

Dr Hannah Jaireth
Inquiry Secretary – *Terrorism (Extraordinary Temporary Powers) Bill 2005*
Standing Committee on Legal Affairs
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Dr Jaireth,

Thank you for allowing us to make a late submission. Please find attached our joint submission.

Thank you
Regards

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General Issues

1. The *Terrorism (Extraordinary Temporary Powers) Bill 2005* ('the Exposure Draft') is perhaps a benign interpretation of the oppressive Commonwealth legislation which the Exposure Draft seeks to complement. We thank the government and all sides who support this Exposure Draft. We also recognise and would like to thank the all the MLAs involved who have reached out to the communities in order to understand the misgivings and apprehension that was created by the Commonwealth legislation.

2. In general the relevant 'crimes' in the in Criminal Code are clearly political crimes. As such, support for the "liberation groups", even those once headed by current Nobel Peace prize winners,¹ would be criminalised by the current legislation. As with the case of the banning of the Communist Party we will have to hope and wait for the High Court to strike down the clearly oppressive Commonwealth legislation. Generally, Legislators should ensure that in a democratic society that it should not be left to the Courts to cure administrative injustices.

3. The Attorney General and PM have stated generally that the anti terrorism legislation is not aimed at Muslims. *Prima facie*, this appears the case with the text of the legislation. However, in practice there seems little doubt that Muslims are being targeted. The number of Muslims so far subject to "raids" and the high profile manner in which these raids were conducted (and footage released to the media,) is unfortunate and unhelpful in curing the problems associated with extremism. In some cases, those detained during and after the raids and who were were subsequently released without charge demonstrates that the intelligence that the raids are based upon are not as reliable as is often made out and thus, the fear of being detained on questionable evidence held within the Muslim community is not without a reasonable factual basis.

4. Further, Muslims may feel under greater scrutiny then others as:

- (i) All proscribed groups in Australia are connected with Muslims. Several 'non-Muslim' groups which are associated with terrorism by both the UN and the US and who have nationals, supporters or adherents (in the case of religious groups) here and/or are represented within the general Australia community, have not been proscribed in Australia.
- (ii) The Attorney-General and PM have met with handpicked Muslim Community members (the reference group/invitees) or "Muslim leaders" and have done so with some publicity. Some questions have been raised as to "how representative" these "leaders" are within the Muslim community.² Further, questions have been raised publicly on the views and opinions expressed or attributed to some of the nominees or members of the reference group and include disrespect to adherents of 'other' religions, support for terrorist acts (as defined in Criminal Code) etc.³ Further when

¹ Eg support for Mr Nelson Mandela and the ANC when he was president of the African National Congress at a time when the ANC was outlawed in South Africa.

² [<http://www.abc.net.au/lateline/content/2005/s1443670.htm>]

³ For example:

(i) statements attributed to Christopher Pyne (SA) at

<http://www.townhall.com/news/politics/200112/FOR20011213b.shtml>

(ii) Howard Government Backs Terrorist groups <http://planetirf.blogspot.com/2005/10/howard-government-backs-terrorist.html>

(iii) That there is a disproportionate number of liberal party supporters or that the balance favours non-Sunni Muslims.

(iv) There also appears to be an implication that those Muslim groups that are not represented in the reference groups are somehow 'moderate' or that they may even be extremist [Letter of 9 September from the Department of PM&C to the President of the Canberra Islamic Centre (CIC), [arguably the largest single Islamic organisation in Australia (Membership 1,200)].

these extreme views are (rightly or wrongly) attributed to 'representatives' of the community, and when these representatives are apparently 'endorsed' as 'moderates' by the Government, this could further damage and alienate the Muslim community within the broader Australian community. This demonisation, of course, legitimises the need for draconian legislation which will for now mainly affect the Muslim community. A cynic may suggest perhaps that, this is the intended effect! The ACT however has a more broadly representative Muslim advisory group of ACT and NSW Muslims, although it is unclear whether the advice of the ACT group will have any substantial impact at the local or national.

5. Although the UK has similar legislation, the committee must consider that the UK legislation is subject to European Conventions and Courts. While the ACT legislation is subject to the Bill of Rights, it does not *prima facie* appear to bind the Commonwealth, and such rights-restricting legislation should therefore be that much more stringent and narrowly focused.

6. Citizenship in Australia is a legislative right only (as opposed to a Constitutional right). Press reports indicate that some (Federal) government members are seeking to provide for legislation to strip people of their Australian nationality under certain circumstances including situations that may arise under this present legislation. Since in the main, only Muslims are affected by these provisions, the move appears to be *prima facie* discriminatory. However, the suggestion is ill-considered and impractical, and is unlikely to be enacted into law. However, such 'talk' is clearly divisive. The point here is to highlight how the 'freedom of speech' of the powerful in the community is protected while the exercise of 'freedom of speech' of the marginalised people (even though one may find these views equally distasteful) is potentially criminalised. It is noted that, if a person is stripped of his/her citizenship, as migration law presently stands, it is possible that this now stateless person or an alien may be detained indefinitely.

7. We recognise and thank the Legislative Assembly for not creating provisions to enable "Control Orders". This order is punitive and draws a penalty even when breached without the knowledge of the person concerned. It is a very oppressive order which can be breached by the acts of others over whom the person concerned has no control.

8. We request that persons held in detention in the ACT be allowed to practice their religious beliefs while in custody (ie to pray and/or to fast as mandated by religion) and to be provided with food that is in accordance with religious requirements.

9. We believe that that general safeguards be added to enable **merits review** of administrative decisions.

PART II

Specific Issues.

The following changes are suggested [by section and subsection number]:

Part 2 Division 2.10

50. That the person detained has access to relevant interpreter services if required.

53. (3) (b) consult with the PIM etc ... giving the PIM written notice including a statement of reasons, including the legal basis for the decision.

53.10 [recording] ... must not be monitored [unless the person requested an interpreter (and it was not possible or practical to get an interpreter in that language) in which case the conversation may be recorded if requested by the person.]

Part 3 Division 3.4

80 (1) is a very broad power. It would be better to include a test of reasonability and necessity be satisfied before entering a given place within the target area.

Part 3 Division 3.5

88 (2) (d). There should perhaps be a presumption that the person from whom the property was taken in the first place, was the rightful owner.