



Monday, 6 October 2014

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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Dear Secretary

Re: Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014

His Eminence, the Grand Mufti of Australia, Dr Ibrahim Abu Mohammad and the Australian National Imams Council wish to make the following submission for the Parliamentary Joint Committee on Intelligence and Security to consider.

The Australian National Imams Council consists of more 250 *Imams* (religious leaders) around the country representing their various congregations. ANIC affirms that, like all citizens, we have a vested interest in the ongoing safety and security of Australia. However, we are not convinced that the threat, no matter how serious, warrants sacrificing basic human rights and imposing on Australians the unnecessary burden of living in constant fear and paranoia.

We are also concerned with the haste with which the introduction of these new laws is being pursued. Passing new laws in the current climate of fear and heightened anxiety is never the best approach. The review should be carried out under considered and more reasoned conditions.

ANIC nonetheless, given the restricted time frame to assess the proposed bill, submits that these new measures will broadly limit key human rights such as freedom of movement, freedom of speech and freedom of association.

Our submission focuses on the following three main areas of concern:

- 1. Advocating Terrorism**
- 2. Designated Areas**
- 3. Customs Detention Powers**

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1. 'Advocating Terrorism'

It is our understanding that the new laws will broaden the definition of "advocating" terrorism to include "promote" and "encourage", as well as "counsel" and "urge"; and if an organisation is deemed to have advocated terrorism, they could be proscribed.

We are concerned with this provision given that experts like Dr Greg Barton from the Global Terrorism Research Centre at Monash University indicated that what would be considered illegal in the advocacy of terrorism is an area that is extremely complex.

Zaid Khan from the Muslim Legal Network cautioned that an *imam* (religious leader) could fall foul of the new provision if he for example advocated the duty of a Muslim to defend his land. Dr George Williams from the UNSW added that it would be problematic targeting people merely for their speech and jailing them for long periods of time.

We are therefore concerned that the proposal has serious implications on free speech and will have a chilling effect on legitimate religious and political debate. This provision is of particular concern to preachers who spend a large proportion of their time teaching and advocating on social justice issues.

We recommend that the provision for advocating terrorism be removed.

2. Designated Zones

It is our understanding that the Foreign Fighters Bill enables the federal government to ban entering or remaining in declared areas. The designation power would be broad and allows the prescription of entire countries or regions.

Legitimate defences to the offence of travelling to or remaining in a declared area will exist for government officials, journalists, humanitarian workers or lawyers with a valid work reason. A fifth defence would apply to those with family or domestic reasons.

The law would ban anyone fighting for non-government forces; however, the Foreign Minister could make an exception to a particular armed force.

We support the concern of academics and community groups in Australia that the revised laws encroach on liberties, restrict movement and place a heavy evidentiary onus on travellers. The new travel offences are extreme and unnecessarily burdens people who may need to visit designated areas for innocent reasons such as religious pilgrimage.

Dr Sangeetha Pillai from the Gilbert + Tobin Centre of Public Law at the UNSW cautions that this provision leaves open the possibility of conviction where a person fails to satisfy the evidentiary requirements, even if their travel *was* for a legitimate purpose. The offence is therefore likely to have the negative effect of discouraging people from travelling to designated areas, even when they have no intent of participating in foreign conflicts.

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In addition, we share the concerns raised by the Australian Lawyers Alliance that the Foreign Fighters Bill would see people who are suspected of preparing for or participating in a foreign conflict receive punishments that are disproportionate; ranging from loss of social security benefits to life imprisonment. Mr Greg Barns from the Alliance cautioned that the new legislation was oppressive and included sentencing provisions that did not match the gravity of the prospective offences. We share the view that the legislation is especially dangerous because it combines harsher penalties with a much higher threshold for traveller's to prove their innocence.

Mr Barnes warned for example that an individual could receive a life sentence just for being associated with another person planning to fight overseas. He could be prosecuted for merely attending a meeting or even for offering a room to be used for such a meeting. This would constitute guilt by association.

We recommend that the declared area provision be removed or alternatively amended to include as part of the offence a specific illegitimate purpose for being in the area rather than the traveller being required to provide a legitimate defence.

3. Customs Detention Powers

It is our understanding that the Bill enables Customs officers to detain a person when they feel satisfied on reasonable grounds that the person "is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country." This considerably widens current provisions where Customs can only detain a person who is reasonably suspected of having committed a serious Commonwealth offence.

We are concerned that the new law will lead to an increase in the number of cases that have been reported recently where innocent travellers were detained for questioning causing them to miss their flights. It is our view that the inconvenience caused and associated financial impost are unjustified.

We thank you for your consideration.
Yours sincerely

Samir Bennegadi,

References:

- Khoury, M (September 2014). New laws designate 'no-go zones' and outlaw terrorism advocacy. *The Point Magazine*. <http://www.thepointmagazine.com.au/post.php?s=2014-09-11-new-laws-designate-no-go-zones-and-outlaw-terrorism-advocacy>
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- Pillai, S (24/9/14). Bill targets foreign fighters before departure and after return. <http://theconversation.com/bill-targets-foreign-fighters-before-departure-and-after-return-30095>

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