

DISSENTING REPORT BY THE AUSTRALIAN DEMOCRATS

1.1 The Australian Democrats are deeply concerned by aspects of this legislation and those concerns have been augmented by the evidence presented to this Committee.

1.2 This Bill contains many of the characteristics we have seen in previous anti-terrorism legislation introduced by the Government – it is riddled with imprecise definitions, an increase in unaccountable power, new offences for which no proper justification has been demonstrated and a range of measures which are likely to have a disproportionate impact on Australia’s Muslim community.

1.3 The Democrats’ primary concerns in relation to the Bill can be summarised as follows:

Amendments to the Passports Act 1938

1.4 We do not believe that the Minister’s power should be predicated on the existence of an arrest warrant issued by a foreign court without any consideration of the nature of the laws and legal system of the foreign country or the reasons for the issue of the warrant.

1.5 We believe that a person should be given an opportunity to challenge the basis of a demand for the surrender of their travel documents. In order to do so, it is vital that the person is provided with the details of any arrest warrant or court order on which the demand is based.

1.6 We strongly oppose the restrictions placed on the Administrative Appeals Tribunal when it considers an application for review of a decision by the Minister to order the surrender of foreign travel documents, and we believe that a person in relation to whom such an order has been made should have recourse to judicial review pursuant to the *Administrative Decisions (Judicial Review) Act*.

1.7 We concur with HREOC that there is a need to clearly define the defence of “reasonable excuse” in the Passports Act. That definition should expressly include refugees and asylum seekers and should apply to the offences in sections 18, 19 and 20.

1.8 There is also a need to consider the inclusion of additional defences for refugees and asylum seekers in relation to the offences in sections 18, 19 and 20.

Amendments to the Australian Security Intelligence Organisation Act 1979

1.9 The Democrats do not support these amendments. They apply to a person in relation to whom a request has been made by the Director-General of ASIO to the Attorney-General for consent to a request for a questioning warrant. In these circumstances, the person can be asked to surrender their passport or face 5 years in prison.

1.10 We note that this demand can be made before the Minister has even granted his or her consent to request a questioning warrant. There is no Ministerial or judicial scrutiny and the Democrats believe this is unacceptable.

1.11 We wish to record our opposition to Recommendation 2 in the Chair's Report. We do not believe that Schedule 2 of the Bill should proceed in its current form.

Amendments to the Criminal Code 1995

1.12 These are without a doubt the most disturbing amendments contained in this legislation and this is reflected in the evidence to the Committee.

1.13 The proposed new offence of associating with a terrorist organisation is extremely broad, poorly-defined and has the potential to be applied in a way that impacts disproportionately on Australia's Muslim community.

1.14 The Democrats strongly oppose the introduction of this offence.

Amendments to the Transfer of Prisoners Act 1983 and the Administrative Decisions (Judicial Review) Act 1977

1.15 The Democrats share the concerns of the Law Council of Australia that these amendments "will allow for the transfer of remand prisoners without notice and without regard for the personal circumstances of the detainee, including their prospective distance from family or other support networks". We agree that decisions regarding the transfer of remand prisoners should require the approval of a court.

1.16 We are very concerned that there will be no opportunity for a person affected by such a decision to seek judicial review of that decision.

1.17 We note, and are concerned by, the evidence regarding limited consultation in relation to these changes.

1.18 The Democrats do not support the proposed amendments.

Amendments to the Crimes Act 1914

1.19 The Democrats support these amendments. It is incredibly disappointing that the Attorney-General has decided to couple these important amendments, which should be passed expeditiously, with more controversial initiatives.

Senator Brian Greig
Australian Democrats

