



Federation of Ethnic Communities' Councils of Australia

Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Submitted via email to [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

## **FECCA submission to the Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005**

We are pleased to have the opportunity to provide a submission to the Senate Legal and Constitutional Committee inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005. The short time frame for lodgement of submissions about this vitally important issue is however, of great concern and has precluded us from consulting as widely as we would like with our constituent members.

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australians from diverse cultural and linguistic backgrounds. Our role is to advocate, lobby and promote issues on behalf of our constituency to government, business and the broader community. Our charter includes promoting full access and equity, advocating community harmony and the celebration of diversity, championing human rights and arguing that Multicultural values are vitally important to the social, economic, and cultural health of Australia.

APERO welcomes the attempts by our governments, Commonwealth, State and Territory, to ensure the security of Australian citizens. This protection of the public good is a primary goal of government. In doing so, however, the rights of citizenry to liberty, protection from arbitrary or unreasonable detention, equal treatment before the law, freedoms of movement, association, religion, belief and speech, clearly outlined in the UN Declaration of Human Rights, must be protected.

The Universal Declaration of Human Rights (1948) state:

*“Article 1*

*All human beings are born free and equal in dignity and rights...*

*Article 2*

*Everyone is entitled to all the rights and freedoms set forth in (the) Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...*

*Article 3*

*Everyone has the right to life, liberty and security of person.”*

These opening articles, outlined in the Universal Declaration must be considered critical as Australia debates how it will manage any potential threats deriving from terrorism.

Australia is a signatory to other major international human rights conventions and bound by international law to ensure those in its territory are protected by the fundamental rights and freedoms that are set out in those conventions. The International Convention on Civil and Political Rights, to which Australia is a signatory, includes the right to liberty, the right not to be subjected to arbitrary arrest or detention (article 9(1)), the right to be told reasons for arrest (article 9(2)) and the right of a detained person *“to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”* (article 9(4)).

Any legislation that allows for detention without charge needs to ensure that adequate legal protections are provided to those detained.

FECCA supports the views of the Hon John von Doussa, the President of the Human Rights and Equal Opportunity Commission (HREOC), who has publicly stated that:

*“To provide a realistic check and balance on orders the legislation needs to incorporate the following safeguards for preventative detention orders, and there needs to be similar rights for the control order regime: “the detained person must have a right to apply to the recognized courts for meaningful review of the factual basis and legal process that has led to the preventative detention order. The courts must be empowered to consider and review the facts. Any review process will be no more than token in value unless the reasons for the making of the order are, at least in broad outline, made known to the detained person. It is a fundamental requirement of natural justice, and of the judicial process, that a person accused be made aware of the allegation that must be answered. A review process to be meaningful to those in detention, particularly if they are unfamiliar with the English language and court processes, must provide legal assistance to bring proceedings to the court; and there must be a statutory obligation on the detaining*

*authority to take positive steps to advise the detained person of these rights, and to facilitate contact with a legal adviser."*

Presentation by the Hon John von Doussa to "Are we crossing the line?: Forum on national security laws and human rights". Canberra, 31 October 2005.

FECCA argues that during the period of detention, there must be complete and unfettered access to legal representation and advice. International human rights law requires that a person who is detained must have the right to challenge this detention in a court without delay. Review before the court needs to include: consideration of whether the order is based on a correct understanding of the facts; whether the detention is fair; whether it is reasonably necessary in the circumstances; and whether it is proportionate to the goal of protecting national security.

FECCA is greatly concerned at community perceptions that the anti-terrorism legislation will only impact on or indeed, concern, Australia's Islamic community. Australian Muslims must not be singled out as potential terrorists. We believe that one of Australia's best guarantees of future security is working in partnership with the Islamic community. Only in this way will Australian Muslims feel that they are respected, equal members of society with as much to lose from violent acts as everybody else. We argue strongly that the media and people in public office must be accountable for their comments about terrorism and the use of anti-terrorism legislation. Such public statements as:

*".... the majority of terrorists are Muslims....certainly they're fanatical, they're extremists, but nonetheless they are Muslims"*

John Laws, Radio 2UE Sydney 9<sup>th</sup> November 2005

are very unhelpful. We are deeply concerned that this sort of public commentary will undermine community harmony, lead to racial stereotyping, vilification and discrimination. Australian Muslims are feeling vulnerable as a result of the recent terror raids.

It has been beyond the capacity of FECCA to examine the proposed legislation in detail, given the short time frame for comment. We therefore seek reassurance that the proposed anti-terrorism legislation does not contain language that points to particular communities. Lawyer Michael Mansell has already expressed concern that section 23CA 4(a) of the Criminal Code (Anti-terrorism Act) makes specific mention of Aboriginal and Torres Strait Islanders. We are disturbed at the potential for the anti-terrorism laws to focus on one section of the community, who are deemed "likely" to engage in terrorism.

FECCA is also anxious about the need to ensure anonymity of detainees. The current situation wherein mainstream media has already characterised the recent detainees as guilty of sedition or terror is unacceptable in any human rights terms. We believe

that there is considerable risk to the basic tenant of the presumption of innocence and the right to a fair trial, implicit in the proposed anti-terrorism legislation.

FECCA believes that the proposed anti-terrorism legislation does create a risk of undermining community harmony and human rights. These laws will be enacted without the added protection of a Bill of Rights or Human Rights Act. We are disturbed that in this context, Australians will be vulnerable to their human, civil and political rights being undermined, once the anti-terrorism bill is enacted into law.

FECCA would be happy to discuss any of the issues raised in this submission. Please do not hesitate to contact me on 0417 489 066 or the FECCA Director, Conrad Gershevitch on (02)6282 5755, should you wish to do so.

Yours sincerely

A handwritten signature in black ink that reads "A MALAK". The letters are written in a cursive, slightly slanted style.

Abd-Elmasih Malak AM  
FECCA Chairperson

11<sup>th</sup> November 2005