



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

AUSTRALIAN PASSPORTS BILL 2004

**AUSTRALIAN PASSPORTS
(APPLICATION FEES) BILL 2004**

**AUSTRALIAN PASSPORTS
(TRANSITIONALS AND
CONSEQUENTIALS) BILL 2004**

Second Reading

SPEECH

Tuesday, 8 February 2005

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Questioner
Speaker Stott Despoja, Sen Natasha

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Senator STOTT DESPOJA (South Australia) (1.14 pm)—*The incorporated speech read as follows—*

I speak on these Bills primarily in my capacity as the Foreign Affairs Spokesperson for the Australian Democrats. However, since the Bills have very significant implications for the privacy of all Australian passport holders, it is also relevant in this context that I am the Democrats' Privacy Spokesperson.

I begin by indicating that the Democrats accept that the Government's genuine intention in introducing these Bills is, as the Minister's Second Reading Speech indicated, to "provide a modern legal structure to underpin our world-class passports system" and "to ensure that Australians can continue to rely on a travel document of the highest integrity, which clearly establishes their identity and citizenship.

The Democrats support those objectives, however, we believe that Government has gone well beyond them in the drafting of this Bill and, as a consequence, what we have before us today is bad legislation.

As we know, there are four main aspects to the Australian Passports Bill.

Firstly, in an effort to combat identity fraud, the Bill makes changes to the methods and technologies for identification in relation to passports.

Although the Bill contains no express mention of biometric technology, the Minister has made it clear that the Government intends to introduce such technology, indicating that the Bill "provides for the introduction of facial biometric technology as an effective means of verifying identity".

The will be achieved by vesting the Minister with the power to authorise the use of particular methods and technologies for confirming identification or performing other functions connected with the Bill.

Secondly, the Bill expands the grounds for the refusal or cancellation of passports. For example, the Minister may refuse to issue a passport upon request from a competent authority if the person is the subject of an arrest warrant in respect of a serious foreign offence.

The Minister may also refuse a passport to a person who has lost, or had stolen, 2 or more passports in 5 years.

These provisions reflect similar provisions in relation to foreign travel documents which were enacted last year in the Anti-Terrorism Bill (No. 3). Like the Anti-Terrorism Bill (No. 3), this Bill will enable the Minister to certify that a particular decision relates to matters of international relations or criminal intelligence. If the Minister issues such a certificate, the Administrative Appeals Tribunal will have no option but to affirm the Minister's decision or remit it back to the Minister for reconsideration.

Thirdly, the Bill creates a range of new criminal offences relating to travel documents—for example, selling an Australian travel document, dishonestly obtaining an Australian travel document, transporting a false travel document across international borders, and using powers under this Bill for wrong reasons.

It is important to note that these offences will apply extraterritorially—in other words, a person will be able to be convicted of an offence regardless of whether or not the conduct constituting the offence occurred within Australia.

Penalties are increased from a maximum fine of \$5000 and/or 2 years imprisonment to a maximum fine of \$110,000 and/or 10 years imprisonment.

Finally, the Bill enables the Minister to obtain, use and disclose personal information for a range of purposes associated with the Bill, for example verifying information provided by an applicant for a passport.

The Australian Passports (Application Fees) Bill will, according to the Government, "establish a simpler structure to deal with changes in the costs and validity of passports and other travel-related documents". In actual fact, it could facilitate a massive increase in the cost of obtaining an Australian passport.

This Bill gives the Minister the power to specify application fees for Australian travel documents. These fees are "imposed as taxes" and the "application fee need not bear any relationship to the cost" of the travel document.

The maximum fee for the first year of the Bill's operation is \$1000, which is an extraordinary increase on the current application fee of \$150 for a standard passport. However, we have been informed by the Department of Foreign Affairs that this is simply an arbitrary figure which is intended to cover all possible increases to passport fees over the next, say, 30 years. I understand that there is no intention whatsoever to increase the cost of a passport to \$1000 and it is important for that to be put on public record.

The Australian Passports (Transitionals and Consequential) Bill will, among other things, remove references to Australian passports from the Passports Act and rename that Act as the Foreign Passports (Law Enforcement and Security) Act.

I turn now to the Democrats' key concerns in relation to these Bills. Our primary concern relates to the Minister's sweeping new powers and the potential impact on the privacy of Australian passport holders under the principle Australian Passports Bill.

The Bill is not specific about exactly what type of technology the Minister may authorise to identify passport holders. In fact, while the Government has indicated that it intends to introduce a biometric system, there is no mention of biometric technology in the Bill. Because of this ambiguity, there is nothing in the legislation to stop the Minister eventually going as far as requiring genetic information to identify passport holders.

This is an unacceptable situation, regardless of whether the Minister's determination is a disallowable instrument. Many of you in this place would be aware of my long-term interest in genetic privacy issues and my strong view that there is a need for legislation to protect the privacy of sensitive genetic information. Indeed, I introduced a Private Senator's Bill with this very objective in 1998.

The absence of any legislation to protect the privacy of genetic information is exactly why general powers such as those contained in this Bill are particularly problematic—as there is no guarantee that they will not be used in a manner which violates the genetic privacy of Australian passport holders.

However, even looking at the immediate proposal for a biometric identification system, there is no indication in the Bill as to what kind of biometric system this might be.

The Bills Digest, for example, identifies two different types of biometric systems which could be adopted. The first of these relies on machine readable travel documents, as advocated by the International Civil Aviation Organisation.

As the Digest explains:

“This method uses a MRTD in which a data-chip is embedded. A computer can then access biometric data from the chip, matching the data with the biometrics of the person purporting to be the passport-holder. In some ways, this is an automated version of the current system of identity confirmation whereby a human Customs or Immigration (or like) officer manually matches a traveller with his or her photographic identification. This method does not rely on a database of passport-holders' biometric details.”

On the other hand, the Government could opt for a database containing the biometric details of all Australian passport holders, which could be accessed through network-connected computers when passengers leave and enter Australia. The Bills Digest indicates that this is the model the US intends to use for all visitors to the US under its US-VISIT scheme.

My understanding of the Government's proposal is that it involves features of each of these models. It is predominantly a machine-readable system, however the Government will maintain a database of computerised photographs of all passport holders.

But, quite apart from the merits or otherwise of a biometric database, the Bill fails to provide any rules as to how biometric information is to be collected, stored, protected or used. The Democrats would hope that, at the very least, this type of information would be included in any determination made by the Minister, however, we maintain our position that any specific technology proposed to be used in relation to identity verification, should be considered by the Parliament and not left to the Minister's discretion.

We do not accept that it is sufficient for the Parliament to have the power to disallow a determination made by the Minister. This will not allow the same degree of community participation in any decision to adopt new passport technologies and, given the very large number of Australians who would be affected by such a decision, the Democrats believe it is important for such matters to be subject to proper Parliamentary scrutiny, including a Committee Inquiry if necessary.

The Democrats believe that the Government should set out the details of its proposed biometric system in the text of the Bill. We note that, while the collection and management of passport identification information would be subject to the Privacy Act, the protection afforded by the Privacy Act is not particularly strong and notoriously difficult to enforce. Indeed, that is why I initiated the current Senate Inquiry into current privacy legislation and the extent to which it is capable of responding to new technologies.

In relation to the Minister's power to disclose personal information for law enforcement, family law or other Commonwealth purposes, the Democrats are concerned that this could lead to the passport identification system becoming a de facto national biometric database which could be used by the Government for a variety of reasons.

The Bills Digest warns:

"These provisions could make the passports system a process by which the Commonwealth could obtain and centralise a large amount of personal information about Australian passport-holders which could be put to a very broad range of uses with minimal parliamentary scrutiny".

The Australian Privacy Foundation has warned that this could result in passports becoming "a de-facto Australia card" and, as the Australian Consumers' Association has pointed out, the legislation will "affect some 8 million passport holders".

There are a couple of other concerns which the Democrats have in relation to this suite of Bills that I wish to place on record.

Firstly, there are restrictions on the appeal process if a person is refused a passport or has their passport cancelled on international relations or criminal intelligence grounds. If the Minister certifies that his or her decision involves matters of international relations or criminal intelligence, the AAT will have no choice but to either affirm the Minister's decision or remit it to the Minister for reconsideration.

The Democrats believe this is unsatisfactory, given the enormous impact of the Minister's decision on a person who is subsequently prevented from leaving Australia. It continues the disturbing trend towards more opaque decision-making on the basis that decisions relate to security, or in this case international relations or criminal intelligence.

Perhaps a more appropriate approach would be to limit the evidence which the AAT can consider as opposed to limiting the orders it can make.

Another concern which I wish to flag is that there is an anomaly relating to the form of Australian travel documents which means that Australian women who marry overseas will need to change their name by deed poll if they wish to use their married name on Australian travel documents. This new policy, which is contained in a DFAT directive, has already affected two Australian women. I understand that DFAT is aware of this issue but is not sure how to rectify it at this stage.

In conclusion, I can indicate that, while the Democrats have no in principle objection to the use of biometric technology in passports, we believe that the introduction of such technology must be accompanied by appropriate safeguards to ensure that the privacy of Australians is protected. In their current form, these Bills fail to include the appropriate protections. They are broad and ambiguous and the Democrats will not support them in their current form.