



Saturday, 18 February 2023

To:

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
Canberra ACT 2600
By email: pjcis@aph.gov.au

Dear Committee Secretary,

Re: Review of the Inspector-General of Intelligence and Security and Other Legislation Amendments (Modernisation) Bill 2022

We thank you for the opportunity to comment on this Bill.

The Australian Muslim Advocacy Network (AMAN) works to secure Australian Muslims' physical and psychological safety from the harms of racism and Islamophobia.

The Committee may be aware of our push to amend the definition of a terrorist act, to remove the reference to religious cause. Consistent with that amendment, we seek for ISIS, and al-Qaida to be categorised as *ideologically* motivated terrorism.

We hope to guide the Committee on steps the Australian Government can take to strengthen inclusiveness.

Section 8 (1) IGIS Act 1986 (Cth)

We note that the existing section 8 of the IGIS Act 1986 (Cth) empowers the Inspector General to inquire into

An act or practice of ASIO that is or may be inconsistent with or contrary to any human right, that constitutes or may constitute discrimination, or that is or may be unlawful under the Age Discrimination Act 2004, the Disability Discrimination Act 1992, the Racial Discrimination Act 1975 or the Sex Discrimination Act 1984, being an act or practice referred to the Inspector-General by the Australian Human Rights Commission.

Complaint to ASIO



In mid-2021, we complained directly to the Director General of ASIO, to which we did not receive a response.

The complaint raised concerns about statements made by the Director-General of Security at his Annual Threat Assessment on 17 March 2021, as well as during a sitting of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on 29 April 2021.

Our concerns included the Director-General of Security's descriptions of

- the late Mr. Raghe Abdi as a 'radicalised ISIS supporter' and
- the incident in which Mr. Abdi was ultimately shot by police as an example of a religiously motivated terrorist attack.

Our concerns were that these comments were highly prejudicial.

The Queensland State Coroner has in the past criticised the Head of the Queensland Police Union for making public comments about matters which are properly the subject of a Coronial finding.

It was our submission that the Director-General should not have made a comment to the effect that Mr. Abdi was a terrorist before the Coroner made her determination. As a senior officer of the country, Australians look to him to respect procedural fairness and the judiciary's role.

Complaint to the AHRC

On 25 November 2021, we complained to the Australian Human Rights Commission (AHRC) under section 11 (1)(f) of the Australian Human Rights Commission Act 1986 (Cth).

We outlined the discriminatory impact of the Director General's statements on the Australian Muslim community.

On 26 November 2021, AMAN was advised by the AHRC that,

it does not appear the Commission's Investigation and Conciliation Service can assist you. The Commission does not have the power to consider complaints against ASIO in accordance with sections 11(3) and (4) of the *Australian Human Rights Commission Act 1986* (Cth).

This assessment may have been informed by the fact that AMAN is an organisation concerned with the welfare of Australian Muslims. Those referenced sections only allowed complaints connected to the Racial Discrimination Act.



The AHRC informed us that complaints about ASIO can be raised with the Inspector General of Intelligence and Security.

Complaint to IGIS

On 7 December 2021, we complained to IGIS concerning ASIO and the Director General of Security.

On 16 August 2022, we received a reply, stating,

As you may be aware, the Inspector-General's statutory role is to review the conduct of Australian intelligence agencies to ensure that they act legally and properly, and consistently with human rights *where an act or practice is referred to the Inspector-General by the Australian Human Rights Commission*.

In this case, I can confirm that the Acting Inspector-General has carefully considered the matters you raised that are within the Inspector-General's jurisdiction; and after examining a range of materials relating to your complaint, the Acting Inspector-General did not find errors **of legality or propriety** in relation to the actions of either the Director-General of Security or ASIO. [emphasis added]

While AMAN appreciated receiving this response, it found the IGIS response to be uninformative. It did not clarify what laws or standards were used to judge the Director General's conduct.

It was noted that the ASIO Director General exercised more caution in relation to the Wieambilla police shooting in December 2022. We welcome this caution.

Recommendations

We submit the following recommendations for the Committee's consideration:

Recommendation 1: We would welcome clarification in the Act that IGIS will consider breaches of human rights and discrimination law in a complaint, regardless of whether the AHRC has referred the complaint to them.

Recommendation 2: We request the Attorney Generals' Department ensure that the proposed Religious Discrimination Bill 2023 package, scheduled for mid-2023, includes a consequential amendment to the *IGIS Act 1986* and *AHRC Act (s11(3)(4))*, so that faith communities have access to the same protections as ethnic minorities.



Recommendation 3: We request that the relevant Minister publish a guideline for IGIS that requires ASIO not to 'count' an incident as a terrorist incident in their Annual Threat Assessment, or otherwise in the media, unless it has been confirmed by trial or coronial inquest, to protect procedural fairness.

Recommendation 4: We would welcome a longer timeframe on this inquiry and the ability to consider submissions from other human rights and law-based civil societies. At the time of writing this submission, only one other submission was available to read from the Inspector General's office.

Should you have any questions about this submission, please do not hesitate to contact AMAN at the email below.

Yours faithfully,



AUSTRALIAN MUSLIM ADVOCACY NETWORK