



Welfare Rights Centre (Sydney) Submission

on the

Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (the Bill)

The Bill contains a range of measures aimed at addressing the threat of terrorism within Australia and in particular the security threat posed by Australians returning from fighting in foreign conflicts or training with extremist groups overseas.

This submission addresses only the changes to social security and family assistance law proposed in the bill.

The national security threat posed by Australians returning from fighting in foreign conflicts or training with overseas terrorist organisation is grave. The Welfare Rights Centre (Sydney) supports targeted and effective measures to address deficiencies in the existing counter-terrorism legal framework, including measures to prevent Australians participating in foreign conflicts, training with foreign terrorist groups and providing financial support to extremist groups.

The Bill introduces a new legislative framework into social security and family assistance law which gives the Attorney-General discretion to bar a person from receiving income support payments. The Attorney-General has discretion to cancel a person's income support payment if their passport has been cancelled or refused, or visa cancelled, on national security grounds. Once imposed, the bar on a person receiving income support may only be lifted again in the Attorney-General's discretion. The Attorney-General has no obligation to consider lifting the bar.

The stated aim of this measure is "to ensure that the Government does not support individuals who are fighting or training with extremist groups".¹ The government also says that it wants to prevent social security payments being used to "facilitate or participate in terrorist activities or fund terrorist organisations".²

The consequences of cancelling a person's income support payments may be severe. This measure permits the Attorney-General to exercise this power on the basis of evidence and information that may be kept secret from the person whose entitlement to income support

¹ *Counter-terrorism legislation amendment (foreign fighters) bill 2014*, Explanatory memorandum, p 55.

² *Ibid*, p 56.

is overridden. The bar on receiving income support payments may be indefinite and may, in practice, be difficult if not impossible for a person to challenge.

The measure therefore encroaches significantly on the rights to social security and an adequate standard of living. It should be clearly shown to be necessary and appropriately tailored to achieving its objectives. When assessed against these principles, the Welfare Rights Centre (Sydney) has significant concerns about the Bill and opposes its enactment in its current form.

The Welfare Rights Centre agrees that, if there is evidence that social security payments are being used to facilitate or participate in, or fund terrorist activities or organisations, and current law is insufficient to prevent this from happening, then targeted measures should be introduced to prevent this.

However, the government has asserted, but not explained, why existing laws are inadequate to achieve its stated purposes of preventing income support payments supporting persons fighting, training with or funding terrorist organisations. For example, a person using some or all of their income support payments to fund a terrorist organisation or engage in terrorist activities is committing serious criminal offences and can be arrested and detained. Bank accounts being used to channel money overseas can be frozen. Existing laws also allow passports to be cancelled to prevent a person travelling overseas to participate in terrorist activities and existing social security laws would lead to the cancellation of their income support payments immediately or soon after departing Australia in most cases.

If there is a need for this measure, then it should be limited to what is necessary to achieve its aims. The government says that it will only use the power “where it is appropriate or justified on the grounds of security” and that it will not use it in every case where a person’s passport or visa is cancelled or refused.³ However, there are no legislative restrictions on the circumstances when the Attorney-General may exercise this discretion, once a person’s passport or visa have been cancelled/refused on national security grounds.

The government has not explained why there are no legislated criteria according to which the Attorney-General should make a decision with respect to a person, when such restrictions exist in relation to other aspects of the counter-terrorism framework. For example, under Division 104 of the Commonwealth Criminal Code a control order may generally be made only where shown to be reasonably necessary and reasonably appropriate and adapted to protecting the public from a terrorist act.

Further, under the Bill in its current form there is no time limit for how long the bar on receiving income support applies, and not even a requirement for the Attorney-General to reconsider the necessity for its application. The government has not explained why this matter should be left up to the unrestrained discretion of the Attorney-General or why there is no provision for periodic reassessment of these decisions.

³ Op cit, p 55.

Finally, as decisions under this measure cannot be appealed through the social security appeals system, in practice the only way to challenge these decisions is to appeal against the antecedent decisions to cancel/refuse a person's passport or visa. But although a person has the right to appeal these decisions, this right may be practically ineffective given the possibility that evidence may be kept secret from the person on national security grounds.

A measure of this kind should only be introduced if there is an appropriate balance between fairness to persons affected by these decisions and national security concerns. Consideration needs to be given to approaches in comparable liberal democracies, such as use of a "special advocate" procedure, before there is any expansion of the executive government's power to make administrative decisions based on national security considerations.

Matthew Butt
Principal solicitor
Welfare Rights Centre