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Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016
Submission to the Parliamentary Joint Committee on Intelligence and Security

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Our Community, Our Future



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About the Lebanese Muslim Association:

The Lebanese Muslim Association is one of Australia's largest and established Islamic organisations that offer social, religious and advocacy services to the Australian Muslim community, particularly in South West Sydney.

We represent a diverse cohort of members and undertake projects to build social capital, community resilience, cohesion and support, as well as highlighting the positive contributions that Australian Muslim communities have made, and continue to make, on Australian society.

Introduction:

The Lebanese Muslim Association (LMA) welcomes the opportunity to provide the Parliamentary Joint Committee on Intelligence and Security ("the Committee") regarding the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 ("the Bill").

The LMA does not support the introduction of Continuing Detention Orders pursuant to the Bill for the following reasons:

- a) The Bill ignores the modern context of Politically Motivated Violence and radicalisation;
- b) Continuing Detention Orders are Counter-Productive;
- c) Continuing Detention Orders are inconsistent with the rule of law, civil liberties and principles of democracy;
- d) Continuing Detention Orders are inconsistent with Australia's international human rights law obligations; and
- e) There are grave concerns regarding the implementation of the Continuing Detention Orders.

1. Continuing Detention Orders: Ignoring the Modern Day Nature of Terrorism.

1.1 The Explanatory Memorandum states that this Bill is necessary to "...strengthen Australia's national security laws and counter-terrorism framework by ensuring that the Government has the means to protect the community from the risk of terrorist acts".

1.2 This fundamentally ignores the reality that the incarceration of an individual does not impede their ability to radicalize others or to themselves be used in terrorist propaganda whilst they remain incarcerated. It is our respectful submission that the real danger is that individuals who are detained after the duration of their custodial sentence and subject to a Continuing Detention Order may become a "Martyr for the cause". This issue should be considered in the context of Islamic

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State's "brand" of terrorism, that is, that a perpetrator of Politically Motivated Violence only requires loose affiliation with Islamic State ideology and may not require face to face contact with those already supportive or engaged in Politically Motivated Violence.

2. Continuing Detention Orders are Counter-Productive.

2.1 Australia still predominantly addresses issues relevant to CVE "at the pointy end of the stick", that is, by largely introducing legislation whilst investing very little in preventative measures. The current CVE framework and policy discussions predominantly views Australian Muslims through a security lens and a prism of violence.

2.2 There has been a lack of empirical evidence and research presented that suggests that Continuing Detention Orders would produce any social change amongst those who are supportive or who advocate Politically Motivated Violence. On the contrary, we respectfully submit that the perception regarding how law enforcement investigates, arrests and detains suspects, and subsequent treatment inside correctional facilities upon conviction, has only exacerbated a growing perception that the Australian Government and law enforcement are unfairly targeting Muslim youth. It risks further deteriorated young Muslim's sense of connection to Australia, their confidence in their support networks and their sense of disempowerment.

2.3 The broader CVE program, with its focus on hard policing and criminalization and failure to address key root causes of violent extremism, is in deep need of reform. We urge both the Federal and State Government to begin looking at the socio-economic roots of environments that foster such sentiments. Often, they are rooted in a lack of opportunities for education and business, a lack of accurate media and political representation, a sense of cultural homelessness that comes with being a second or third generation migrant, disaffection, disenfranchisement, peer pressure and a sense of moral outrage. Without these elements forming the centre of any CVE policy, there will be inevitable negative consequences, as we see with the Muslim Community being unfairly treated, demonised in the media and consistently silenced. Mental Health is also largely ignored and both the Federal and State Governments need to seriously support Mental Health initiatives.

2.4 The policies focus on religious extremism have been criticised extensively, with many pointing out the inherent islamophobia that comes with associating differing levels of conservatism and piety with religious violence. As they stand, the government's CVE policies have continued to place religious practise at their centre, focusing on particular readings and interpretations of Islam, this shifting the blame for such violence from a wider, societal perspective, to a narrow, arguably racist view is problematic.

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2.5 These negative policies are reflected in the current public discourse around Muslims, which has taken a turn for the extremely negative over the past 5 years. With the emergence of Senators Cory Bernardi and Pauline Hanson, coupled with a number of international figures that promote bigotry and hatred, the Muslim community has found itself the target of a series of growing rates of abuse, violence, demonization, dehumanisation, stereotyping, discrimination and so on. These consequences are a result of the Islamophobia that undermines public discourse, and only serves to drive away young people struggling with identity and social issues and potentially legitimises radical narratives employed by terrorist organisations to recruit supporters.

2.6 Any policy or law that is seen to reflect or even build upon the public discourse as it stands, serves to exacerbate the ongoing issues the Muslim community is facing. Without considering the human rights breaches that come with any indefinite detention, the impacts on the community, and its current political discourse, could be devastating. Such policies act only as a deterrent for wider social engagement by any young people feeling marginalised.

2.7 This Bill has been introduced within a context whereby many Australian Muslims are struggling to feel like they belong. At times, it often feels like Australian Muslims are being continually expected to “prove” that they belong to Australia. This Bill does not contribute to a legal or political landscape that would encourage capacity building, empowerment or sense of belonging. We believe that it is these three aspects which can “inoculate” Australian Muslim youth from any potential narratives promoting Politically Motivated Violence.

2.8 The other “unintended consequence” could be a further mistrust between members of the Australian Muslim community and the Australian Government, law enforcement and other relevant agencies.

3. Continuing Detention Orders: Inconsistent with the rule of law, civil liberties and principles of democracy.

3.1 The Bill allows an unlimited amount of Continuing Detention Orders to be applied for, creating a pathway for indefinite detention. It is shocking that Australia is seeking to replicate a provision that is mirrored in authoritarian regimes that have little regard for human rights and civil liberties. The concept of indefinite detention is abhorrent. A regime that allows indefinite detention would fundamentally change the character of our country and is deeply undemocratic.

3.2 We support the submissions made by the New South Wales Council for Civil Liberties on this issue.

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3.3 The concept of indefinite detention will also most certainly be used by those advocating Politically Motivated Violence and has a long history of being a theme in violent propaganda that seeks to recruit foreign fighters, sustain violent campaigns and legitimise their “brand” of violence.

4. Continuing Detention Orders are inconsistent with Australia’s international human rights law obligations.

4.1 It has become somewhat standard practice for any tranche of Counter Terrorism legislation to assert that the proposed laws are compatible with Australia’s international human rights law obligations.

4.2 We respectfully submit that notwithstanding the assertion contained in the Explanatory Memorandum that the Bill complies with our international human rights law obligations, that this Bill breaches the International Covenant on Civil and Political Rights.

4.3 We support the submissions made by Professor Ben Saul and the New South Wales Council for Civil Liberties on this issue.

5. There are grave concerns regarding the implementation of the Continuing Detention Orders.

5.1 We do not entirely agree with the assertion within the Explanatory Memorandum that “...there are limited options to manage the risk that person may present to the community following their release from prison”. We respectfully submit that the current regimes associated with Preventative and Control Orders, combined with the resources and funds of various agencies are more than capable in monitoring individuals believed to pose a risk to Australia’s security. The belief of the Australian Government that they have “limited options” supports our proposition that more resources should be dedicated to rehabilitation and preventative measures, rather than permitting Continuing Detention Orders under the Bill.

5.2 Although the Bill mirrors that of the Dangerous Prisoners (Sexual Offenders) Act 2003 (QLD), there is a significant distinction between the Bill and the QLD Act with respect to the evidentiary requirements needed before a Continuous Detention Order is granted. Under the Bill, a “relevant expert” has a wide definition, which could include “any other expert” outside the designated occupations.

5.3 We support the submissions made by Australian Lawyers Alliance and share their concerns regarding the lack of correlation between the test of whether an individual poses “an unacceptable risk” under the proposed section 105A.1 and the broad nature of the offences under Part 5.3.

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5.4 The Bill also provides that evidence can be considered where the individual subject to the proposed Continuing Detention Order has not reviewed as a result of the proposed section 105A.5(5). When considering that this Bill could become a pathway for indefinite detention as a result of evidence not being revealed in full, would result in the individual subject to the Continuing Detention Order being unable to refute the evidence being presented. This undermines the right to a fair hearing in circumstances where their liberty is at stake. Again, we support the submissions made by the Australian Lawyers Alliance on this issue.

Summary

The LMA does not support the Bill and we urge the Committee to not proceed with it.

We thank the Committee for the opportunity to present our concerns regarding the Bill.

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