

23 February 2007

The Secretary
Senate Legal & Constitutional Affairs
Committee
Parliament House
Canberra, ACT 2600.

libertyvictoria.org.au
ABN: 23 236 210 735
Reg No: A0026497L
Phone: (03) 9670 6422
Fax: (03) 9670 6433
email: info@libertyvictoria.org.au

GPO BOX 3161
MELBOURNE VICTORIA 3001

PRESIDENT
Julian Burnside QC

VICE PRESIDENTS
Jamie Gardiner
Anne O'Rourke
Michael Pearce SC
Professor Spencer Zifcak

SECRETARY
Jonathan Wilkinson

ASSISTANT SECRETARY
Sean Huggins

TREASURER
Robert Niemann

IMMEDIATE PAST PRESIDENT
Brian Walters SC

COMMITTEE
Damian Abrahams
Melissa Castan
Greg Connellan
Liz Curran
Kristen Hilton
Phil Lynch
Urfa Masood
Lucie O'Brien
Tony Pagone QC
Diane Sisely
Marian Steele
Larry Stillman
Joo-Cheong Tham
Penny Underwood
Stan Winford
Melanie Young

Dear Sir/Madam

Inquiry into the AusCheck Bill 2006

While acknowledging the benefits of a centralised background checking scheme of the Commonwealth Government, Liberty Victoria is unable to support the above Bill. This is fundamentally because the Bill does not create such a scheme but instead delegates to regulation the creation of the scheme.

A centralised background checking scheme, however desirable in the current security climate, would carry with it the serious risk of invasions of privacy and discrimination. Strict limitations must therefore be imposed on such a scheme to prevent these detriments. Permitting a scheme to be created by regulation, rather than legislation, tends, however, in the other direction. It tends to permit abuses of the scheme and its extensions into areas not originally envisaged by Parliament.

The Parliament's power to disallow regulations is no adequate safeguard against such abuses. The parliamentary oversight of the scheme is much less and the public has a right to insist that Parliament affirmatively agree to any extension of the scheme.

For these reasons Liberty Victoria submits the Bill should be withdrawn and the Government should instead proceed with legislation which actually creates the type of scheme envisaged by the Bill.

If this submission is not accepted, Liberty makes the following additional submissions on particular aspects of the Bill.

Clause 5

Paragraph (d) should be deleted, confining the background check to the subject matters set out in paras (a), (b) and (c).

Clause 8

Delete sub-clauses (1)(c) and (2), so that further legislation is required to extend the scheme beyond the purposes of the Aviation Transport Security Act 2004 and the Maritime Offshore Facilities Security Act 2003.

Clause 14

Provision should be added for deletion of data from the database after a fixed period. It is submitted that five years after the making of a background check, all data collected for that check be deleted.

Other

Provision should be made permitting a person the subject of background check to have access to data collected for that check and to apply for deletion of data on the grounds that it is inaccurate.

Yours sincerely,

Michael Pearce SC
Vice-President