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Australia's compliance with CERD FACT SHEET 9

Impact of Counter-Terrorism Laws

Since 2001, Australia has enacted more than 50 'counter-terrorism' laws, thereby creating new terrorism offences, outlawing 'terrorist organisations' and increasing powers for police and intelligence agencies. While Australia's counter-terrorism legislation does not expressly target specific groups, in practice, the laws disproportionately affect Muslim, Kurdish, Tamil and Somali communities. Only Muslim and Tamil people have been prosecuted under the laws.¹ The organisations listed as terrorist organisations are almost exclusively Islamic organisations.

Surveillance and harassment by law enforcement bodies

As part of the Australian Government's raft of counter-terror laws, broad coercive powers were given to the Australian Federal Police and the Australian Security and Intelligence Organisation (**ASIO**) to do a range of things, including to detain people without charge for up to 7 days. Anecdotal evidence suggests that intelligence gathering agencies use the existence of the laws to coerce co-operation with investigations from particular communities, without needing to resort to actually exercising powers under the laws. Tamil, Pakistani, Arab and East African communities have reported disproportionate attention from investigating authorities.²

ASIO officers themselves gave evidence of using words to the effect of 'we can go down the difficult path or a less difficult path' in the case of Izhar Ul-Haque, who was questioned about training in Pakistan with a terrorist organisation. In that case the Supreme Court of New South Wales found that the questioning tactics of ASIO were 'grossly improper and constituted an unjustified and unlawful interference with the personal liberty of the accused'. The court also found that ASIO officers committed criminal offences of false imprisonment and kidnapping at common law.³

Muslim Women

Australia's counter-terrorism laws have had a particularly adverse effect on Muslim women. Muslim women have reported being verbally and physically abused in public due to their visible association with Islam through their wearing of the hijab and their skin colour.⁴ These incidents have escalated with increased media coverage of terrorism associated with Muslim people. As a result, many Muslim women feel afraid to leave their homes or travel independently. Many also feel that their race and religion limits their education and employment opportunities.

The Collection of Biometric Data and the Right to Privacy

Australia now collects fingerprint and facial imaging as part of the visa processing system for non-citizens from ten countries.⁵ The UN Special Rapporteur on Counter-Terror has recognised that the collection and retention of biometric data is a potentially permanent invasion of privacy.⁶ Moreover, Australia's system specifically targets people from ten countries. Though these countries are not publicly named, similar measures adopted in the United States may indicate that they include Afghanistan, Iraq and Somalia.⁷

Outlawing Organisations and Freedom of Association

The Government's ability to outlaw organisations as 'terrorist organisations' has had a disproportionately adverse impact on Muslim and Kurdish people in Australia. The criteria for outlawing or 'proscribing' organisations is broad,⁸ capturing organisations that merely 'advocate' or praise acts of terrorism. Where an organisation is proscribed as a 'terrorist organisation', the members can suffer severe detriment, including criminal ramifications, as it is an offence for a person to knowingly and intentionally be a member of the organization.

The public condemnation of the political, religious or ideological goals of outlawed organisations threatens the right to freedom of association. Communities that share social, cultural, ethnic or religious commonalities with outlawed organisations report increased police scrutiny and fear about donating money to charitable organisations.⁹ These matters disproportionately affect Muslim communities, as all but one of the currently 18 proscribed organisations self-identifies as Islamic. The other is the Kurdistan Workers Party.

TABLE OF CROSS-REFERENCES

Issue	Relevant CERD Articles	References to Issue in CERD NGO Report
Discriminatory Application of Laws	2, 5(a)	FREDA Submission Part E.4, F.5, F.6
Collection of Biometric Data	5(b)	FREDA Submission Part F.5(a), F.6
Proscribed Terrorist Organisations	5(d)(viii), (ix)	FREDA Submission Part F.5(b)
Muslim Women	5(d)(i), (f)	FREDA Submission Part F.6

Endnotes

¹ See, eg, *R v Mallah* (2003); *R v Thomas* (2004); *R v Lodhi* (2006); *R v Khazal* (2006); *R v ul-Haque* (2006); *R v Benbrika* (2006). Charges have also been brought against two alleged members of the Liberation Tigers of Tamil Eelam: *R v Vinayagamoorthy & Yathavan*.

² Islamic Council of Victoria, *Submission to the Federal Attorney-General's National Security Legislation Discussion Paper* (18 September 2009) para [12], available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(966BB47E522E848021A38A20280E2386\)~SLB+-+Islamic+Council+of+Victoria+October+2009.pdf/\\$file/SLB++Islamic+Council+of+Victoria+October+2009.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(966BB47E522E848021A38A20280E2386)~SLB+-+Islamic+Council+of+Victoria+October+2009.pdf/$file/SLB++Islamic+Council+of+Victoria+October+2009.pdf)

³ *R v Ul-Haque* [2007] NSWSC 1251, para [62].

⁴ Islamic Women's Welfare Council of Victoria, *Race, Faith and Gender: Converging Discriminations Against Muslim Women in Victoria* (2008), 56.

⁵ Department of the Prime Minister and Cabinet, *Securing Australia, Protecting our Community* (2010).

⁶ M Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc A/HRC/13/37, [22] 28 December 2009.

⁷ *Australia toughens visa checks* (23 February 2010) *News Asia-Pacific* < <http://english.aljazeera.net/news/asia-pacific/2010/02/201022391617481508.html> > at 6 May 2010.

⁸ Section 102.1(1A); in this Division, an organisation advocates the doing of a terrorist act if, among other things, the organisation directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act.

⁹ Western Suburbs Legal Service, *Is Community A Crime?* (2009), 10.