The President
Canberra Islamic Centre
Calwell ACT
19 April 2004

The Secretary
Senate Legal and Constitutional Legislation Committee
APH
Canberra ACT

Dear Senators,

Submission to inquiry into the provisions of the Anti-Terrorism Bill 2004
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We refer to the Committee's inquiry into the Anti-Terrorism Bill 2004 ('the Bill'). We hereby provide a submission to assist the Committee in its inquiry.

This submission is on balance, opposed to the substance of the Bill. This submission deals with the key changes proposed by the Bill and the reasons for opposing them. For convenience the format adopted here, follows the internet version of a general 'form' submission but is substantially different in content. It is noted that the short time frame given to parties to prepare the submissions also reduces the ability for non-paid volunteers to put together a comprehensive submission arguably making it easier for well paid and well resourced Senators to underestimate the legitimate, significant and pressing level of concern for citizens.

(1) Provisions to increase the maximum detention/questioning time for persons suspected of 'terrorism' offences by 20 hours

Section 23C of the Crimes Act 1914 (Cth) presently empowers the police to detain arrested persons for a maximum of four hours. The Act also provides for an extension for serious offences under certain circumstances. The Bill proposes to make an extension of questioning time of up to 20 hours permissible in the case of 'terrorism' offences.

Terrorism is defined broadly and is essentially a 'political' definition even when phrased in legal terms. A 'terrorism' offence is committed by possessing a thing in connection with engagement in a 'terrorist act' (Criminal Code Act 1995 (Cth) s 101.4). 'Terrorist act', in turn, prima facie embraces certain acts of industrial action. Thus, a person holding a leaflet promoting picketing by nurses is, on an extreme by legitimate reading of the legislation arguably, committing a 'terrorism' offence. This point is illustrated infra.

Further, men like Nelson Mandela and the ANC [and Mr Gusmao of Fretlin] who were once 'terrorists' are now welcome at Buckingham Palace and at the Lodge highlighting the transitory nature of 'definitions'. To take a contemporary example, Iraqi 'insurgents' are often referred to in Australia as terrorists [and could be legitimately classified as terrorists within the meaning of the legislation] while States such as Venezuela and some OIC member states, regard them as 'freedom fighters'. The broad scope of the 'terrorism' definition and the subjective interpretation of this definition means that while the prima facie objective nature of the legal definition is emphasised by the Government, the application of the law will impact disproportionately and adversely affect those working within/ belonging to the 'newer' less well resourced communities,

those with friends/relatives among the disposed peoples struggling against the dominant powers and ideologies in other States and !
who through 'association' are in contact with émigré groups from these 'problem' countries.

As it currently stands, the Australian Security Intelligence Organisation, in conjunction with the Australian Federal Police, can detain and compulsorily question persons suspected of having information related to a 'terrorism' offence for periods of seven-days under the Australian Security Intelligence Organization Act 1979 (Cth). Such persons have no right to silence and have only a highly circumscribed right to legal representation. Moreover, if detained, they may be detained incommunicado, and can be subject to body and strip searches. These unprecedented powers already in existence make the present proposal unnecessary except as for political purposes of being 'tough on terror'. We submit that the proposed amendments should be rejected, as they have not been justified as necessary and is action clearly disproportionate and unnecessary to achieve the outcomes as outlined in the second reading speech. On the contrary, 'rights' such as the right to silence, legal repres! entation, contact with family and non-self incrimination should be extended to provide procedural rights for those who are detained under all existing legislation although it is conceded that this is beyond the scope of the present committee.

(2) Proposal to broaden the scope of liability under the Crimes (Foreign Incursions and Recruitment Act)

Currently, the Crimes (Foreign Incursions and Recruitment Act 1978 (Cth) exempts from criminal liability Australian citizens and residents who fight with the armed forces of foreign countries. The government's proposed amendments to the Act would make it an offence to fight with the armed forces of a foreign state while a member of an organisation prescribed by the Attorney-General under that Act, or proscribed pursuant to the Criminal Code terrorist organisation provisions (which were recently broadened to allow the Attorney-General to proscribe organisations which have not been listed by the United Nations). Given the breadth of the definition of 'terrorist act' in the Criminal Code Act 1995 (Cth), any armed force is apt to be declared a terrorist organisation, regardless of whether or not it attacks civilians. This proposed amendment would therefore, make the legality of the conduct of Australians fighting with foreign armed forces entirely subject to the political whims ! of the Australian government, as it is entirely up to the government whether a foreign armed force, or its associated organisations, are listed or not. The imposition of serious criminal liability based on the whim of the executive is entirely contrary to the rule of law. It is noted that Australia has ratified international Conventions that recognise the rights of groups to self determination although it is conceded that non-incorporated international treaties do not have the force of law and (even if ratified) are not self executing. While lawyers may accept the dual nature of domestic and international laws, many in our community tend to see the law as much more unified. Thus the Foreign Minister statement today that the extrajudicial killing/ assassination of Mr Rantissi by the IDF was 'unwise' but essentially an internal matter which he did not condemn as illegal or immoral is interpreted as a general 'okay' for the military to eliminate (including within Australia)!
elements that are 'troublesome'. That is in the eyes of mamy there a rises a question as to whether this mean that the Government can now eliminate dissidents within Australia extrajudicially as long as it does so 'wisely'? Even objectively, this possibility is not so farfetched when one juxtaposes the Foreign Minister's statement with some of the key findings of the Deaths in Custody Royal Commission.

Further, according to his legal representative, a clear example of the arbitrary politically inspired nature of the application of 'terrorism laws', is the case of medical student Mr Haque in NSW. Although we do not yet know the specific evidence the DDP have against the defendant so far, it seems clear that 3 weeks of (non-specialist) training, even if proven true, appears to his lawyer at least as a trial for symbolic reasons or political show, as opposed to one based on genuine security concerns. That is, under the current interpretation of terrorism, a person is charged not for the content of what he or she had "learnt" or but purely for reasons of association. That is, Mr Haque could have learnt at any gun club in Sydney, what he is alleged to have learnt 'with a terrorist organisation'. We realise that these trials are meant to re-assure the public that the country is safe hands and that people can feel a degree of safety. However, it does so at the expense of Mus! lims who are at present an already vilified and a community whose commitment to freedom and plurality is now openly brought into question. Whether, this is a legitimate 'balance' between 'public confidence' as weighted against the inconvenience for a small minority, is ultimately a matter for Parliament, but on balance appears to be unjust to a vulnerable minority.

Further, the reversal of the onus of proof on the matter of 'intent' means that a person studying (or receiving 'training') in Indonesian at a pesentaran or medressa (ultimately having some indirect connection with some banned group) is potentially guilty of terrorism (as referred in the Bill) by association while an institution such as a university/ CIT (in the case of Indonesian instruction) or a gun club or an Army (or militia) that provides the same service or instruction in the use of small weapons or firearms is prima facie legitimate. We submit that this broad classification of terrorism crimes based on association as opposed to one satisfying specific, objectively determinable elements, requiring solid evidence (as required under any other criminal action), beyond a reasonable doubt, creates scope and tools for oppression and marginalisation of (minority) people through both the judicial process and through Executive action. We urge the Senate to reject this bill i! n its current form.

(3) Proposal to broaden the scope of the Proceeds of Crime Act

At present, the Proceeds of Crime Act 2002 (Cth) permits assets to be confiscated if they are the result of a 'foreign indictable offence,' an offence committed abroad that would be a crime in Australia. The Anti-Terrorism Bill would include, as foreign indictable offences, offences tried by United States military commissions. This proposal would thus recognise and legitimate in Australian law the system of military commissions established by the United States government to try Guantanamo Bay inmates, despite the condemnation of that system by numerous eminent jurists, including retired High Court Justice Mary Gaudron and a serving member of the House of Lords, Lord Steyn. Even Mr Hick's US appointed military lawyer criticises the 'fairness' of the process. This injustice is compounded by the discriminatory treatment of 'aliens' which while arguably legitimate for the US becomes entrenchment of this discriminatory behaviour by our own parliament when the 'alien' is an Aust!
ralian citizen. It is noted that the US does not adhere in practice to the terms of the four Geneva Conventions and has arbitrarily created new 'categories' of combatants specifically created to avoid its obligations under international law. The Australian Government it appears is unwilling or unable to avoid the detrimental effects accruing to Australian Citizens.

The alleged 'torture' of British detainees at Guantanamo Bay, the 'trumped up' charges against Captain Yee - 'treason' charges which were subsequently downgraded to a 'grabbing at straws' adultery charge – which were also subsequently dropped, clearly shows the discriminatory operation of general laws against those following a religion that is not 'fashionable'. These concerns

are present in the general Australia Muslim community [as it was arguably against the Ananda Marga community after the events that are now well known and documented].

Further, this 'crime' is declaratory and the level of evidence required for the 'balance of probabilities' test is often at a probative value not in strict accordance with the Evidence Act. Crimes declared in Australia based on military and other decisions overseas may include outcomes based on or including the results of 'secret evidence' and other products of legal fictions in a manner that is incompatible with a society that claims to adhere to the rule of law [for ALL] as opposed to just for the (vast) majority.

The Muslim community has learnt from the characterisation of those seeking asylum under the Refugees Convention 1951, to which Australia is party, as 'queue jumpers'. This term is not defined in legislation or in the Convention – but when used politically, brings with it understandable and emotionally based political advantage. Thus the 'terrorism' laws in its current form causes apprehension in segments of the Australian Muslim community that their rights would become subservient to the greater political game under the new 'terrorism' regime. This (on the example of asylum seekers) is not an irrational fear because of the strength of our political and legal institutions would likely make it difficult for the party in power to go 'too far'. On balance however, we urge the Senators, and particularly those who believe in the right of minorities to enjoy the same privileges as the majority, to make the point that the powers sought in these legislation already exists and tha! t it is not in the interest of the general community that these powers are made available more generally to a wider sub-class of the Executive and therefore to recommend against the Senate adopting the proposed Bill.

I thank you for taking the time to read our submission. It was prepared in haste as is not as comprehensive or as complete as we would like. We are happy to provide further information if required.

Yours sincerely
A Youssef
President
Canberra Islamic Centre
Canberra
19 April 2004