

DISSENTING REPORT BY THE AUSTRALIAN LABOR PARTY

1.1 Labor Senators agree with the majority report's consideration of the evidence presented in the course of the committee's inquiry: all the evidence points to fundamental flaws with the Bill in both conception and design. Labor Senators note that the overwhelmingly view among those who provided evidence to the committee was that the Bill represents a completely misguided approach to addressing, in any meaningful way, the endemic problems of violence and child abuse in Indigenous communities.

1.2 Labor Senators strongly hold the view that violence and abuse, particularly against children, should not be tolerated in any community. It is therefore unfortunate that this Bill has diverted the energy of Government and Parliament away from advancing practical solutions to these problems. Labor Senators also note that the Bill pre-empts the agreed COAG approach: namely, that SCAG is to report to COAG, in February 2007, on the extent to which bail provisions and enforcement take particular account of the potential impact on victims and witnesses in remote communities.

1.3 Labor Senators agree that the Bill will do little, if anything, to achieve its stated aim and that urgent 'on the ground' solutions are required to address these issues in a practical sense. Accordingly, Labor Senators consider that the appropriate conclusion should be that the Bill be rejected in its entirety.

1.4 Labor Senators explicitly endorse comments in the majority report in relation to the lack of consultation with respect to the issues encompassed in the Bill. Labor Senators are particularly concerned that the wider implications of the Bill have not been considered – no consultation whatsoever appears to have taken place with multicultural and ethnic groups.¹ Labor Senators note also that Aboriginal legal services were not consulted specifically in relation to the Bill; nor, indeed, were any other Indigenous groups.²

1.5 Labor Senators also note the absence or limited availability of vital information to assist with the committee's deliberations in this inquiry. The Department has appeared reluctant to proactively provide the committee with information, nor has it provided detailed explanations of fundamental aspects of the Bill and its proposed operation. Labor Senators note that a great deal of the information provided by the Department has only been made available after persistent questioning by the committee. Moreover, when information has been provided, answers have been brief and at times obscure. In particular, Labor Senators note the failure of the Department to provide, of its own initiative, a written submission to the

1 *Committee Hansard*, 29 September 2006, p. 36.

2 *Committee Hansard*, 29 September 2006, p. 40.

committee, along with the Department's failure to present an opening statement at the public hearing.

1.6 Labor Senators are of the view that the Bill will lead to increased racial discrimination against Indigenous Australians and those with a multicultural background. The Bill will inevitably impact most upon these persons since, clearly, its practical application will only be to offenders from certain cultural backgrounds. Labor Senators disagree with the Department's claim that the Bill is not discriminatory.

1.7 Labor Senators believe that the Bill is at odds with the overall findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody. Labor Senators also consider that the Bill goes against the fundamental principles elucidated in the landmark decision of *R v Fernando* which provides the common law basis upon which 'Aboriginality' is, and should be, considered in the sentencing of Aboriginal defendants.

1.8 Having looked at the recommendations in the majority report, Labor Senators recognise that they are an attempt to salvage the Bill but ultimately leave it gutted. Labor Senators find themselves in the unusual position of agreeing with the findings of the majority report of the committee; however, those findings lead us to conclude that the Bill must be rejected.

1.9 In light of these arguments, Labor Senators recommend that the Bill not proceed.

Recommendation 1

1.10 Labor Senators recommend that the Bill should not proceed.

Senator Patricia Crossin

Senator Linda Kirk

Deputy Chair

Senator Joseph Ludwig