



New South Wales
Minister for Justice



Senator Payne
Chair
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600
AUSTRALIA

- 8 JUL 2004

Dear Senator

**Re: Submission to Senate Legal and Constitutional Committee Inquiry
into the provisions of the Anti-Terrorism Bill (No. 2) 2004**

All of the states and territory Corrective Services Ministers met last week at the Corrective Services Ministers' Conference held in Hobart.

The conference discussed the provisions of Section 4 of the Anti-Terrorism Bill (No. 2) 2004, which would amend the Commonwealth Transfer of Prisoners Act 1983 to provide for the interstate transfer of inmates on security grounds.

The Corrective Services Ministers' Conference unanimously rejected the bill and resolved that New South Wales would coordinate a joint submission to the Senate Committee outlining their concerns on behalf of all state and territory Corrective Services Ministers.

This submission is currently being finalised, but will not be completed by the closing date for submissions. I respectfully seek leave of the Committee, to lodge a more comprehensive submission shortly, expanding on this initial letter.

The submission will cover in more detail the main concerns with the Bill as currently drafted. These can be summarised as follows:

1. By adopting the definition of security contained in the Australian Security Intelligence Organisation Act 1979 it focuses on *national security* and **falls to provide for the transfer of prisoners on the basis of *operational security*.**

2. By requiring the written approval of the Federal Attorney-General prior to transfer, the legislation **imposes an unnecessary extra layer of bureaucracy** which will slow the urgent transfer of extreme high risk inmates.
3. By requiring the Commonwealth Attorney-General to approve the transfer of certain state inmates it is an **unnecessary interference in the management of the state correctional systems**.

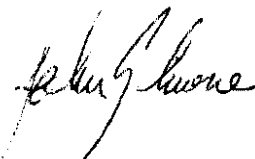
Whilst we do need tools for the inter-state transfer of inmates on security grounds, the changes proposed in this bill are not adequate.

I have also written to the Commonwealth Attorney General explaining some of our concerns about the Bill, and I have attached a copy of that correspondence as an addendum to this initial submission.

I want to make it clear that we remain committed to working cooperatively with the Federal Government to find a mutually agreed solution to this important issue.

We would also be prepared to explain our concerns to the Committee in a public hearing if that would be beneficial.

Yours faithfully


for
(John Hatzistergos)



New South Wales
Minister for Justice

The Honourable Phillip Ruddock MP
Attorney-General
Parliament House
Canberra ACT 2600

23 JUN 2004

FAXED

Dear Attorney

RE: Interstate transfer of terrorist inmates on security grounds

I write to you in relation to certain provisions of the Anti-terrorism (No. 2) Bill 2004 which was introduced into Federal Parliament last week. Regrettably, the Bill was introduced without prior consultation with the states and in circumstances where a number of concerns exist.

Whilst I appreciate that the Federal Government has an interest in the movement of inmates on grounds of national security, the states also need the ability to move inmates very rapidly in certain circumstances.

I am concerned that this Bill fails to plan for threats that inmates may pose to *operational security* in correctional centres. By focussing on national security criteria (in line with the Australian Security Intelligence Organisation Act 1979) to enact transfers of prisoners, it is unclear as to whether these powers could be invoked in circumstances of other security risks.

If, for example, my Department receives intelligence that a terrorist inmate is planning an escape; an attack on a correctional centre or the black-mail or intimidation of a prison officer; we need to be able to act immediately - to transfer that inmate to another state within hours.

I am concerned that even if the provisions within this Bill could be invoked, the requirement to obtain the written approval of the Federal Attorney-General for movement of security transfer inmates (including inmates who are not even being held for Federal offences) will unnecessarily delay time-critical transfer of inmates who pose an immediate risk to security.

This may have implications for the security of the correctional system, and possibly the safety of the community.

Further, there are only a very limited number of correctional centres across the Australia that are equipped to deal with terrorist inmates. Consequently,

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the power to rapidly transfer terrorist inmates between suitable correctional centres in different states is essentially an operational matter that is more appropriately compared with the intra-state transfer of offenders from one correctional centre to another. Such transfers of Federal offenders only require notification by State authorities to Federal authorities.

The Corrective Services CEOs and commissioners from all states have already developed a set of agreed draft National Custodial Management Guidelines and draft National Guidelines for Interstate Transfer of Inmates on security grounds – to ensure consistency in the management of terrorist inmates across jurisdictions.

All of the state Ministers are, and always have been, open to discussion with the Federal Government on this important issue. The appropriate forum for this discussion is the Corrective Services Minister's Conference next week.

I request that you hold-over the legislation until after the conference, and accept the cooperation of the state authorities who are ultimately responsible for holding terrorist inmates.

Yours faithfully



(John Hatzistergos)