

André Leslie
Mosman, NSW

4th July, 2004

The Secretariat
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600
AUSTRALIA

Dear Sir/Madam,

Submission to Inquiry into the provisions of the Anti-Terrorism Bill 2004 (No 2) (Cth)

I wish to express concern at some sections of the Anti-Terrorism Bill (No 2) 2004. I am a fourth year law student of administrative and constitutional law at the University of Sydney and work regularly in independent media reporting on legal issues. It is with this background knowledge that I wish to express concern about this Bill.

I wish to state from the outset that the views below are my own and do not represent the views of my place of work or my learning institution.

The majority of the law as stated in the Bill seems to be commensurate with the situation that, undeniably, now confronts us in Australia. However, there are two parts of the Bill that, I believe, represent worrying developments in the extension of power of the executive. Namely, the apparent extension of power given to ASIO and the restrictions placed on the AAT.

Power to seize passports prior to questioning warrant being issued

As I understand it, this amendment has been introduced to stop people fleeing the country after they become aware that they are being investigated. This is obviously a legitimate concern. But what if the questioning warrant is not approved by the Minister after an application from the Director-General? The result is that a person will have been restricted from leaving the country for a considerable period for no good reason at all.

Surely, the process should be done the other way round. That is, the Director-General of ASIO should get the questioning warrant (with approval from the minister) *before* restricting the rights of those who are being questioned. If this were the process, then only *approved* questioning warrants would restrict the movements of suspects. This is

justified. Restricting people's movements with warrants that may never even get approved is not justified.

In summary, this proposed new power to seize a person's passports even before an ASIO questioning warrant has been issued against them, appears to have the effect of giving ASIO the power to restrict a person's movements without due process. Add to this the fact that ASIO's functions and operations are not easily open to scrutiny, and it seems clear that vesting this sort of power in ASIO is particularly dangerous and open to abuse.

Limits placed on the Administrative Appeals Tribunal.

I also oppose the limits placed upon the Administrative Appeals Tribunal to review decisions of the Minister if he or she issues a certificate in relation to a decision to seize a person's passports. Limiting the function of the AAT to only 'approving or remitting the decision to the Minister' (albeit with recommendations by the Tribunal), seriously restricts the role that was intended for the AAT. The AAT should be able to continue to make decisions as if it were the primary decision-maker (ie. It should be able to overrule the Minister's decision and replace it with a decision of its own).

Thank you for your attention,

André Leslie