

The Secretary,
The Senate Legal & Constitutional Legislation Committee,
Re: Inquiry into
Anti-Terrorism Bill (No 2) 2004,
Parliament House, Canberra A.C.T. 2600.



Wednesday, 30 June 2004

From: Kendall Lovett and Mannie De Saxe,
Lesbian & Gay Solidarity (Melbourne),

Dear Secretary,

Below is our Submission of Comment to the Anti-Terrorism Bill (No 2) 2004 for the present Senate Inquiry.

SUBMISSION

Schedule 1: Foreign travel documents

Passports Act 1938

This Bill gives 'enforcement officers' extraordinary powers before even a warrant has been issued to prevent a person suspected of harmful conduct or a serious offence leaving Australia and puts such officers above the Courts of the land. People suspected of involvement in terrorist offences should be afforded the same rights and protections as any person arrested for alleged offences. If his/her Australian passport has been cancelled and the ASIO interrogators think that the person may have a foreign travel passport, it should be possible for 'enforcement officers' to alert all Australian airports to delay issuing boarding passes to that person even if it is merely to travel within Australia. In this day and age the various means of instant communication is sufficient for such an alert to be effective.*

We consider this amendment to seize foreign passports and making failure to surrender foreign travel documents an offence to be unnecessary. The present Act already provides ASIO with more than sufficient power to conduct its tasks.

Schedule 2: Persons in relation to whom ASIO questioning warrants are being sought

Australian Security Intelligence Organisation Act 1979

This amendment in the Bill means that even before the Minister has consented to issuing an interrogation warrant ASIO will have the power to force a person to surrender his/her Australian passport and foreign passport and prevent that person from leaving the country. Such power brings us closer to becoming a dictatorship rather than a democracy.

This amendment including the offence for failing to comply with a demand for the surrender of a person's passports goes beyond our criminal justice administration and

provides our intelligence agencies with an alternative regime to that of our judicial system. It's a bad amendment and undermines the principles of civil and political rights and we think it should be withdrawn.

Schedule 3: Associating with terrorist organisations

Criminal Code Act 1995

This new offence in the Bill means that the evidentiary burden is on the defendant and therefore removes the fundamental right to silence and of presumption of innocence. How is one to prove that he/she is unaware of an associate or friend being a member of a clandestine and banned group? A person commits this new offence if he/she intentionally associates with a person who is a member of a terrorist organisation or communicates with that person by a face to face meeting or by means of any form of modern communication. Being a family member of that person does not necessarily exonerate you from an interrogation warrant because it will be an "enforcement officer" who will decide whether or not you fit the "closeness" of the Bill's defence as a close family member.

We consider this to be an outrageous and unacceptable attempt to intimidate innocent people whose name, appearance, mode of dress, or perceived form of religion makes them suspects of knowing what may be in the mind of another person. The proposed new offence should not be proceeded with because, obviously, there is no recourse for the detained person to appeal against pointless interrogation regardless of the harmful effect on a person's standing in the community.

Schedule 4: Transfer of prisoners

Administrative Decisions (Judicial Review) Act 1977

Transfer of Prisoners Act 1983

This amendment in the Bill is specifically designed to provide the Attorney-General with new power over prisoners in other Australian States and Territories if he thinks it's in the interests of security. State rights are removed because it's a demand not a request that the state may not challenge. The Attorney-General is given the power to make an order for transfer (or return) of a prisoner (convicted or remand) to or from another state to appear in court proceedings. As well, the decisions of the Attorney-General are excluded from the Administrative Decisions (Judicial Review) Act. That means they will not be subject to judicial review.

This is one of those amendments when the reason for which it was intended is forgotten until some much later period when it gets used inhumanely like the 2003 case of 24 years old Rodrigo Herrera. This young man was ordered by the then Immigration Minister, Philip Ruddock, to be deported to Chile despite being in Australia since he was 6 years of age. The Federal Court challenged the fairness of the little-known section of the Migration Act, used by Mr Ruddock, to revoke a person's permanent residency without warning or reasons if that person fails a character test – refer Sydney Morning Herald, 23 April 2004.

We believe this amendment undermines the principles of natural justice and due process in the criminal justice system and further erodes civil rights. It should be thrown out as unacceptable.

Schedule 5: Forensic procedures
Crimes Act 1914

One has to be concerned when investigators into disaster victim identification are asking to be given access to the National Criminal Investigation DNA Database. Surely it is sufficient for a request be made to the NCI to find a match (if any) to the victim's DNA sample held by the investigator. Isn't that what state and federal police have to do? Why should other investigators be given the right of access to the actual database.

We recommend the amendment be denied.



Kendall Lovett and Mannie De Saxe
For Lesbian & Gay Solidarity (Melbourne)

***Note 1st July 2004:** News reports on radio and on television on this day described how a Korean airliner, an hour or so flying time out, had been forced to return to Sydney airport. One of its passenger's clothing had tested positive for a form of explosives but the person's luggage, that was already in the airliner's hold, had not been checked for explosives.

Surely, this bears out our contention in the very first paragraph of our submission that there is no need for the Passports Amendment considering the effectiveness of the various modern means of instant communication.