



THE CABINET OFFICE
NEW SOUTH WALES

TCO/17752

COPY

Senator Marise Payne.
Chair
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600

28 FEB 2007

Dear Senator Payne

I refer to your letter to the Premier dated 9 February 2007, inviting the New South Wales Government to make a submission to the inquiry into the provisions of the *AusCheck Bill 2006*. Mr Iemma has asked me to reply on his behalf.

The New South Wales Government strongly supports the establishment of a co-ordinated legislative scheme for background checking for the issue of aviation and maritime security identification cards. This is a critical component in safeguarding airports and ports from terrorist and security threats. The establishment of such a scheme was recommended by the Rt Hon Sir John Wheeler DL in his *Independent Review of Airport Security and Policing for the Government of Australia*.

In the time available, New South Wales has had limited opportunity to consider fully the detailed provisions of the Bill. However, New South Wales fully endorses the Bill as it applies to aviation and maritime security identification cards, and would equally support its application in other contexts to protect against terrorist and security threats.

New South Wales is extremely concerned, however, that the Bill also permits the establishment of background checking regimes in a range of other circumstances which raise no terrorist or security issues. This distracts from the proper focus of the legislation on counter terrorism measures. Whereas the need for the Bill is clear in connection with terrorist and security concerns, no case has been made for it to apply more widely.

There is a real risk that, by extending the Bill beyond its proper focus, the rigour of the background checking regimes in circumstances raising terrorist or security concerns will be reduced because of justifiable concerns about the application of such regimes in other unrelated circumstances. The most extensive and rigorous background checking is justifiable where there are terrorist or security concerns, but the Commonwealth Government has made no case for such checking in other circumstances.

One example of the inappropriate extension of the Bill concerns its potential application for background checking requirements to be imposed by the Commonwealth in connection with a grant of financial assistance to a State. This provision is unrelated to terrorism and security concerns and should be removed from the Bill.

The New South Wales Government considers that the Commonwealth should not put at risk the broad public support for rigorous responses to terrorism and security issues by allowing this Bill to expose many members of the public, whose occupations raise no terrorism or security concerns, to intrusive background checking.

Thank you for the opportunity to comment on these matters.

Yours sincerely



J. L. Schmidt
Acting Director-General