Submission to Parliamentary Joint Committee on Intelligence and Security

Inquiry into the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016

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Prepared by the Muslim Legal Network (NSW)
Contributors: Zaahir Edries, Sarah Khan, Kamran Khalid, Anzer Khan, and Rabea Khan

Contact: Zaahir Edries, President Muslim Legal Network (NSW)

Table of Contents

1. Introduction

1. We thank the Parliamentary Joint Committee on Intelligence and Security (the **Committee**) for the opportunity to provide submissions on Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 (**the Bill**).

2. This Bill infringes on civil liberties and requires a considered and technical legal analysis. The short limited time provided for submissions has been cause for limitations in our submissions. A lengthier time frame would have provided us with a greater opportunity to engage in community consultation and radicalisation experts to provide more meaningful submissions. As with the other recent Counter-Terrorism legislation that has been introduced since 2014, we are concerned with the speed that this Bill is travelling through Parliament, particularly given the gravity of the measures proposed.

3. We would like to highlight that the Muslim Community has voiced concerns on the efficacy of several pieces of counter-terrorism legislation introduced since 2014. The amendments have been extensive and contained serious implications for civil liberties in Australia. We gave evidence at the Parliamentary Hearing for the Counter-Terrorism Legislation Amendment Bill (No 1) 2015, a bill enabling control orders to be placed on children as young as 14. We expressed serious concerns regarding the implications of that Bill during the hearing. Despite concerns raised by the Muslim Legal Network (NSW) and many other significant organisations as to the efficacy of such legislation there was little substantive change and we understand that bill will again be introduced to parliament with broad bipartisan support despite widespread public and professional concern.

4. Since the introduction changes to counter-terrorism legislation in the last two years, we have seen a marked increase in instances of Islamophobia and bigotry towards Muslims, at times from members of Parliament. In such a climate, we stress the continued need for the use of inclusive language that directly

condemns discriminatory attitudes towards any minority group in this country. Social cohesion is paramount to the safety of all Australians.

5. Understandably, offenders of terrorism offences are one of the most unpopular minorities, along with other groups such as sex offenders and violent offenders. However, our civil liberties need to be upheld despite such unpopularity. Whilst there is no doubt that the law needs to protect the safety of all Australians and reflect the concerns of the time, the laws need to be reasonable, effective, proportionate and consistent with our values as a society. It must be noted that a purely legislative response to the threat of violent extremism will never be effective. Early intervention, mentoring, community welfare campaigns and rehabilitation strategies are encouraged by industry experts and touted as being far more effective long term solutions for issues around radicalisation and countering violent extremism.

6. The Bill establishes a regime enabling the ongoing detention of high-risk prisoners sentenced to imprisonment for terrorism-related offences. The Muslim Legal Network (NSW) expresses its deep concern on the provisions and consequences of the Bill.

7. We acknowledge the vital objective behind the introduction of the Bill, that prioritises the protection of the community, and support the achievement of such objective by way of legislation. However, any such legislative measure needs to be carefully balanced with the protection of individual civil liberties.

8. In this regard, the Muslim Legal Network (NSW) stresses the Parliament to analyze the Bill critically and makes recommendations accordingly. Further, in order for this regime to be truly preventative, rather than punitive, the rehabilitation of the offender needs to be prioritised alongside protection of the community, for protection of the community from any type of offender ultimately always rests in the rehabilitation of them.

2. The Continuing Detention Orders' regime

2.1 Australia's Human Rights obligations

9. The content of the Bill raises some important questions on its compatibility with Australia's commitment to international human rights instruments, in particular the International Covenant on Civil and Political Rights[1] (**ICCPR**).

10. The continuing detention order regime, as established by the Bill, infringes Article 9(1) of the ICCPR, which provides for the right to liberty and security of person and prohibits arbitrary arrest or detention. Arbitrary detention is a potential consequence of the regime. By enabling the detention of a person who has completed a term of imprisonment for an offence, can be detained further without the commission of a new crime.

11. The Explanatory Memorandum (the **EM**) describes the detention of offenders under a continuing detention order is preventative rather than punitive. However, the Muslim Legal Network (NSW) is concerned that in practical terms for the offender, the effect will be punitive. Imprisonment, or detention, is the most serious punishment that our legal system can inflict.

12. The extended period of detention after a sentence has been completed infringes Article 15 of the ICCPR, which prohibits the imposition of "a heavier penalty … than the one that was applicable at the time when the criminal offence was committed". Further, as a continuing detention order does not require the commission of a new offence, it consequently contravenes Article 14(7) of the ICCPR, which expressly provides that "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted".

13. A sentencing Judge is obligated to consider many factors when determining the appropriate period of imprisonment for an offender, such as the seriousness of the offence, protection of the community, the likelihood of re-offending and rehabilitation of the offender. Many of the same factors determined on sentence

[1] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, as also mentioned in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

will be revisited again with such an application. The Muslim Legal Network is concerned that by extending the detention of an offender after a term of imprisonment that was deemed appropriate considering those factors has been served, will practically allow for double punishment.

These orders can be made for a period up to three years and successive orders can be made without limit. The Muslim Legal Network (NSW) is extremely concerned as this effectively leads to indefinite detention. Whilst we are opposed to continuing detention orders as a principle, if they are to be legislated, we submit that the period of orders should be reduced and successive applications should be limited.

14. And whilst, this kind of legislation was considered constitutionally valid in the case of *Fardon v Attorney- General (Qld)* [2004] HCA 46 (discussed below, the Muslim legal Network (NSW) respectfully submits that it is not effective in combating violent extremism. We hold concerns about the consequences of further radicalisation such orders will have on offenders. The grievance that an offender develops from serving additional time in custody, without new charges being before the court or the commission of new offences, will undermine and jeopardise any rehabilitation the offender has achieved whilst in custody. This will ultimately not assist in reducing the likelihood of reoffending and the protection of the community.

2.2 The Kable principle and its implications

15. The preservation of the institutional integrity of our courts in order for them to exercise judicial power is paramount. Any legislation that may undermine this integrity or interfere with our constitutionally protected judicial process is to be analyzed critically.

16. In the landmark case of *Kable v Director of Public Prosecutions (NSW)* [1996] HCA 24 (***Kable***), the High Court invalidated a New South Wales' Act[2] that sought to establish a continuing detention order scheme for a particular individual.

[2] *Community Protection Act 1994* (NSW).

While giving his remarks about the validity, under the Act, of a Supreme Court detention order, His Honour Justice Gummow said:

> "*whilst imprisonment pursuant to Supreme Court order is punitive in nature, it is not consequent on any adjudgment by the Court of criminal guilt. Plainly, in my view, such an authority could not be conferred by a law of the Commonwealth upon this Court, any other federal court, or a State court exercising federal jurisdiction. Moreover, not only is such an authority non-judicial in nature, it is repugnant to the judicial process in a fundamental degree.*"[3]

17. Nonetheless, since the *Kable* decision, states have enacted laws that establish schemes for continuing detention or supervision of certain high-risk offenders after the expiry of their custodial terms[4]. Queensland, Victoria and Northern Territory have laws for supervision and continuing detention of prisoners serving custodies for serious sex offences, while New South Wales and South Australia have similar laws for high risk sex offenders as well as high risk violent offenders.

18. The Queensland scheme was distinguished from *Kable* by the High Court[5] in *Fardon v Attorney- General (Qld)* [2004] HCA 46 (***Farden***). However, it is vital to note the difference between the Queensland scheme and the Act invalidated by the *Kable* decision. The High Court found the Queensland scheme was preventative in nature as the discretion given to the Queensland Supreme Court to order treatment or supervision for the prisoners instead of merely detaining them in prison[6]. The Act in *Kable* was unique in that it applied only to a specific individual. His Honour, Gleeson CJ described the Queensland law as one that:

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[3] *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 131-132 per Gummow J.
[4] *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld); *Dangerous Sexual Offenders Act 2006* (WA); *Crimes (High Risk Offenders) Act 2006* (NSW); *Serious Sex Offenders (Detention and Supervision) Act* 2009 (Vic); *Serious Sex Offenders Act 2013* (NT); *Criminal Law (High Risk Offenders) Act 2015* (SA).
[5]
[6] *Fardon v Attorney- General (Qld)* (2004) 223 CLR 575 at 607-614 per Gummow J and at 654-655 per Callinan and Heydon JJ.

> "*authorises and empowers the Supreme Court to act in a manner which is consistent with its judicial character ... It confers a substantial discretion as to whether an order should be made, and, if so, the type of order. If an order is made, it might involve either detention or release under supervision.*"[7]

19. The Bill, in its current form, ignores this aspect completely. It leaves no discretion for the Supreme Court of New South Wales to order rehabilitation or supervision of the high risk terrorist offenders as an alternative to ongoing detention. As a result, the Muslim Legal Network (NSW) is concerned that it does not empower the Court in a manner that is consistent with its judicial character. Further, this allows the scheme to be more punitive than preventative – it is concerned with detention only, rather than providing the Court with other options to make orders with respect to rehabilitation.

2.4 Efficacy of existing continuing detention regimes

20. An Australian study[8] into the use of similar post sentencing regimes for serious sex-offenders for example highlighted concerns about the increased risks they created including issues relating to the targeting of only known offenders and not working to reduce recidivism. The impact on safety is minimal and the study suggested the regime provided the community with a false sense of belief that they were safer and protected from sex offender.

21. The research study conducted 86 interviews with psychiatrists, psychologists, social workers, former corrective services officials, lawyers and police officers who have firsthand experience with the operation of such Australian schemes[9]. Many of those involved at the coalface of operation of such schemes, expressed their reservations on the efficacy of continuing the detention of sex offenders in order to prevent re-offending. Five interviewees considered the orders resulted in posing a greater risk to the community and did not reduce recidivism[10]. More

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[7] *Fardon v Attorney- General (Qld)* (2004) 223 CLR 575 at 592 per Gleeson CJ.
[8] Patrick Keyzer and Bernadette McSherry, Centre for Law, Governance and Public Policy, Bond University, Gold Coast, QLD, 4229, Australia and Melbourne Social Equity Institute, University of Melbourne, Parkville, VIC 3010, Australia, "*The Preventive Detention of Dangerous Sex Offenders in Australia: Perspectives at the Coalface*", International Journal of Criminology and Sociology, 2013, 2 at 296-305.
[9] Ibid
[10] Ibid at 298.

specifically, the research found that such schemes increase offenders' anger and dissatisfaction. This would be a particular concern in the context of terrorism offences.

22. At the same time, supervision, monitoring and treatment were preferred by many interviewees as being an appropriate preventative tool in relation to high-risk sex offenders[11]. This is in line with the recommendations of Muslim Legal Network (NSW), which submits that the focus of any legislative instrument that seeks to protect public from threats of, or commission of, terrorist acts needs to be focused more on rehabilitation of prisoners charged with terrorism-related crimes. Supervision can be used as a tool for added protection and is already provided by extensive parole periods, giving the Parole Board discretion in whether to release an offender on expiry of their non-parole period.

23. Should similar issues become apparent in the terrorism offence sphere the proposed regime could definitely have a negative impact and prove counter productive.

2.5 Existing measures

24. Currently, the Commonwealth has enacted laws, which provide for making preventative detention orders[12] and control orders[13] in order to counter a terrorism threat. Further, as stated above, most periods of imprisonment will include a supervised parole period. The enactment of post-sentence supervision of offenders of terror-related crimes has already been established[14].

25. The Muslim Legal Network (NSW) has concerns that the continuing detention order scheme is not necessary considering parole periods, control orders and preventative detention orders that are all available to the Courts and the authorities in order to protect the community.

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[11] Ibid at 304.
[12] Division 105 of the *Criminal Code Act 1995* (Cth).
[13] Division 104 of the *Criminal Code Act 1995* (Cth).
[14] *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth).

26. Provisions in Queensland[15] dealing with sex offenders include an option of continued detention *or* supervision, which allows for the supervision of the released offender by way of curfew, electronic monitoring and exclusions from certain locations to avoid the risk of potential reoffending.

27. Thus, the need for any additional legislative measure, especially one that carries the potential of severely hampering the individual rights and civil liberties, is unwarranted considering the avenues already available to protect the community.

[15] *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)

3. Terrorism offences that form part of this Bill – s105A.3

28. On its face, the continuing detention order regime is designed to protect Australia's citizens against one of the most extreme threats to security – at terrorist offender who has served their sentence and seemingly not rehabilitated. Whilst one would assume that such a regime would be reserved for purveyors of "terrorist acts", the structure of existing legislation could allow for the indefinite detention of those who were convicted of;

- Providing financial aid (regardless of the sum);
- Possession of materials deemed to be of an unacceptable nature;
- Potential hate speech offences such as "advocating terrorism" and the "advocating genocide" offence which is to be reintroduced as a part of the Counter-Terrorism Legislation Amendment Bill (No.1) 2016.

29. Importantly, actions such as associating with persons who may have associations with terrorist organisations could, under Division 102.8 of the Criminal Code 1995 (Cth) (the **Code**) criminalse certain relationships, innocent interactions and other business transactions. If a convicted, could subject the detainee to a continuing detention order. The Muslim Legal Network (NSW) is concerned by this.

30. The Muslim Legal Network (NSW) submits that this Bill must be read in context of the extraordinarily broad view which the Code takes in distinguishing what could potentially form a terrorism offence which ultimately could be a subject to the implementation of any continuing detention order.

31. We note that the proposed section 105A.3 of the Bill states the continuing detention order will only apply to persons over 18 years old and must not exceed 3 years (per application) for those in detention serving a sentence or a continuing detention order, however we direct the Committee to the

remainder of our submissions pertaining to the Bill for our views on the applicability generally.

32. It is also important to note that the EM attempts to equate existing provisions in New South Wales and South Australia which deal with sex offenders and Queensland, Victoria, Western Australia and the Northern Territory who deal with sexual and violent offenders with the far reaching consequences that the Code imposes as it relates to the breadth of potential terrorism offences.

33. It is clear that whilst the perceived intent of the Bill is to maintain some form of control over offenders who have committed the most serious forms of terrorism offences and still pose a real and substantial threat to society, the manner in which the Bill allows the application could be open to a number of individuals convicted over seemingly less significant offences which are caught by the Code which is of significant concern.

4. Treatment of a terrorist offender in a prison under a continuing detention order – s105A.4

34. Clearly, given the Bill allows only for the continuing detention of the prisoner after they have served the sentence related to their primary conviction, it is envisaged that the individuals will not be housed with the general prison population, however, the EM states that a prison is the only reasonable and practicable place to detain the individual subject to the regime is within a prison.

35. Such an approach is incongruent with the section stipulating that where a person is detained in a prison, they must be treated in a way consistent with a person not serving a sentence of imprisonment

Subject to any reasonable requirements necessary to maintain:

(a) the management, security or good order of the prison; and

(b) the safe custody or welfare of the offender or any prisoners; and

(c) the safety and protection of the Community

36. Clearly, this provision of the Bill provides an extraordinarily broad basis for a complete contradiction to the sentiments expressed in the EM. There exists little clarity in the section as to what can constitute "reasonable requirements" and which operational head can make these assessments, be they prison officials, courts, or public servants. The lack of clarity in this portion of the provision is troublesome.

37. Furthermore, this section of the proposed Bill speaks to an individual not being housed in the same unit or prison as persons serving prison sentences, again except where it is "reasonably necessary" for a number of reasons or more disturbingly, where "the offender elects to be so accommodated or detained".

38. Again, the Muslim Legal network (NSW) submits that this provision is troublesome as it provides for a situation where an individual who may be assessed as being an unacceptable risk for release is able to consent to re

enter a prison population, which was not necessarily conducive to rehabilitation.

39. This is particularly pertinent as prisoners whom are convicted of terrorism offences are frequently provided with the "AA" rating which either isolates them from social interactions for up to 23 hours a day and in New South Wales for example, house in a similarly isolated wing of Goulburn's "Supermax" facility.

40. It follows that should an individual who had served a sentence for a terrorism related offence be subject to the Bill's regime, they would be held not in an ordinary remand centre but likely in similar facilities which housed them during their period of incarceration.

41. The Muslim Legal Network (NSW) submits that this is an unacceptable situation, particularly where the objectives behind the depravation of liberty as a result of an offence is to concurrently rehabilitate the individual. Housing persons whom have finished their sentence for terrorism offences under extremely strict conditions in the same location or giving those individuals the option to continue to be housed in the same location is fraught with practical and rehabilitation issues.

42. Whilst generally speaking, we are opposed to the implementation of continued detention orders, should they be enforced safeguards as to normal socialisation, segregation from prison populations and access to rehabilitation programs are essential. Whilst other portions of the bill deal tangentially with these issues, to accommodate an individual previously convicted or any offence, in particular a terrorism offence in a prison is counter intuitive to the purposes of rehabilitation.

43. The Muslim Legal Network (NSW) submits that the entirety of s105A.4 of the Bill requires further consideration and redrafting should the Bill proceed to take into account the matters raised in this submission.

5. Use of Expert Evidence – Subdivision C – s105A.6

44. Subsection (1) of Section 105A.6 of the Bill states that, if an application for a continuing detention order is made to a Supreme Court of a State or Territory in relation to a terrorist offender, the Court must hold a preliminary hearing to determine whether to appoint one or more relevant experts. Subsection (3) allows for a Court to "appoint one or more relevant experts if the Court believes that the matters alleged in the application would, if proved, justify making a continuing detention order in relation to the offender". In order to ensure the sufficient probity of any expert opinion provided, the Muslim Legal Network (NSW) is of the view that the definition of "Relevant Experts" needs to be further specified.

45. It is also unclear in this subsection as to what process will be employed for the appointment of this expert; that is, whether the Attorney-General will be entitled to make the election for the use of a particular expert(s) or whether the accused party is entitled to make submissions in that regard.

46. Whilst the proposed section 105.15 theoretically grants the accused the right to obtain his or her own expert evidence in response to the court appointed expert evidence, it raises practical difficulties. Psychiatric and psychological reports can take from 4 to 8 weeks to obtain and generally tend to take longer with prisoners. Further, it is usual in criminal proceedings where the mental state or health of an accused or offender is central to the hearing, that the accused obtains a report after having received the report obtained by the Prosecution. And whilst the Muslim Legal Network (NSW) does not submit that the 28 day period provided for in 105A.6 needs to be extended, we do however, note that within that time period, it will be extremely difficult for the offender to obtain a report within that time frame, without increasing his or her time in custody, post-sentence. We respectfully submit that this disadvantages the offender in such applications.

47. The Muslim Legal Network (NSW) is also concerned about the broad nature of the criteria for the appointment of "relevant experts". The definition of "relevant expert" refers to an individual who is "competent to assess the risk of a terrorist offender committing a serious part 5.3 offence if released into the community". However, the categories of individuals listed are so broad that "a person registered as a medical practitioner under a law of a State of Territory" may be considered competent to assess such a risk. Further, and of particular concern, is the reference to "any other expert", which is extremely far-reaching. The definition does not identify what specific criteria will be considered in assessing whether an individual will be deemed as a being "competent" in assessing risks of terrorist offenders re-offending. It is essential that those deemed to be "relevant experts" have sufficient experience in this field. Consequently, we submit that:

- Section 7 of the *Crimes (High Risk Offenders) Act 2006* (NSW) be mirrored so that a minimum of two psychologists and/or psychiatrists in the assessment process is required; and
- The phrase 'any other expert' is deleted due to its potential broad and unjust application.

48. Further, subsection (7) of the proposed 105A.6 lists the matters, which an expert's report must address. Part (d) requires consideration of "efforts made to date by the offender to address the causes of his or her behaviour in relation to serious Part 5.3 offences, including whether he or she has actively participated in any rehabilitation or treatment programs". In NSW, all Terrorist offenders are at least on initial assessment, housed in the Goulburn High Risk Management Correctional Centre (**HRMCC**) and classified as National Security Inmates (**NSI**) with 'AA' classification. Once they progress through their classification, their status may change and they may be moved into mainstream jails. Generally speaking, 'AA' Classified inmates spend about 23 hours per day in the confines of their cell. Reviews

of inmates by the High Risk Inmate Management Committee occur once a year.

49. There are currently no well-established programs encouraging or obligating convicted inmates to be rehabilitated. It is essential that inmates on remand are also encouraged to participate in available programs, which will assist their mental health and any de-radicalisation process. The custodial environment that offenders find themselves in only elevates their level of anxiety and frustration, rather than improving their worldview. The conditions of detention can contribute to mental harm and exacerbate any pre-existing mental illness.

50. Like offenders who are classified as sex-offenders or serious violent offenders, terrorist offenders already must complete a level of rehabilitation whilst in custody in order to be eligible for release on parole. Similarly, if terrorist offenders are required to engage in programs to assist in de-radicalisation and improve their mental health and social cohesion, there must be a practical regime in place, which allows inmates to actively engage in and benefit from. Therefore, the Muslim Legal Network (NSW) stresses that there must be adequate funding for such programs, otherwise, there will be a backlog of inmates incarcerated indefinitely and increased frustration amongst inmates who are already affected by their isolated environment.

51. If an expert report must address the rehabilitation of an offender, as is proposed by the Bill, it follows that there must be opportunities for terrorist offenders to engage in active and relevant rehabilitation programs.

6. Providing the offender with a copy of the application – circumstances where the applicant may refuse to provide a copy, or information contained in the application

52. The importance for the offender to be provided with the information contained in the application is set out in the EM to the Bill. The EM states at paragraph 37 that detention under a continuing detention order shall only be authorised where it is non arbitrary. The EM states that the safeguards contained in the Bill which authorise the detention as non arbitrary include that:

> "*the terrorist offender must be provided with certain documents to enable him or her to prepare for the Court's hearing of an application for a continuing detention order*".

53. Section 105A.5(5) of the Bill states that the applicant for a continuing detention order may refuse to provide the offender with information contained in the application if the Attorney General is likely to:

> "*(a) give a certificate under Subdivision C of Division 2 of 1 Part 3A of the National Security Information (Criminal and 2 Civil Proceedings) Act 2004;*
> *(b) seek an arrangement under section 38B of that Act;*
> *(c) make a claim of public interest immunity;*
> *(d) seek an order of the Court preventing or limiting disclosure of the information.*"

54. It is the Muslim Legal Network (NSW)'s view that the ability of the applicant to suppress information from the offender on the basis that it is 'likely' to do a number of things, is too broad.

55. Firstly, the applicant is not required to ascertain whether the Attorney General will give a certificate in respect of the information, or make a claim of public interest immunity. Instead, it need only be 'likely' that the Attorney General will do so. The Muslim Legal Network (NSW) respectfully submits that the suppression of information from the offender on the basis of this low threshold encroaches on principles of procedural fairness, particularly given that the offender will require this information to counter the continuing detention order, and produce evidence in reply.

56. The Muslim Legal Network (NSW) suggests that this section be amended so that the applicant is only entitled to suppress information when it has been discerned that the Attorney General *will* make a claim of the kind set out in sub-divisions 105A.5(a) – (d) of the Bill.

7. Civil Evidence and Procedure Rules in relation to Continuing Detention Order Proceedings

57. Section 105A.13(1) of the Bill states that a Supreme Court of a State or Territory must apply the rules of evidence and procedure for civil matters during a continuing detention order proceeding.

58. The Muslim Legal Network (NSW) submits that it is inappropriate to apply the civil rules of evidence and procedure, in circumstances where the offender has originally been convicted of a criminal offence and may now be subject to this Bill's regime to prevent them from committing further criminal offences.

59. Instead, criminal evidence and procedural rules should apply to continuing detention orders. By applying the civil evidence and procedure rules, the offender is denied of the important safeguards afforded to accused persons under our criminal legal system including at its core, a differing standard of proof. By not applying the criminal standard of proof, the regime avoids the need to apply procedural fairness and rights afforded in the ICCPR.

60. The serious denial of civil liberties that results from a continuing detention order, should not be made unless and until a hearing conducted in accordance with criminal evidence rules and procedures is abided by. This will hold applicants to the robust burdens of proof and tests required under our criminal law.

61. This robustness is particularly desired where offenders are being detained for 'protective' purposes for conduct with a lowered threshold of a 'high degree of probability' of being an unacceptable risk. Whilst we note that the use of the phrase 'high degree of probability is the same as the test in section 5B of the *Crimes (High Risk Offenders) Act 2006* (NSW) and many Bail tests in the States, The Muslim Legal Network (NSW) is, as a principle,

of the view that the test of 'high degree of probability' should be replaced by the test of 'beyond reasonable doubt,' particularly as these are offenders who have served, most likely, significant periods of imprisonment considered appropriate by the sentencing judge.

62. It follows that there is a difference in applying this text in the context of bail and with post-sentence. In the case of bail, the subject is still an accused and has not served a sentence, as is the case post-sentence.

63. The Muslim Legal Network (NSW) submits that criminal law evidentiary rules and protections should not be dispensed with, particularly in circumstances where offenders are being detained on the basis of preventative detention after having served a term of imprisonment.

8. Conclusion

64. The Muslim Legal Network (NSW) thanks the Committee for taking the time to consider its submissions.