed to facilitate dialogue between Muslim communities and police in NSW and Victoria, and improve police responses to complaints of racist violence.<sup>35</sup> It is important that such work continues and that everything is done to promote a wider appreciation across the whole community that freedom of speech is not a license to deliberately inflame hostile sentiment against any other group.<sup>36</sup>
- 3.20 The Committee regard the issue of increased levels of investigation as essentially a question about the operation of police and intelligence powers, a matter that was not examined in detail during this inquiry. We therefore limit our comment to the observation that building cross community partnerships at the operational and community level is important in supporting the efforts of the police and intelligence agencies.<sup>37</sup>

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34 *Isma Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australian's*, 2004.

35 HREOC, *Report to the Department of Immigration and Citizenship on the Unlocking Doors Project*, March 2007; see also, *Report to the DIAC on the Muslim Womens' Project 2006: A Dialogue on human rights and responsibilities*, December 2006.

36 ASIO's *Questioning and Detention Powers: Review of the operation, effectiveness an implications of Division 3 Part III of the ASIO Act 1979*, November 2005, p.75; *Review of Security and Counter Terrorism Legislation*, December 2006, p.32.

37 *Review of Security and Count-Terrorism Legislation*, December, 2006, p.p.23-37.

- 3.21 The Committee does not agree that proscription on the basis of 'advocacy' of terrorist acts is an unjustified infringement of freedom of expression. While we understand that many of the fears expressed about this aspect of the law are genuine, in light of the fact that no organisation has yet been proscribed on the basis of advocacy, some of the claims appear to overstate the position. The application of the proscription power based on the grounds of 'advocacy' of terrorism is discussed in Chapter 4.
- 3.22 The Committee recognises that, traditionally, Diaspora communities have considered their ongoing support and connections with overseas organisations as perfectly legitimate. However, Australia has obligations not to provide safe haven or allow its territory to be used for activities that facilitate terrorist violence against foreign states. The Committee has also recognised that assessing the impacts of proscription on ethnic and religious communities is a relevant factor to be taken into account during its review of listings.
- 3.23 Concerns were raised about the potential for proscription to impact on the determination of refugee status but exclusion is not automatic under Australian law. The Inspector General of Security and Intelligence (IGIS) plays an important role in providing ongoing oversight of the intelligence agencies, and is the appropriate body to deal with individual complaints about delays in assessments in migration related matters.<sup>38</sup> The question of the procedural rights of non-nationals is outside the terms of reference of this inquiry.
- 3.24 There is an important distinction between activities prior to arrival in Australia and conduct in Australia that breaches Australian criminal law, which clearly does raise the possibility of prosecution. It is therefore of the utmost importance that effective communication strategies are in place to ensure that vulnerable communities are aware of what is and what is not permissible. The Committee has stated the importance of community information on several occasions during its review of listings and it is disappointing that the efforts to-date appear to be quite limited rather than part of a more comprehensive and proactive strategy.

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38 See, for example, *IGIS Annual Report 2005-06*, p.18.



**Recommendation 1**

3.25 The Committee recommends that:

- the Attorney-General's Department develop a communication strategy that is responsive to the specific information needs of ethnic and religious communities;
- there be direct consultation on the management of visa security assessments between the Australian Intelligence Security Organisation, the Inspector General of Intelligence and Security and the UN High Commission for Refugees.

