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## Anti-terrorism Bill (No. 3) 2004

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Law and Bills Digest Section  
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# Anti-terrorism Bill (No. 3) 2004

**Date Introduced:** 24 June 2004

**House:** House of Representatives

**Portfolio:** Attorney-General

**Commencement:** The formal provisions commence on Royal Assent. Details of commencement dates for the substantive provisions can be found in endnotes 1-3 of this Digest.

## Purpose

The Bill amends three Commonwealth statutes:

- *Passports Act 1938*—to provide for the surrender of foreign travel documents in certain circumstances and create new offences relating to foreign travel documents<sup>1</sup>
- *Australian Security Intelligence Organisation Act 1979*—to provide that a person can be required to surrender their passport once the Director-General of ASIO has asked the Attorney-General for consent to apply for an ASIO questioning warrant,<sup>2</sup> and
- *Crimes Act 1914*—to enable the national DNA database to be accessed for forensic purposes in the event of a domestic mass casualty disaster.<sup>3</sup>

## Background

The amendments contained in the Anti-terrorism (No. 3) Bill 2004 ('the No. 3 Bill') were originally part of the Anti-terrorism Bill (No. 2) 2004 ('the No. 2 Bill').

The No. 2 Bill was introduced into the House of Representatives on 17 June 2004. As introduced, it proposed amendments to a number of pieces of Commonwealth legislation. Most importantly, these amendments:

- provided that a person could be required to surrender their foreign travel documents in certain circumstances—for instance, if they were the subject of an arrest warrant for an indictable offence or were likely to prejudice Australia's security (Schedule 1)

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- created new offences relating to foreign travel documents. These offences carried penalties of up to 10 years imprisonment or 1000 penalty units,<sup>4</sup> or both (Schedule 1)
- provided that a person could be required to surrender their passport once the Director-General of ASIO had asked the Attorney-General for consent to apply for an ASIO questioning warrant (Schedule 2)
- created offences of associating with terrorist organisations, punishable by up to three years imprisonment (Schedule 3)
- established a scheme for the transfer of prisoners within Australia if the Attorney-General considered such transfers necessary on security grounds (Schedule 4), and
- enabled the Minister to determine that Commonwealth, State and Territory officials could access the national DNA database for forensic purposes in the event of a mass casualty disaster occurring in Australia (Schedule 5).

On 23 June 2004, the No. 2 Bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 5 August 2004.

On 25 June 2004, the No. 2 Bill passed the House of Representatives with amendments. Most importantly, these amendments removed Schedules 1, 2 and 5 from the No. 2 Bill. This left the No. 2 Bill with amendments creating offences of associating with terrorist organisations and establishing a regime for the domestic transfer of prisoners on security grounds.

The three schedules removed from the No. 2 Bill are those dealing with foreign travel documents, the surrender of passports and ASIO questioning warrants, and access to the national DNA database in the event of a domestic mass casualty disaster. These provisions form the substance of the No. 3 Bill, which was introduced into the House of Representatives on 24 June 2004.

Explaining why the Government had moved to amend the No. 2 Bill and introduce the No. 3 Bill, the Attorney-General said:

... since the introduction of ... [the No. 2] bill, the shadow minister for homeland security has written to me offering to facilitate the passage of schedule 5 of the Anti-Terrorism Bill (No. 2) which deals with disaster victim identification and criminal investigation following a domestic mass-casualty incident.

The member for Barton has rightly recognised the importance of our ability to respond if a terrorist attack or other mass-casualty disaster were to occur within Australia.

...

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In the spirit of cooperation I have agreed to excise schedule 5 from the Anti-Terrorism Bill (No. 2) and progress it in a separate bill, the Anti-Terrorism Bill (No. 3), in recognition of the importance of this measure and its relatively non-controversial status.

...

In a similar vein, I will also be excising schedules 1 and 2 from the Anti-Terrorism Bill (No. 2) and have included the provisions from those schedules in the bill I am introducing today.

...

I am advised that both the passport and victim identification measures are important and urgent and should not be delayed because the bill in which they are contained has, as is the usual practice for this opposition, been referred to an already over-burdened Senate committee system.<sup>5</sup>

For its part, the Labor Opposition supported the victim identification amendments<sup>6</sup> but considered that the amendments relating to passports<sup>7</sup>—particularly the amendments relating to ASIO questioning warrants—raised ‘issues of substance ... that justify appropriate consideration by the Senate Legal and Constitutional Committee.’<sup>8</sup> Additionally, in relation to the ASIO questioning warrant amendments, the Labor Opposition took the view that ‘... the government has not demonstrated a pressing urgency ... that would warrant departure from an appropriate consideration or scrutiny of legislation that is, after all, imposing terms of imprisonment ...’<sup>9</sup>

Schedules 1, 2 and 3 in the No. 3 Bill are identical to Schedules 1, 2 and 5 in the No. 2 Bill. For background information and a discussion of the provisions, readers can refer to the Bills Digest for the Anti-terrorism Bill (No. 2) 2004.<sup>10</sup>

## Endnotes

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- 1 These amendments commence on the 28<sup>th</sup> day after the date of Royal Assent (clause 2).
  - 2 These amendments commence on the 28<sup>th</sup> day after the date of Royal Assent (clause 2).
  - 3 Items 1-5 of Schedule 5 commence on Royal Assent. Item 6 of Schedule 5—repealing subsection 23YUF(2C) of the Crimes Act—commences on either the date of Royal Assent or 22 December 2004—whichever occurs later. However, item 6 does not commence if Schedule 3 of the *Australian Federal Police and Other Legislation Amendment Act 2004* does not commence (clause 2).
  - 4 A penalty unit is \$110—see subsection 4AA(1), *Crimes Act 1914* (Cwlth).
  - 5 Attorney-General, House of Representatives, *Hansard*, 24 June 2004, pp. 31458–9.
  - 6 Schedule 5 in the No. 2 Bill and Schedule 3 in the No. 3 Bill.

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- 7 Schedules 1 and 2 in both the No. 2 and the No. 3 Bills.
- 8 Robert McClelland MP, House of Representatives, *Hansard*, 24 June 2004, p. 31705.
- 9 Robert McClelland MP, House of Representatives, *Hansard*, 24 June 2004, p. 31706.
- 10 Bills Digest No. 6, 2004–05.

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