



Committee Secretary
Senate Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via email: fpa.sen@aph.gov.au

30 July 2009

Dear Sir/Madam,

RE: Inquiry into the National Security Legislation Monitor Bill 2009

Thank you for the opportunity to make a submission to the above inquiry.

About AMCRAN

The Australian Muslim Civil Rights Advocacy Network (AMCRAN), formally established in 2004, is a network of volunteers dedicated to preventing the erosion of civil rights of all Australians. By drawing on the rich civil rights heritage of the Islamic faith, AMCRAN provides a Muslim perspective on matters relating to civil rights. It actively participates in law reform and policy work, including legislative reform through submissions to government bodies, lobbying, grassroots community education, and communication through media. It collaborates with many Muslim organisations and non-Muslim organisations to achieve its goals.

AMCRAN is of the view that a Monitor of the anti-terrorism legislation, proposed by The National Security Legislation Monitor Bill 2009 ('the Bill') is necessary to review the effectiveness of the legislation and the national security bodies empowered to apply them.

The current bill is similar in several ways to the Troeth/Trood bill. We will firstly outline AMCRAN's submission to the Legal and Constitutional Inquiry into the Troeth/Trood Bill of 2008. We will then make specific recommendations regarding the Bill.

AMCRAN's Position on the Legal and Constitutional Inquiry into the Troeth/Trood Bill of 2008

The Troeth/Trood Bill of 2008 was a significant step towards addressing the current problems with the anti-terrorism legislation. AMCRAN supported the Troeth/Trood Bill and had hoped to see it eventuate into the establishment of a formal review body for the laws. AMCRAN remains of the view that Australia is in a critical need of a thorough and detailed review of the laws, in order to formally assess the operation, effectiveness, implications, and above all, the necessity of laws in Australia relating to terrorism.

In its previous submission to the Legal and Constitutional Inquiry into the Troeth/Trood Bill, AMCRAN made several recommendations. We are pleased that some of the recommendations have been addressed in the drafting of the Bill. However, AMCRAN is of the view that the Bill does not adequately address these recommendations:

- Ensure that community impact and human rights impact of anti-terror legislation is explicitly included within the scope of the Independent Reviewer.
- Ensure that the Independent Reviewer has a specific law reform role in helping to propose legislative cure for Executive excesses.

The function of the Monitor in relation to analysing the impact of the anti-terror regime on the community needs to be explicitly stated. Furthermore, AMCRAN believes that there also needs to be emphasis on the law reform function of the Monitor, in the event that areas of reform are identified.

Community Impact

With respect to the meaning of the word "implications" under clause 6, AMCRAN recommends that, in addition to the **broad implications** of the legislation, some specific non-exhaustive areas such as the implications on human rights, the implications on community relations, the implication on Australia's international obligations etc be explicitly examined, addressed and reported on by the Monitor. In particular, from our experience of monitoring community reaction and response to specific action by the Executive, we believe that the implications of the operation of legislation on community confidence and relations are especially important.

AMCRAN submits that the application of the laws has had a disproportionate effect on the Muslim community. AMCRAN conducted a survey in 2005 on the Muslim community's perceptions of and contact with ASIO, the AFP and State anti-terror authorities. The results indicate the underlying problems with the anti-terror laws and

support our view that a reviewer body is strongly needed by the Australian community.¹ The respondent's perceptions of the anti-terror regime included denying or strongly denying feeling safe under the current regime and almost half of respondents indicated that they strongly agreed that the Muslim community was being targeted by the laws. Almost 75% of respondents indicated that they were somewhat to very worried about the Australian Security and Intelligence Organisation (ASIO) following September 11. It appears that the community appeared as fearful of an act of terrorism as it was of the anti-terror authorities designed to police and contain that threat.

To some extent the Muslim community has seen their fears played out in the cases of Dr Haneef and Izhar Ul Haque, in which these people were held for lengthy periods of time on tenuous and ultimately unsupportable charges. In November 2007, Justice Adams of the NSW Supreme Court criticised the conduct of certain ASIO officers in the case of Izhar Ul-Haque. The events in question related to a search executed at the Ul Haque residence, and the interrogation of Izhar Ul Haque under the colour of a search and entry warrant in November 2003.

Justice Adams found that certain admissions made by Izhar in the course of subsequent investigations by the AFP were inadmissible, as they had been coloured by the previous coercive conduct of ASIO. He further found that, on the evidence, it may be possible to argue that ASIO officers B15 and B16 had committed the common law wrongs of kidnapping and false imprisonment by interrogating and detaining Izhar in the course of executing a search, and without a specific warrant for his questioning. Despite these findings, no criminal charges or formal disciplinary proceedings were initiated against officers B15 and B16.

Cases such as these indicate that the application, meaning and effects of the laws remain unclear and confusing. In the absence of a formal review of the laws, there is a strong possibility that national security agencies will apply the laws, at times, in an incorrect and unevenly discretionary manner. In exercising the function of 'considering if the laws contain appropriate safeguards for protecting individuals' rights', the Monitor should also consider community impact of the counter-terrorism and national security legislation.

¹ The survey had a sample of about 146 respondents from Sydney's Southwest suburbs, covering Lakemba, Bankstown and Punchbowl. We acknowledge the age of this survey, however we have found that the results still speak to the current sentiments in the community. The survey can be accessed online at: http://amcran.org/index.php?option=com_content&task=view&id=178&Itemid=176.

In addition, AMCRAN also makes the following recommendations:

Qualifications of the Monitor

Clause 11(3) of the Bill requires that the Monitor must not be appointed unless the person is suitable because of the person's qualifications, training or experience. Additionally, the Second Reading Speech indicates that the Monitor needs relevant 'expertise' but does not have to be a lawyer. AMCRAN is of the firm view that this requirement does not meet the complexities of the role as Monitor. AMCRAN maintains its previous recommendation that the Monitor needs to have extensive legal background, preferably an ex-judge or a Ch III judge acting as *persona designata*. This will ensure that the person has sufficient legal knowledge and experience to navigate the incredibly complex anti-terror laws that Australia currently has.

Individual Complaints

Clause 6(2)(b) specifically excludes the Monitor from considering individual complaints about the activities of Commonwealth agencies. However, AMCRAN submits that it would be both effective and pragmatic to provide a legislative mechanism to allow concerned individuals or groups with standing to be able to trigger review action by the Independent Reviewer.

Questions of Law

The Monitor, when necessary, should be able to refer questions to the Federal Court on questions of law, on the legality of agencies' taking of action or the legality of the particular exercise of executive power etc.

Law Reform

AMCRAN submits that it is important for the Monitor to have a specific law reform role in addition to reporting to the Prime Minister. We believe the Monitor will have an in-depth understanding of how the anti-terrorism laws function as a whole, and therefore would be in a unique position to propose legislative amendments. Therefore one of the Monitor's functions should also be to identify legislative reform areas and recommend legislative changes.

New Proposals for Changes or Additions to the laws

Recent proposals for changes to the anti-terror laws, as outlined by the Attorney-General Robert McClelland in recent media reports, may further implicate the Muslim community. The proposals make it an offence to incite violence against an individual on the basis of race, religion or nationality. Mr McClelland also stated, "I see centres for Islamic studies at tertiary institutions as having a particular responsibility in this area."² As a result of the Monitor's role in reviewing the operation and effectiveness of existing

² Walters, Patrick *Race and religion to be in law Review* Sydney Morning Herald, <http://www.theaustralian.news.com.au/story/0,25817921-31477,00.html> July 22 2009

laws, he or she would also be in a good position to know whether any proposed legislation is necessary and appropriate. We submit that the Monitor's role should include active involvement in any proposals of new legislation, including contributing to and participating in relevant Senate Inquiries.

Conclusion – a look at International Law

Specifically, a function of the Monitor is to 'have regard to Australia's international obligations, such as the International Convention on Civil and Political Rights and United Nations counter-terrorism instruments as well as the agreed national counter-terrorism arrangements between the Commonwealth, States and Territories.' AMCRAN is of the view that this is an important function of the Monitor and that International Law provides an excellent foundation for supporting the need for a Monitor in Australia.

Article 9 of the International Covenant on International, Civil and Political Rights states that, *'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.'* Our experience has shown that the anti-terror laws have allowed for instances of arbitrary arrest and detention, where no sustainable charges could be laid. There is a definite fear that without a Monitor, and in light of the recent proposal for changes to the laws, this situation will continue to occur and target the Muslim community.

Article 18 further states that, *'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.'*

The Clarke Inquiry has also recommended that there be in place an independent reviewer body or Monitor of the anti-terrorism legislation. There has been much discussion and debate about this issue, and the practical application of the recommendations is long overdue. AMCRAN is hopeful that an independent Monitor will identify and analyse the issues that Muslims face as a result of the operation of the terrorism laws and address the inherent problems in its application.

Yours sincerely,

Australian Muslim Civil Rights Advocacy Network