

CHAPTER 2

BACKGROUND TO THE BILL

2.1 This chapter briefly outlines the background and the main provisions of the Bill in relation to amendments to:

- the *Passports Act 1938* (Passports Act);
- the *Australian Security Intelligence Organisation Act 1979* (ASIO Act);
- Division 102 of the *Criminal Code Act 1995* (Criminal Code);
- the *Transfer of Prisoners Act 1983* (Transfer of Prisoners Act) and the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act); and
- the *Crimes Act 1914* (Crimes Act).

Key provisions of the Bill

2.2 The Bill seeks to strengthen Australia's counter-terrorism legal framework.¹ Its key provisions, prior to amendment, are set out below.

Amendments to the Passports Act 1938

2.3 Schedule 1 of the Bill amends the Passports Act to provide that those subject to a warrant for an indictable offence or serious foreign offence, prevented from travelling internationally by force of an order of a court, a law of the Commonwealth or a condition of parole, or suspected of engaging in harmful conduct (such as terrorist activities), are prevented from leaving Australia on a foreign passport.²

2.4 The Bill creates powers to demand, confiscate and seize foreign travel documents so that those suspected of serious offences or harmful conduct are prevented from leaving Australia on a foreign travel document. Part 3 of Schedule 1 inserts new offences for:

- making false or misleading statements in relation to foreign travel document applications;
- giving false or misleading information in relation to foreign travel document applications;
- producing false or misleading documents in relation to foreign travel document applications;
- improper use or possession of a foreign travel document;
- possessing, making or providing false foreign travel documents;

1 *Explanatory Memorandum*, p. 1.

2 *ibid.*

- failure to surrender a suspicious foreign travel document; and
- failure to surrender a foreign travel document when required to do so.³

Amendments to the Australian Security Intelligence Organisation Act 1979

2.5 Schedule 2 of the Bill contains amendments to the ASIO Act to create a power for the Australian Security Intelligence Organisation (ASIO) to demand the surrender of a person's passports (both Australian and foreign) to prevent that person from leaving Australia, where the person is subject to a request by the Director-General of ASIO to the Minister for consent to apply for a questioning warrant.⁴

2.6 The Bill will create new offences under the ASIO Act for failure to comply with a demand for the surrender of a person's passport and for leaving Australia when a person is subject to a request for consent to apply for a questioning warrant.⁵

Amendments to Division 102 of the Criminal Code Act 1995

2.7 Schedule 3 of the Bill inserts a new subsection 102.8(1), 'Association with a Terrorist Organisation', in Division 102 of the Criminal Code. This makes it an offence to intentionally associate with a person who is a member or who promotes or directs the activities of a listed terrorist organisation where that association provides support that would help the terrorist organisation to continue to exist or to expand. The offence would only apply to organisations which are listed as terrorist organisations under the *Criminal Code Regulations 2002* and where the person knew that the organisation was a listed terrorist organisation.⁶

2.8 Exceptions to the offence are provided for in relation to:

- associations with close family members (spouses, de facto spouses or same sex partners; parents, step-parents or grandparents; children, step-children or grandchildren; brothers, sisters, step-brothers or step-sisters; guardians or carers);
- associations for the purpose of public religious worship;
- associations for the purpose of the provision of aid of a humanitarian nature; and
- associations for the purpose of providing legal advice or representation in criminal proceedings, or related proceedings, or proceedings relating to whether the organisation in question is a terrorist organisation.⁷

3 *ibid*, p. 2.

4 *ibid*, p. 1.

5 *ibid*, p. 3.

6 *ibid*.

7 *ibid*.

Amendments to the Transfer of Prisoners Act 1983 and the Administrative Decisions (Judicial Review) Act 1977

2.9 Schedule 4 of the Bill amends the Transfer of Prisoners Act to include security as a third ground for transfer between state or territory prisons for Commonwealth, state and territory prisoners, as well as for persons charged with and remanded in custody for an offence. The amendments to the Transfer of Prisoners Act will also provide for the return transfer of such persons, as well as the transfer of such persons for court proceedings.⁸

2.10 Schedule 4 also amends the ADJR Act to make decisions of the Attorney-General under Part IV of the Transfer of Prisoners Act, as well as any decision of the Attorney-General under the Transfer of Prisoners Act on the grounds of security, exempt from the application of the ADJR Act.⁹

Amendments to the Crimes Act 1914

2.11 Schedule 5 of the Bill contains amendments to the forensic procedure provisions in the Crimes Act to facilitate effective disaster victim identification in the event that a disaster causing mass casualties (such as a terrorist attack or an aircraft disaster) were to occur within Australia.¹⁰

8 *ibid*, p. 4.

9 *ibid*, p. 2.

10 *ibid*.

