



SENATE LEGAL AND CONSTITUTIONAL COMMITTEE

Inquiry into the Anti-terrorism Bill (No 2) 2004

In response to developments in the Asia-Pacific region since September 11 and the Bali bombings, the Australian Government has enhanced counter terrorism measures. Counter terrorism is a whole-of-government issue that requires cooperation between the Australian Federal Police, State and Territory law enforcement agencies, and national security, intelligence and defence agencies.

Investigations into terrorism and related offences are a specific focus for the Australian Federal Police and other key stakeholder agencies and are being undertaken at a time when the community has high expectations that law enforcement agencies will be able to assist in the disruption and prevention of terrorism offences.

The amendments proposed in the *Anti-terrorism Bill (No 2) 2004* are intended to improve Australia's counter-terrorism legal framework. The AFP experience is increasingly that criminals such as terrorists have the capability to rapidly adapt their modes of operation and to expand their reach. People who are not members of terrorist organisations are still capable of supporting such organisations directly and indirectly. The proposed 'associating' offence will enable investigators to take appropriate action against persons whose activities contribute to the ongoing capacity of terrorist organisations to exist and expand. Disrupting support networks in turn may disrupt planning and preparation for terrorist acts.

Offence of associating with terrorist organisations

The creation of an offence of associating with a terrorist organisation provides an earlier intervention point before any substantive terrorist offence may have been committed. The Australian Federal Police considers that intervention is likely to be more effective in preventing loss of life, preserving property and protecting the community when associates of terrorist organisations are disrupted from providing assistance to terrorist organisations. This in turn makes it harder for terrorist organisations to engage in acts preparatory to the commission of an offence.

The Australian Federal Police experience, particularly in the Bali bombings investigations, echoes the experience of other law enforcement agencies overseas and suggests that terrorist organisations rely on people outside the organisation in addition to actual members. Such people provide assistance sustaining the group and its activities. Support from persons outside the terrorist organisation may be tangible such as the provision of a venue for a meeting between members and associates, or

intangible in the form of facilitating introductions between the organisation and desirable contacts such as suppliers or other service providers. Existing criminal code offences relating to membership, financing, and training enable law enforcement to deal with an organisation's substantive activities. There is still a gap where associates who are not members may provide support of one kind or another to the terrorist organisation.

The Australian Federal Police supports the proposed amendment to Division 102 of the *Criminal Code Act 1995* to insert a new offence of 'associating with terrorist organisations'.

There are many examples of consorting offences in State and Territory legislation but none that are applicable to associating with terrorist organisations and their members at the Commonwealth level. The Australian Federal Police considers that the new offence will strengthen the Commonwealth's counter-terrorism legislation. It will extend the application of offence provisions under Division 102 of the Code to people whose associations with a listed terrorist organisation, or with a person who is a member or who promotes or directs the activities of such an organisation, assists the organisation.

The legislation provides exceptions for close family members and associations used for public religious worship. Other exceptions ensure that humanitarian aid and legal aid or representation can be provided.

The exceptions potentially leave a loophole that terrorist organisations may exploit, for example, by having their members associate with other family members for the purpose of sustaining or expanding the organisation. The Australian Federal Police respects the need for certain exceptions where the relationships are not criminal, and considers that the proposed amendments represent an appropriate balance between the rights of association and law enforcement's requirement to protect the public interest.

Transfer of prisoners

The Australian Federal Police supports proposed amendments to the *Transfer of Prisoners Act 1983* to permit prisoners to be transferred on national security grounds to other prisons or for court proceedings. Although no such grounds exist at present it is timely to address the issue now rather than at a time when specific incidents requiring such transfers may arise.

Amendments to the *Administrative Decisions (Judicial Review) Act 1977* will make decisions of the Attorney-General under Part IV of the *Transfer of Prisoners Act 1983*, as well as any decision of the Attorney-General under the Act on the grounds of security, exempt from the application of the Act.

Administrative Decisions (Judicial Review) Act 1977

The Bill also proposes an amendment to excise decisions about the transfer of prisoners on national security grounds from the *Administrative Decisions (Judicial Review) Act 1977*. This will have the practical effect of preventing review of the decision to relocate a prisoner who requires relocation for national security reasons. The Australian Federal Police has no objection to the proposed amendment.

Conclusion

The ability of the Australian Federal Police to achieve the Commonwealth's crime-fighting objectives depends on the provision of appropriate law enforcement tools and powers that are responsive to changing conditions.

The proposed new offence of associating with a terrorist organisation will address the fundamental unacceptability of terrorist organisations by making meeting or communicating with listed organisations in a way that assists the continued existence or expansion of an organisation illegal. The Australian Federal Police supports the need for acknowledgement that because membership of such organisations is illegal, activity supporting the existence or expansion of an illegal organisation should also be a crime.

Without the proposed new offence of associating with a terrorist organisation, law enforcement investigations must continue to rely on action taken in the later stages of an investigation to prevent terrorist incidents. Terrorists and terrorist organisations are consorting using their members and associates. It is important to recognise that this kind of criminal activity exists and that it is timely to look for ways to deal with it.

The proposed consorting-style offences in the *Anti-terrorism Bill 2004 No 2* will permit law enforcement to take appropriate action as early as possible in a terrorist investigation, and make it more difficult for listed terrorist organisations to circumvent membership, financing and training offences to secure the support necessary for their activities.