

Zionist Federation of Australia submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the Human Rights Implications of Recent Violence in Iran

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Recommendations

Recommendation 1
The ZFA recommends that the Committee urges the Attorney-General to task the Attorney-General's Department to clarify whether foreign government-owned or -controlled organisations may be proscribed under current Australian law.
Recommendation 2
If current Australian legislation prevents foreign government-owned or -controlled organisations from being proscribed, the ZFA recommends that the Committee should call for legislation to be amended so as to allow for foreign government-owned or -controlled organisations to be proscribed in the future.
Recommendation 3
The ZFA recommends that the Committee call on the Attorney-General to task the Department of Home Affairs and the National Intelligence Community to determine whether the IRGC and associated organisations breach the terrorism provisions of the Criminal Code and so should be proscribed.

The Zionist Federation of Australia thanks the Committee for the opportunity to make this submission into its inquiry into the human rights implications of recent violence in Iran.

As the Australian Zionist representative roof body, the ZFA is committed to advocating for the State of Israel on behalf of the Jewish community in Australia and fostering a deep connection between Australia and Israel.

This Committee has already heard and seen substantial amounts of information in regards to the repressive regime of the Islamic Republic of Iran. Although it was established to determine the human rights implications of the Iranian regime's brutal crackdown of protesters, many submissions have also discussed the efforts by the Iranian regime to undertake and/or facilitate the doing of terrorist acts outside of its borders.

In particular, numerous submissions have called for the proscription of the Islamic Revolutionary Guards Corp (IRGC), as well as sub-units (such as the Qods Force) and policing units associated with it (such as the Basij).

This submission does not intend to replicate the substantial research by other parties in pointing out the many instances of how the IRGC is, in the words of the Criminal Code, "an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act."¹

¹ Criminal Code 1995, s. 102.1

That said, the Committee might be alarmed to know that the IRGC weekly newspaper, *Sobh-e Sādeq*², on 12 December 2022, not only recommended that the protesters within Iran be executed, but issued a threat against those in the West who support the protests. According to the article, “effective deterrence against the instigators of the riots abroad must be pursued at suitable times and places”.³ A day later, on 13 December, the Iranian Minister for Intelligence said, “Anyone involved in the chaos and disorder against the people will be punished... Those who have harmed the people and the country, wherever they are in the world, will be punished.”⁴

The Iranian community in Australia has already reported that these are not idle threats.⁵ Indeed, this inquiry has heard from witnesses reporting that elements of the Iranian regime are surveilling and intimidating members of the Iranian community here in Australia. There is also copious open-source evidence that the IRGC and organisations associated with it pursue activities that would meet the definition of terrorism in pursuit of its mission to ‘export the revolution’.⁶

However, there is some confusion as to whether, legislatively, the IRGC and associated organisations may be proscribed here in Australia. In a submission to this inquiry, Ben Saul suggested it could not:

Such designation is not legally possible under Australian law. Section 100.1(1) of the Criminal Code defines an ‘organisation’ as a body corporate or an unincorporated body. The Australian courts have interpreted bodies corporate and unincorporated bodies as excluding governments, which thus cannot be listed as terrorist organisations. The IRGC is clearly an Iranian state entity.⁷

Notwithstanding the definitive tone of Prof Saul’s submission, the court decision upon which he relies is ambiguous on the matter. It states that a nation (by which it means state) or its government is not a body corporate, and that a nation or its population is not an unincorporated association.⁸ While it is thus clear that a state or a state government cannot be considered a terrorist organisation according to this ruling, it is not clear whether an organisation (which is not a government) controlled by a state should be immune from proscription by Australia.

Given the calls by many parties making submissions to this inquiry for the IRGC to be proscribed, and the assertion that it may not be proscribed, due to the way courts have interpreted Australian legislation, it behoves the Committee to urge the Attorney-General to task his department to clarify the matter.

² <https://ssweekly.ir/>

³ <https://basirat.ir/fa/news/342361/%D8%AC%D9%86%DA%AF-%D8%AA%D8%B1%DA%A9%DB%8C%D8%A8%DB%8C-%D8%AF%D8%B1-%D9%85%D9%88%D9%82%D8%B9%DB%8C%D8%AA%DB%8C-%D8%B3%D8%B1%D9%86%D9%88%D8%B4%D8%AA%E2%80%8C%D8%B3%D8%A7%D8%B2>, accessed 15 December 2022

⁴ <https://www.tasnimnews.com/fa/news/1401/09/22/2821046/%D9%88%D8%B2%DB%8C%D8%B1-%D8%A7%D8%B7%D9%84%D8%A7%D8%B9%D8%A7%D8%AA-%D9%87%D8%B1%DA%A9%D8%B3-%D8%AF%D8%B1-%D8%A2%D8%B4%D9%88%D8%A8-%D8%B9%D9%84%DB%8C%D9%87-%D9%85%D8%B1%D8%AF%D9%85-%D9%86%D9%82%D8%B4-%D8%AF%D8%A7%D8%B4%D8%AA%D9%87-%D9%85%D8%AC%D8%A7%D8%B2%D8%A7%D8%AA-%D8%AE%D9%88%D8%A7%D9%87%D8%AF-%D8%B4%D8%AF>, accessed 15 December 2022

⁵ See, for examples, <https://www.abc.net.au/news/2022-11-05/threats-surveillance-intimidation-iran-protest/101614078>, accessed 15 December 2022; <https://www.sbs.com.au/news/article/nos-is-a-vocal-critic-of-irans-regime-she-fears-iranian-agents-have-targeted-her-in-australia-for-it/fllh5quuk>, accessed 15 December 2022; and <https://www.abc.net.au/news/2022-11-29/kylie-moore-gilbert-inquiry-human-rights-abuses-iran-protests/101708798>, accessed 15 December 2022.

⁶ In this regard, members of the Committee would benefit from reading Afshon Ostovar’s *Vanguard of the Imam: Religion, Politics, and Iran’s Revolutionary Guards* (Oxford University Press, 2016)

⁷ SSFADT Inquiry into the human rights implications of recent violence in Iran, Submission 47, p. 3.

⁸ *Abdirahman-Khalif v R* [2019] SASCFC 133 at [22]-[23] (Kouras CJ)

Recommendation 1

The ZFA recommends that the Committee urges the Attorney-General to task the Attorney-General's Department to clarify whether foreign government-owned or -controlled organisations may be proscribed under current Australian law.

The Zionist Federation of Australia believes that foreign state-owned or -controlled organisations that directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act should **not** be immune to proscription under Australian law. As such, if, as a result of the clarification recommended in Recommendation 1, the Attorney-General reports that current Australian legislation prevents foreign government-owned or -controlled organisations from being proscribed, the ZFA recommends that the Committee should call for legislation to be amended so as to allow for such entities to be proscribed in the future.

Recommendation 2

If current Australian legislation prevents foreign government-owned or -controlled organisations from being proscribed, the ZFA recommends that the Committee should call for legislation to be amended so as to allow for foreign government-owned or -controlled organisations to be proscribed in the future.

As above, there is ample evidence that the IRGC and associated organisations commit terrorist acts around the world, and threaten to do so here in Australia. Mindful of the careful process that Australian practice requires before an organisation is proscribed in this country, once it is clear that Australian legislation does not prohibit a foreign state-owned or -controlled organisation from being proscribed, it is the ZFA's strong recommendation that the Attorney-General ask the Department of Home Affairs and the National Intelligence Community to determine whether the IRGC and associated organisations meet the threshold for proscription and so should be proscribed.

Recommendation 3

The ZFA recommends that the Committee call on the Attorney-General to task the Department of Home Affairs and the National Intelligence Community to determine whether the IRGC and associated organisations breach the terrorism provisions of the Criminal Code and so should be proscribed.