



Australian Government
Department of Foreign Affairs and Trade

- 8 JUL 2004

8 July 2004

The Secretary
Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600
AUSTRALIA

Dear Mr Bailey

Thank you for your letter dated 24 June 2004 to Dr Ashton Calvert, Secretary, Department of Foreign Affairs and Trade, calling for a submission on the provisions of the Anti-Terrorism Bill (No. 2) 2004.

The Department gives a high priority to anti-terrorism activities. The Department actively supported the Attorney-General's Department in preparations to bring this Bill to Parliament, with a specific focus on the provisions amending the *Passports Act 1938*, which is administered by this portfolio. The proposed amendments insert provisions relating to foreign passports. I note that on 24 June 2004 the House of Representatives agreed to delete the provisions relating, *inter alia*, to the *Passports Act 1938* from the Anti-Terrorism Bill (No. 2) 2004. These provisions are now contained in the Anti-Terrorism Bill (No. 3) 2004.

The provisions in relation to foreign passports parallel the provisions in the Australian Passports Bill 2004, which was introduced into the House of Representatives on 24 June 2004. These basic provisions, relating to Australian passports and other Australian travel documents, update the *Passports Act 1938*.

I should note that the Australian Passports Bill (Transitional and Consequential) 2004 would repeal all provisions relating to Australian travel documents in the *Passports Act 1938* and rename that Act, 'Foreign Passports (Law Enforcement and Security) Act 2004'.

I would like to highlight some aspects of the operation of the foreign passports provisions in the Anti-Terrorism Bill (No. 3) 2004.

Surrender of foreign travel documents

The new power to order the surrender of a person's foreign travel documents parallels the proposed refusal/cancellation powers in the Australian Passports Bill. This will ensure a consistency of approach and ensure that foreign passports are not used to circumvent actions

taken in relation to Australian passports. The powers in relation to Australian passports were introduced in 1979 into the *Passport Act 1938*, specifically to combat terrorism.

The powers in the Anti-Terrorism Bill (No. 3) 2004 will ensure that a person who carries both an Australian passport and a foreign passport cannot leave Australia on a foreign passport if the person's Australian passport has been cancelled.

A key element to the operation of these powers is the codification of the role of the "competent authority". The competent authority will have the responsibility for requesting the Minister to act in relation to an Australian or foreign law enforcement matter or potential harmful conduct.

Law enforcement agencies and others, such as the Australian Federal Police and the Australian Security Intelligence Organisation, have responsibilities in relation to preventing a person from travelling internationally for law enforcement reasons or to prevent harmful conduct. In the main, these two bodies are expected to be the competent authorities requesting the Minister to order the surrender of a foreign passport.

Another element is the capacity to list, by disallowable Ministerial determination, conduct which might constitute an indictable offence against the law of the Commonwealth. This will provide for greater certainty to cover conduct which might not come within the general provisions relating to prejudicing the security or endangering the health or physical safety of others. One example of this problem is people smuggling. Most of the relevant offences in the *Criminal Code* relate to making, providing or possessing travel or identity documents.

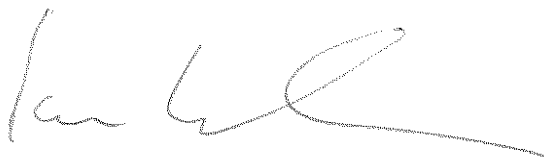
These provisions are underpinned by the comprehensive administrative review regime relating to refusal / cancellation of Australian passports which has worked well under the *Passports Act 1938*.

Offences relating to foreign travel documents

These provisions will achieve two core goals. First, there will be a greater deterrence factor through increased penalties to 10 years imprisonment or \$110,000 from 2 years and \$5,000. Second, the new provisions will be consistent with the network of legislation designed to prevent false identity and citizenship documents from being used in Australia. These provisions are consistent with the changes in the Australian Passports Bill.

Thank you for the opportunity to contribute to your inquiry.

Yours sincerely



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