

Islamic Council of Victoria
National Security Legislation Review

1. The Islamic Council of Victoria ('ICV') is the peak body for Muslim organisations in Victoria. The ICV represents Victoria's more than 90,000 Muslims, through its 32 member organisations located throughout metropolitan Melbourne and rural Victoria. Accordingly, the ICV welcomes the opportunity to assist and comment on the National Security Legislation Review ('**Review**') with reference to the Muslim community.

General Comments

2. The ICV is concerned of the ever-widening circle of terrorism laws, which has no foreseeable end in sight. The ICV does not understand why there is a separate body of laws to deal with terrorist offences, when the ordinary criminal laws of the various States and Territories already deal with the results of these offences? Why is there a need for this specialist body of law to deal with terrorism offences when it is self-evident that the ordinary criminal laws cover the field?
3. The ICV is concerned that no evidence is posited how the existing laws are failing in some way - particularly in view of recent arrests - so there is a lack of clear reasoning why the following are being recommended:
 - new emergency powers to enter and search premises without a warrant;
 - extension of time to re-enter premises from 1 hour to 12 hours; and
 - expanding the definition of a terrorist act to include psychological harm - which is difficult to quantify, and arguably the existing definition covers this already (eg. the threat of harm).
4. The ICV is concerned at the over-complicated laws and processes and notes that the upshot of this is at alienation of the people from the law. In addition, the ICV notes that the terrorism laws are resource intensive in terms of policing and these resources should be better spent on improving community relationships and building the community.
5. The recent terrorism trials and bail applications expose the failure of Australian society particularly with regards to education, rights and community services to affected

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communities. The angst expressed by those convicted of terrorist offences and those accused of such offences centre on the lack of opportunities and discrimination within Australian society, and the unbalanced approach of Australian foreign policy especially with regards to Israel and Muslim nations.

6. The ICV notes the definition of terrorism offences lack sufficient clarity which is a major concern given the severe penalties of a terrorist act. In particular, the ICV is concerned that the current terrorism laws are not clear and are not in plain English. The ICV is concerned that many ‘new’ Australians will fail to understand these laws, which is in fact a failure of government to explain these laws. Laws that have no connection or fail to resonant with the community are bad laws, such as laws which are overly complicated and difficult to understand.
7. The ICV notes that for a vast majority of Australians, they will not meet with the communities/people who are affected by these legislative changes or the suite of terrorist laws per se. The ICV notes that the laws undermine social cohesion and target particular vulnerable communities, thus creating further alienation and angst.
8. What marks us Australians out as a beacon of liberal democracy is a tolerance of others and sticking up for the ‘battler’ and the disadvantaged. The harshness of the proposed legislative changes only diminishes the perception of Australia as that beacon both throughout the Australian and global community. The hallmark of a democratic government is not how it caters for the majority but rather how it protects its minorities, their rights and liberties. The proposed changes fail in this regard and lack balance, and can only ultimately lead to greater community frustration. The irony is that what the laws propose to diminish and deter, will only foster instead.
9. The proposed legislative changes do not deal with the root causes of terrorism. The laws only seek to punish and their application will only create disharmony within Australian society.

Terrorism Investigations

10. The ICV fails to understand the logical reasoning between having separate provisions for terrorism and non-terrorism investigations. The ICV is concerned with the lack of clarity as to the maximum period of detention, given the provisions which state that time during which suspension or delay of questioning may be disregarded. The ICV asks what is the maximum period of detention?

11. Subdivision B – headed ‘Terrorism offences’ can only be described as a drafting nightmare. The ICV is of the view that there is no prospect of the average Australian being able to comprehend this piece of legislative drafting. The ICV recommends that this section be drafted under the principles of plain English.

12. The ICV is of the view that section 23DF(4), which allows limited disclosure of information, relies too heavily on the vague and problematic definition of “national security” and is potentially open to exploitation and abuse by law enforcement officers. Examples of abuse that the ICV has catalogued with regards to the Somalian community are as follows:
 - Presumably Federal policing/intelligence agents constantly harassing people without warrants, and not disclosing the nature of the questioning;

 - Presumably policing/intelligence agents asking the same questions time and time again, at all hours of the day, arranging meetings and not turning up;

 - Presumably policing/intelligence agents purporting to act on a warrant which is not provided;

 - Presumably policing/intelligence agents telling people that that cannot speak to anyone, or else they will be charged, without providing a warrant;

 - Presumably policing/intelligence agents telling the man of the house, that his wife is required for questioning - again with no warrant being provided.

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13. The ICV urges that subsection 23C(7)(j) include within ‘rest and recuperate’, time for an individual who is of Muslim background to observe ritual prayers and appropriate meal times during the holy month of Ramadan.
14. With regards to subsection 23DB, the ICV reiterates the comments of subsection 23C7(j) above regarding allowing arrested individuals of Muslim background the opportunity to observe the ritual prayers and appropriate meal times during the holy month of Ramadan and seek it to also be applied to the ‘rest and recuperate’ provision in Subsection 23DB(9)(j).
15. In regards to subsection 23DC, the ICV welcome the procedures outlined in this section, specifically that any application is to be ‘in writing’ and to a ‘magistrate,’ as opposed to previous/current legislation which allows for various means to submit an application and that such applications may come before a justice of the peace. Further, we welcome the addition of requiring such an application to be “authorised, in writing, by an authorising officer.”
16. The ICV believes that this move towards a more transparent process with oversight by appropriate individuals is encouraged. This subsection also addresses and dispels the presupposition that suspension or delay in questioning to acquire additional information, particularly outside Australia, is a legitimate reason to hold an individual for longer than the specified statutory period. The ICV welcomes this requirement of seeking judicial approval for including the time used for such suspensions and delays to prolong an individual’s arrest period.
17. However, the ICV is concerned with subsection 23DC(4)(e) in that there is a need for additional examples. We urge that any application seeking suspension or delay of questioning to be disregarded for purposes of ascertaining outside information to also outline the following:
 - (i) The reasons or explanation for why this information was not acquired prior to the arrest or prior to the completion of the questioning time-period;
 - (ii) If the need for this information arose after the arrest, or if questioning revealed the need for this information, a timeframe for when the information was sought and any reasons for delay in seeking the information should be specified in the application by the investigating individual to the magistrate.

18. With regards to subsection 23DE, as stated regarding subsection 23DC, the ICV specifically welcomes that any application is to be ‘in writing’ and to a ‘magistrate,’ as opposed to previous/current legislation which allows for various means to submit an application and that such applications may come before a justice of the peace. Further, we welcome the addition of requiring such an application to be “authorised, in writing, by an authorising officer.” This move towards a more transparent process with oversight by appropriate individuals is encouraged.
19. The ICV is of the view that the proposed amendments to subsection 23B(1) potentially broadens the definition of *arrested*, by adding further requirement that the person has not been released. Therefore if a person has been arrested, and does not fall under (3) or (4), the person is considered arrested until their release. The ICV believes that there is no evidence that the existing laws are failing in some way.

Expanded Search Powers

20. The new section 3UEA grants greater powers than that available under the Victorian Crimes Act. In addition, there are no procedural safeguards as there is Victoria, namely ex post facto scrutiny of searches being regularised by the issue of a warrant.
21. The ICV is of the view that the power granted under section 3UEA is one that is easily abused and permits covert searches, where there is no reason to notify the occupiers of the premises of the search. The ICV believes that this is a step too far without adequate reasoning on how the current law has failed in this regard and safeguards in place.
22. In summary, the ICV believes that the proposed amendment to section 3UEA puts too much faith in the individual discretion of the police officer – once the threshold requirement of “suspects on reasonable grounds” is met, the police officer is granted sweeping entry, search and seizure powers that are open to abuse, especially given that the amendments are not accompanied by measures to ensure accountability of individual officers who act pursuant to the proposed amendments.

Treason and Sedition amendments

23. The ICV is of the view that section 80.1AA(1) fails to account with the situation where there is no declaration of war, and no enemy defined. The ICV is of the view the section 80.1AA(1) is also a legislative drafting nightmare, and should be explained in plain English. In addition, with regards to subsection (6), the term ‘aid of a humanitarian nature’ should be defined, and the ICV believes that is sloppy drafting to leave the definition of this term to the courts.

Terrorism Offences

24. The ICV fails to see the relevance of the offence of inciting violence against an individual on the basis of race, religion, and national origin with regards to terrorist offences. It is not clear why this is being considered within an anti-terrorism framework, and it is an unnecessary erosion of right to freedom of speech, and there is no evidence of a necessary relationship between freedom of speech and violent criminal acts.
25. With regards to the new proposed terrorism hoax offence, the ICV is of the view that there are self-evident definitional problems vis-à-vis between what is a threat and what is hoax. In addition, the ICV questions why there is a need for this offence which is already covered in both Federal and State legislation (see for example laws with regards to Telecommunications and Aviation).

Terrorist Organisations

26. The ICV believes that by banning terrorist organizations, the Government loses an important avenue to negotiate peaceful outcomes, and becomes unnecessary involved in the politics of other states (following this argument to its logical conclusion this means that Nelson Mandela and the ANC would have been banned terrorist organizations, as would be Aung Sung Su Ki). If a person cannot associate with a terrorist organization for fear of prosecution, this means that the Australian Government will lose a vital source of human intelligence and also miss an opportunity to dialogue with terrorist entities, and thus minimising any efforts for global peace.

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27. In the recent proscription of Al-Shabab, the ICV is of the view that the Federal Government has misunderstood the basics of Somalian tribal society and culture. When an Australian of Somalian descent visits Somalia, in regions where Al-Shabab is active, it is more than likely that that person's relatives and friends are members of Al-Shabab for reasons of tribal affiliations and security, give that Somalia is failed state. Applying the law as it stands, that person would be guilty of an offence, which is ridiculous in the extreme.
28. The ICV also calls on the Government to have a one, clear, proscribed list instead of the current situation where AGD, DFAT and the United Nations each all have a banned organisations list. The ICV also believes that while there is no issue in extending banning terrorist organisations from 2 years to 3 years, the listing process is complex and affected persons have no right to be heard. The ICV believes that if the Government extends the period of listing then and further opportunities for review of listings should be provided.

Summary

29. The ICV has very serious misgivings about the terrorism legislation as a whole and the 'need' to distinguish it from current legislation which addresses similarly serious criminal issues such as drug and gang wars which also place people's lives at risk and can potentially affection national security, depending on whether they have ties internationally. The ICV urges closer community consultation with lawmakers, and implores the government to examine the root causes of terrorism, rather than mandating complex and often turgid laws.

Yours sincerely,

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ICV

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