

Mr Owen Walsh
Committee Secretary
Senate Legal and Constitutional Committee

By e-mail: LegCon.Sen@aph.gov.au

22 November 2005

Dear Mr Walsh,

Inquiry into provisions of *Anti-Terrorism Bill (No. 2) 2005* – Questions taken on notice

We thank you allowing us to take questions on notice. Our answers are as follows.

Question 1:

Senator NETTLE—My final question, my third question, deals with the issue of advocating that you mentioned in relation to how a terrorist organisation is defined. I have not had the opportunity to ask the Attorney-General's Department about whether or not they, as you say, define that by saying that, if the leader of an organisation says something, then it applies to the whole organisation and it can be deemed an unlawful association or an unlawful organisation. Because I have not had that opportunity to ask the Attorney-General's Department, I am wondering if you have received any advice or communication from the Attorney-General's Department about how that particular clause will be interpreted.

We have written to the Attorney-General directly to reiterate our concerns, a copy of our letter is enclosed for your information. We submit that we have not yet received a response.

Question 2:

Senator LUDWIG—In your submission you deal briefly with schedule 3, the financing of terrorism. You mention in the last paragraph on page 14 that donations may flow through to Muslim countries but that formal channels may not be utilised. Have you looked at the legislation in terms of cash dealers being required to be registered by AUSTRAC and the impost on what may be called Hawallah networks which exist in countries where it is difficult to utilise the existing banking system? How would that impact on Muslims in this country?

"Hawallah" comes from the Arabic word for "transfer". In Arab states a money order from a post office in fact is referred to as a Hawallah. In rural areas of Muslim states lacking banking or other financial infrastructure, the Hawallah system fills the gap. It is a semi-informal system that operates on trust. In western countries, the Hawallah system is known as an informal system of funds transfer often to areas in Muslim or third world states where there is either no financial institution capable of transferring cash or where exchange control regulations make it difficult for people to transfer hard currencies. Further, many Muslims and others use Hawallah networks rather than conventional banking networks because (a) in many parts of the Muslim world, conventional banking is inefficient and it can take weeks to transfer funds; and (b) in many cases, there is corruption in the banking system that endangers the ability to send the funds effectively. In many cases, Hawallah networks are used for their speed – they are used to transfer funds in personal emergencies, and in some cases for larger emergencies of the kind seen in Aceh and India and Pakistan in the last year.

Typically, a person would visit a dealer in one country and provide a certain amount of cash to the dealer. The dealer then provides the person with the address of a dealer in another country and a code of some kind. The code is then given to a person in the other country, allowing it to be redeemed for cash. The dealers square these transactions up at a later time. The amounts transferred are generally quite small and the charges are generally lower than at commercial institutions. The informal nature and lack of reporting obligations reduce the administrative costs of the Hawallah system. Reporting regulations will no doubt increase the cost to the end users, who are often people with little money themselves, trying to assist their even poorer families overseas. Further, as noted the small amounts transferred are unlikely to trigger the AUSTRAC "minimums" for cash transaction reporting.

We assume that the intention of these provisions is to prevent transfer of significant sums by terrorist organisations. However, academic literature points to terrorist organisations using much more sophisticated methods of transferring cash such as "blood diamonds", narcotics and precious metals. If this literature is correct then the legislation will create significant hardship to a vulnerable group without achieving the object of the legislation.

The proposed provisions in Schedule 9, particularly item 11, would seem to specifically cover Hawallah networks for cash transfer. We do not, in principle, object to the concept of dealers in Hawallah networks having to be registered. We are concerned, however, that the short time after commencement for them to be registered may create difficulties, and that it is difficult to see how in the space of 30 days dealers will become aware of the changes and implement the requirements. There are no professional bodies of Hawallah networks or the like. Our view is that a longer period needs to be provided for dealers to register after commencement. Further dealers in regulated environments should not be



asked to disclose or be responsible for the actions of their counterparts in third world countries as this may cause their counterparts problems at that end. Further, making the reporting systems so onerous as to in practice put them out of business would cause great difficulties to families of Australians living in already difficult circumstances.

In summary, we also do not object in principle that cash dealers should report funds transferred. However, if the reporting obligations are so onerous as to slow down the process of transfer, then this would be inconvenient to many users (including Muslims) of these informal networks. A preliminary and general reading of the Bill suggests that these reporting obligations are indeed onerous. We refer to the submission by the Australian Bankers' Association in which it expresses its concerns about the capacity of smaller financial institutions to comply with certain provisions of the Bill. We submit that these difficulties will be amplified for more informal systems such as Hawallah networks. The impact of these provisions on the poor is therefore likely to be significant. The object of the legislation is however, if this analysis is correct, not likely to be achieved.

Yours sincerely,

M. Waleed Kadous
Co-convenor
Australian Muslim Civil Rights Advocacy Network

The Hon Philip Ruddock MP
House of Representatives
Parliament House
Canberra ACT 2600

Dear Mr Ruddock,

Re: Anti-Terrorism Bill (No. 2) 2005

We refer to the *Anti-Terrorism Bill (No. 2) 2005*. We note that the Senate Legal and Constitutional Committee is currently holding an Inquiry into the provisions of the Bill, and that AMCRAN appeared before the Committee on Thursday 17 November 2005.

One of the questions we took on notice was whether or not we had received advice or other communication from your Department as to how an organisation as an entity "advocates terrorism".

In our submission, we raised a number of concerns in relation to the extension of the proscription regime to include "advocating terrorism" as a grounds of proscription. In particular, we submitted that there are difficulties with the current drafting of the Bill which does not specifically define how an *organisation* as an entity "advocates" terrorism. We enclose a copy of our submission, and we reproduce the relevant paragraph below for your convenience:

Secondly, there is vagueness as to what is meant for an *organisation* to "advocate" terrorism. Does it mean that the leader of the organisation has made comments on one occasion publicly "advocating terrorism"? Is there a requirement that the comments be made on multiple occasions? Is it sufficient for someone on the forums of a website to have made statements advocating terrorism? Or is advocacy limited to it being stated as one of the doctrines of the organisation? This is very different from the doing of a terrorist act, which clearly requires logistical support and coordinated acts, rather than the speech of a single individual. (Submission 157, p. 12)

We request a response from your Department as to how these provisions will be interpreted. We further request that the provisions be re-drafted to define how an



organisation as a single entity advocates terrorism. Lastly, we seek reassurance that the vagueness of the provisions will not allow for discriminatory or arbitrary application of the law.

Yours sincerely,

M. Waleed Kadous
Co-convenor
Australian Muslim Civil Rights Advocacy Network