



19 September 2008

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: legcon.sen@aph.gov.au

Dear Secretary,

Inquiry into the Independent Reviewer of Terrorism Laws Bill 2008 [No. 2]

We thank you for the invitation to make a submission to the above Inquiry and we are also grateful for the opportunity to appear at the public hearing.

Since its inception, the Australian Muslim Civil Rights Advocacy Network (AMCRAN) has been concerned with the practical operation of anti-terror laws and the ways in which these laws operate to target particular segments of the Australian community. AMCRAN draws on the rich civil rights heritage of the Islamic faith to introduce a Muslim perspective on civil rights issues. It does this through active engagement with the Muslim and broader community, with the media, and through political lobbying and submissions such as this.

In principle, AMCRAN supports an independent reviewer of terrorism laws for the following reasons:

- The anti-terror laws are multi-faceted, covering a variety of areas including the creation of new terrorism offences, as well as extended powers for ASIO and police forces for searching, questioning and detention. In the last 8 years, more than 40 pieces of anti-terrorism legislation, many of which are incredibly complex, have been introduced. Existing bodies and parliamentary committees have reviewed major components and select aspects, but no comprehensive review of the system in its totality has been undertaken.
- The interpretation of the laws, both by courts and agencies empowered by the legislation has at times been unexpected. For example, the extension of a 24 hour pre-charge detention into 12 days in the Haneef case, or the way in which a "terrorist organisation" has been used in courts to represent any collection of individuals jointly accused of terrorism offences, appear to go far beyond what the original lawmakers conceived, unfortunately aligning with what the community feared the most.

- Reviews by the Security Legislation Review Committee and the Parliamentary Joint Committee on Intelligence and Security have recommended a permanent review mechanism. AMCRAN has concurred with the findings of both reviews.

Concerns for the Muslim Community

One of the concerns of the Muslim community is that the impact of the legislation on them as a community has not fully been considered. There is little doubt that the laws have had a disproportionate impact on the Muslim community. Of the 19 proscribed terrorist organisations, 18 are self-identified Muslim groups. This means that some of the offences (e.g. the association offence under s 102.8 Criminal Code) more or less apply exclusively to Muslims. This is in stark contrast to countries like the UK, Canada and USA. Furthermore there have been a number of crimes committed that appeared to be within the definition of terrorism offences but the people involved were not charged under the terrorist offences (e.g. plans for bombing of a Chinese restaurant by the Australian Nationalist Movement in WA). The Izhar Ul Haque and Mohammad Haneef cases (both individuals were practising Muslims) have not helped with this situation, with both individuals being cleared, after long and arduous processes, of any involvement in terrorism.

Muslim organisations such as AMCRAN, the Islamic Council of Victoria, the Islamic Council of New South Wales, the Islamic Information and Support Centre of Australia, have appeared before the Senate Legal and Constitutional Committee, the Sheller Inquiry and PJCIS numerous times. They have done their best to communicate broad Muslim community concerns. The committees, in turn, have reported that there does appear to be disproportionate impact on the Muslim community and have made various recommendations. It is fair to say that by and large these recommendations have been ignored.

In view of this, the Muslim community has become somewhat skeptical of these kinds of reviews. It is therefore important that if the Independent Reviewer of Terrorism is established, it should be done in such a way as to:

- 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.
- Ensure that the Independent Reviewer is sufficiently resourced and empowered to accomplish its goal.

Some specific points relating to particular provisions

In addition to the above general concerns, we make the following recommendations with respect to particular provisions:

Clause 4 (Interpretation):

- The definition of terrorism laws is broad in scope but may not cover all relevant acts. AMCRAN recommends retaining the broad definition but also including additional mechanism such as the Minister making a regulation specifying the inclusion of a particular Act. This is similar to the way that the list of proscribed organisations is currently prepared.

Clause 6:

- AMCRAN recommends that the Independent Reviewer is someone with 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.

Clause 8:

- We note the use of the phrase 'the operation, effectiveness and implications' is similar to the SLRC (Security Legislative Review Committee). We presume that effectiveness means 'with respect to national security'. It is our belief that the current definition is too broad. It would assist the Independent Reviewer in his/her role if more guidance were to be given as to their responsibilities.
- On the meaning of "implications", 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 Independent Reviewer. 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.
- We submit that there should be some legislative guidance for some (non exhaustive but) precise or specific criteria for own motion action on the part of the Independent Reviewer. These criteria should ideally be linked to international legal instruments such as the UDHR, ICCPR.
- In addition, AMCRAN believes 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.
- The Independent Reviewer, 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.

- As discussed above, the Independent Reviewer should have a specific law reform role in proposing legislative cure for Executive excesses.

Part 3:

- The Independent Reviewer should be a full time position with adequate resources including staff cleared to the highest security levels so that they will be able adequately to view all relevant material without impediment.

Clause 10 (1), (5):

- This clause (which compels the production of documents, attendance of a witness etc) should carry a penalty for non-compliance.

Conclusion

AMCRAN believes that the post of Independent Reviewer of Terrorism is an important and productive role. However, the bill as proposed should be amended in order to ensure that the scope is sufficiently well-defined and that the position is sufficiently well-resourced in terms of experience, security clearances and finances.

We thank you for the opportunity to make this submission.

Yours faithfully,

Australian Muslim Civil Rights Advocacy Network (AMCRAN)