2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Anti-Terrorism Bill (No. 2) 2005

(Amendments to be moved by Senator Stott Despoja on behalf of the Australian Democrats in committee of the whole)

(1) Schedule 1, page 7 (after line 27), after item 17, insert:

17A After section 102.1 of the Criminal Code

102.1AA Proscription

(1) The Minister must, when considering whether an organisation should be listed as a terrorist organisation in accordance with this Act, consider the effect of any such proscription upon the following rights of individuals who are, have been, or may become, ordinary or other members of the organisation:

(a) freedom of opinion, conscience, belief and/or religion;
(b) freedom to manifest or practice their opinion, conscience, belief and/or religion;
(c) freedom of expression;
(d) freedom to associate with others.

(2) The Minister must include with any regulation that proscribes an organisation as a terrorist organisation, a Human Rights Impact Statement that includes:

(a) the extent to which the human rights listed in subsection (1) are likely to be limited and the classes of individuals or groups likely to be affected by the proscription; and
(b) the purpose or purposes of any proposed limitation on the human rights listed in subsection (1); and
(c) a statement of why any proposed limitation on the human rights listed in subsection (1) is, in the Minister’s opinion, necessary—the statement should include what alternative measures were considered and why such measures were rejected by the Minister; and
(d) a summary of any information, evidence and other material upon which the Minister relied in forming the opinion that the proposed limitation is necessary; and
(c) a summary of the Minister’s reasoning as to why the form of the proposed limitation is appropriate, the least intrusive and best adapted to achieve the purpose of the proposed limitation.

(3) No regulation made by the Governor-General in relation to proscription under this section can take effect until the Parliament has considered and approved, by a process to be established by the Parliament, the Human Rights Impact Statement attached to the regulation that would proscribe an organisation as a terrorist organisation.

[proscription]

R(1A) Page 4 (after line 14), after clause 4, add:

5 Sunset provision
The amendments made by the Schedules to this Act excluding the amendments made by Schedule 7 cease to have effect on the third anniversary of the day on which Act receives the Royal Assent.

[sunset]

(2) Schedule 4, item 10, page 14 (line 28) to page 15 (line 4), omit the item, substitute:

10 Subsection 100.1(1) of the Criminal Code
Insert:

issuing authority means a judge of a State or Territory Supreme Court or a judge of the Federal Court.

[definition]

(3) Schedule 4, item 11, page 15 (line 10), omit paragraph (c).

[issuing court]

R(3A) Schedule 4, item 24, page 17 (after line 23), after section 104.1, insert:

104.1A No interim control orders until statement of procedures made and tabled
The Attorney-General must not consent to an interim control order request unless a statement of procedures required by section 104.1B has been made and tabled in each House of the Parliament.

104.1B Statement of procedures to be followed for the exercise of authority under an interim control order or a control order
(1) Before an interim control order an urgent interim control order may be issued in accordance with this Act, a statement of procedures must be made in accordance with subsections (2) to (4).

(2) The Attorney-General must cause a statement of procedures for the requesting and making of interim control orders or urgent interim control orders.

(3) A statement of procedures made in accordance with subsection (2) must be made in consultation with the Australian Federal Police Commissioner, following consultation with:

(a) the Inspector General of Intelligence and Security; and

(b) the Human Rights and Equal Opportunity Commissioner; and
(c) the Commonwealth Ombudsman.

(4) The Attorney-General must cause the statement of procedures to be tabled in each House of the Parliament.

[procedures for control orders]

(4) Schedule 4, item 24, page 20 (after line 28), after subsection 104.4(2), insert:

(2A) When determining what is reasonably necessary, and reasonably appropriate and adapted, any person, police officer, issuing court or issuing authority exercising powers under this section must, when making, reviewing, confirming, implementing or otherwise acting consistent with powers in this section, have regard to the human rights standards contained in the scheduled international instruments. In particular, the person, police officer, issuing court or issuing authority must consider, and may require evidence to be provided as to:

(a) the extent to which the human rights contained in the scheduled international instruments are likely to be limited and what classes of individuals or groups, if any, are likely to be affected; and

(b) the purpose or purposes for which any limitation is proposed to be made; and

(c) whether such a limitation of the human rights contained in the scheduled international instruments is necessary to achieve the purpose or purposes, including what alternative measures were considered and whether they were properly rejected; and

(d) whether the form of the limitation of human rights proposed to be made has the least severe impact on the human rights contained in the scheduled international instruments of affected classes of individuals or groups.

(2B) For the purposes of this section, scheduled international instrument means the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

Note: The text of the treaties listed in subsection (2B) are set out in the Australian Treaty Series.

[scheduled international instrument]

(5) Schedule 4, item 24, page 28 (lines 19 and 20), omit paragraph 104.13(1)(b), substitute:

(b) a copy of all information and evidence that forms the basis of the application for the order.

[copy of interim control order]

(6) Schedule 4, item 24, page 28 (lines 21 to 25), omit subsection 104.13(2).

[copy of interim control order]

(7) Schedule 4, item 24, page 34 (lines 1 to 4), omit paragraph 104.21(1)(b), substitute:

(b) a copy of all information and evidence that forms the basis of the additional obligations, prohibitions and restrictions to be imposed on the person.

[copy of control order]

(8) Schedule 4, item 24, page 34 (lines 5 to 9), omit subsection 104.21(2).

[copy of control order]

(9) Schedule 4, item 24, page 38 (lines 9 to 11), omit “16” (twice occurring), substitute “18”.

[rules for persons under 18]
(10) Schedule 4, item 24, page 38 (lines 12 to 19), omit subsections 104.28(2) and (3).

**[rules for persons under 18]**

R(10A) Schedule 4, item 24, page 38 (after line 19), at the end of section 104.28, add:

(4) An independent child welfare and advocacy officer must oversee the health and welfare of a person of a class specified in subsection (1) from the time any control order is issued, for the duration of the order.

**[health and welfare of children]**

R(10B) Schedule 4, item 24, page 40 (after line 16), after section 105.1, insert:

**1051A No preventative detention orders until statement of procedures made and tabled**

The Attorney-General must not consent to a preventative detention order unless a statement of procedures required by section 105.1B has been made and tabled in each House of the Parliament.

**[preventative detention orders]**

R(10C) Schedule 4, item 24, page 40 (after line 16), after section 105.1, insert:

**105.1B Statement of procedures to be followed for the exercise of authority under a preventative detention order**

(1) Before a preventative detention order may be issued in accordance with this Act, a statement of procedures must be made in accordance with subsections (2) to (4).

(2) The Attorney-General must cause a statement of procedures for the exercise of authority under a preventative detention order to be made.

(3) A statement of procedures made in accordance with subsection (2) must be made in consultation with the Australian Federal Police Commissioner, following consultation with:

(a) the Inspector General of Intelligence and Security; and

(b) the Human Rights and Equal Opportunity Commissioner; and

(c) the Commonwealth Ombudsman.

(4) The statement of procedures must include minimum conditions for the detention and standards of treatment applicable to any person who is the subject of a preventative detention order.

(5) The Attorney-General must cause the statement of procedures to be tabled in both Houses of Parliament.

**[procedures for detention orders]**

R(10C) Schedule 4, item 24, page 40 (lines 2 to 6), omit “10” twice occurring, substitute “3”.

**[sunset of 3 years]**

(11) Schedule 4, item 24, page 40 (line 23) to page 41 (line 4), omit paragraphs 105.2(1)(c), (d) and (e) and subsection (2).

**[issuing authorities—detention orders]**

(12) Schedule 4, item 24, page 42 (lines 30 to 33), omit “16” (twice occurring), substitute “18”.

**[rules for persons under 18]**
R(12A) Schedule 4, item 24, page 42 (lines 34 and 35), omit the note.

[note]

(13) Schedule 4, item 24, page 43 (lines 1 to 21), omit subsections 105.5(2) and (3).

[rules for persons under 18]

R(13A) Schedule 4, item 24, page 43 (after line 21), after section 105.5, insert:

105.5A Treatment of persons aged 16 to 18

An independent child welfare and advocacy officer must oversee the health and welfare of all persons aged 16 to 18 from the time they are detained and for the duration of their detention.

[health and welfare of children]

(14) Schedule 4, item 24, page 51 (lines 12 to 15), omit the note, substitute:

Note: Issuing authority means a judge of a State or Territory Supreme Court or a judge of the Federal Court.

[issuing authority]

R(14A) Schedule 4, item 24, page 64 (after line 33), at the end of section 105.27, add:

(4) If the subject is a person under 18 years of age, any person exercising authority in accordance with this section must ensure that the subject is segregated from adult detainees at all times.

[segregation of minors]

(15) Schedule 4, item 24, page 69 (line 1), omit “summary”, substitute “the copy of all the information and evidence that forms the basis on which the order is made”.

[copy of grounds of detention]

(16) Schedule 4, item 24, page 69 (lines 2 to 6), omit subsection 105.32(2).

[copy of grounds of detention]

R(16A) Schedule 4, item 24, page 70 (after line 32), at the end of section 105.33, add:

(2) If a person has been taken into custody, or has been detained under a preventative detention order, and the person is under 18 years of age, the treatment of the person must be consistent with the person’s status as a minor.

[treatment of minors]

R(16B) Schedule 4, item 24, page 70 (after line 32), after section 105.33, insert:

105.33A Treatment of Minors

A person who is under 18 years of age being taken into custody, or being detained, under a preventative detention order in addition to the requirements of section 105.33 must be treated in accordance with the Convention on the Rights of the Child.

Note: The test of the Convention on the Rights of the child is set out in the Australian Treaty Series.
105.33B  Obligation to notify Ombudsman for child protection and welfare arrangements where minor detained

(1) If a person who is under 18 years of age is the subject of an application for an interim or continued preventative detention order or taken into custody, or being detained, under a preventative detention order:
   (a) the police officer who is making the application or detaining the person under the order must immediately notify the Commonwealth Ombudsman of the application or detention;
   (b) on being notified in accordance with paragraph (a) the Commonwealth Ombudsman must refer a child welfare and advocacy officer for the person from the office of the Ombudsman;
   (c) the child welfare and advocacy officer referred in accordance with paragraph (b), must:
      (i) immediately visit the person;
      (ii) explain to the person the basis of their detention;
      (iii) advocate for and protect the interests of the child in accordance with section 105.33 and 105.33A.

[child advocacy and protection]

(17) Schedule 4, item 24, page 72 (line 24), omit “but solely”, substitute “including”.

[remove restrictions on contact with lawyer]

(18) Schedule 4, item 24, page 74 (lines 8 to 27), omit subsections 105.38(1) to (4).

[no monitoring communications/detainee and lawyer]

R(18A) Schedule 4, item 24, page 87 (line 1) to page 88 (line 16), omit section 105.51, substitute:

105.51  Legal proceedings in relation to preventative detention orders

(1) Proceedings may be brought in a court for a remedy in relation to:
   (a) a preventative detention order; or
   (b) the treatment of a person in connection with the person’s detention under a preventative detention order.

(2) An application may be made under the Administrative Decisions (Judicial Review) Act 1977 in relation to a decision made under this Division.

(3) The power of the Administrative Appeals Tribunal to review a decision referred to in subsection (2) may be exercised by the Tribunal only in the Security Appeals Division of the Tribunal.

(4) The Administrative Appeals Tribunal may determine that the Commonwealth should compensate the person in relation to the person’s detention under the order if the Tribunal declares the order to be void.

(5) If the Administrative Appeals Tribunal makes a determination under subsection (4), the Commonwealth is liable to pay the compensation determined by the Tribunal.

[ADJR applies]

R(18B) Schedule 4, item 24, page 90 (lines 6 to 11), omit “10” (twice occurring), substitute “3”.

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R(18C) Schedule 4, Part 2, page 91 (lines 2 to 8), **TO BE OPPOSED.**

**[sunset of 3 years]**

R(18D) Schedule 5, item 10, page 101 (lines 11 to 19), omit “10” (three times occurring), substitute “3”.

**[sunset of 3 years]**

R(18E) Schedule 7, page 109 (line 2) to page 115 (line 14), **TO BE OPPOSED.**

**[sunset of 3 years]**

R(18F) Schedule 8, item 5, page 117 (line 14), after “may”, insert “, subject to the Privacy Act 1988,”.

**[protection of information]**

**[sunset of 3 years]**

**[ADJR applies]**

**[sedition]**