2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Anti-Terrorism Bill (No. 2) 2005

(Amendments to be moved by Senator Ludwig on behalf of the Opposition in Committee of the whole)

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

5 Public and independent review of operation of Security Acts relating to terrorism

(1) The Attorney-General must cause a review of the operation, effectiveness and implications of amendments made by Division 105 of Schedule 4 of this Act.

(2) The review must be undertaken as soon as practicable after the fifth anniversary of the commencement of the amendments.

(3) The review is to be undertaken by a committee consisting of:
   (a) up to two persons appointed by the Attorney-General, one of whom must be a retired judicial officer who shall be the Chair of the Committee; and
   (b) the Inspector-General of Intelligence and Security; and
   (c) the Privacy Commissioner; and
   (d) the Human Rights Commissioner; and
   (e) the Commonwealth Ombudsman; and
   (f) two persons (who must hold a legal practising certificate in an Australian jurisdiction) appointed by the Attorney-General on the nomination of the Law Council of Australia.

(4) The Attorney-General may reject a nomination made under subsection (3)(f). If the Attorney-General rejects a nomination, the Law Council of Australia may nominate another person.

(5) The committee must provide for public submissions and public hearings as part of the review.

(6) The committee must, within six months of commencing the review, give the Attorney-General and the Parliamentary Joint Committee on Intelligence Security a written report of the review which includes an assessment of matters in subsection (1), and alternative approaches or mechanisms as appropriate.
(7) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of that House after its receipt by the Attorney-General.

(8) Before the copy of the report is tabled in Parliament, the Attorney-General may remove information from the copy of the report if the Attorney-General is satisfied on advice from the Director-General of Security or the Commissioner of the Australian Federal Police that its inclusion may:
   (a) endanger a person's safety; or
   (b) prejudice an investigation or prosecution; or
   (c) compromise the operational activities or methodologies of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Signals Directorate or the Australian Federal Police.

(9) The Parliamentary Joint Committee on ASIO, ASIS and DSD must take account of the report of the review given to the Committee, when the Committee conducts its review under paragraph 29(1)(ba) of the Intelligence Services Act 2001.

[public and independent review of operation of security acts relating to terrorism]

(2) Page 4 (after line 14), after clause 4, add:

6 Sunset provision

(1) The amendments made by the Schedules to this Act cease to have effect on the fifth anniversary of the day on which this Act receives the Royal Assent.

[sunset of 5 years]

(3) Amendment to Government amendment (4), paragraph 104.2(3)(f), after “summary”, insert “of the primary facts and”.

[control orders]

(4) Amendment to Government amendment (6), paragraph 104.5(1)(h), after “summary”, insert “of the primary facts and”.

[control orders]

(5) Amendment to Government amendment (28), paragraph 105.7(2)(g), after “summary”, insert “of the primary facts and”.

[control orders]

(6) Amendment to Government amendment (30), paragraph 105.8(6)(e), after “summary”, insert “of the primary facts and”.

[control orders]

(7) Amendment to Government amendment (34), paragraph 105.11(2)(g), after “summary”, insert “of the primary facts and”.

[control orders]

(8) Amendment to Government amendment (37), paragraph 105.12(6)(d), after “summary”, insert “of the primary facts and”.

[control orders]

(9) Amendment to Government amendment (28), after paragraph (e), add:
(f) the right of the person to reasonable assistance to choose a lawyer and contact the
lawyer in relation to the order.

[right to lawyer—preventative detention orders]

(10) Schedule 4, item 24, page 18 (after line 18), after paragraph 104.2(2)(b), add:
   (c) is satisfied that applying for an interim control order and the terms in which it is
       sought is the least restrictive means of achieving the purpose of the order.

[least restrictive means]

(11) Schedule 4, item 24, page 19 (after line 29), at the end of section 104.2, add:

(6) In giving consent in accordance with this section, the Attorney-General must be satisfied
   that an interim control order and the terms in which it is sought is the least restrictive
   means of achieving the purpose of the order.

[least restrictive means]

(12) Schedule 4, item 24, page 20 (after line 22), at the end of subsection 104.4(1), add:
   (e) the court is satisfied that making a control order and the terms in which it is sought
       is the least restrictive means of achieving the purpose of the order.

[least restrictive means]

(13) Schedule 4, item 24, page 29 (after line 16), at the end of subsection 104.14(3), add:
   (c) whether the making of a control order and the terms in which it is sought is the least
       restrictive means of achieving the purpose of the order.

[least restrictive means]

(14) Schedule 4, item 24, page 27 (after line 13), after subparagraph 104.12(1)(ii), insert:
   (iii) the person shall be provided with a copy of the order and the reasons for the
       decision, including the materials on which the order is based.

[detainee's copy of order]

(15) Schedule 4, item 24, page 27 (line 23), after “(ii)”, insert “or (iii)”.  

[consequential]

(16) Schedule 4, item 24, page 40 (lines 2 to 6), omit “10”, (twice occurring), substitute “5”.

[sunset of 5 years]

(17) Schedule 4, item 24, page 69 (after line 1), at the end of subsection 105.32(1), add:
   (c) a copy of the order and the reasons for the decision, including the materials on
       which the order is based.

[detainee's copy of order]

(18) Schedule 1, item 24, page 72 (line 24), omit “but solely”, insert “including”.

[contact with lawyer]

(19) Schedule 1, item 24, page 72 (after line 30), after paragraph 105.37(1)(a), insert:
   (b) obtaining at any time during the period of detention advice in relation to their
       detention.

[contact with lawyer]

(20) Schedule 1, item 24, page 74 (after line 7), before subsection 105.38(1), insert:
(1A) The provisions of this section apply only after the police officer exercising authority under the preventative detention order has first lodged with the issuing authority a written statement setting out the basis of the reasonable grounds on which it is believed that the consultation will interfere with the purpose of the order.

[consultation with lawyer unless prejudicial to security]

(21) Schedule 4, item 24, page 82 (after line 9), at the end of section 105.42, add:

(4) Any questioning which occurs under this section must be videotaped and a copy of the videotape must be given to the detained person, or the detained person’s lawyer.

(5) Any questioning which occurs under this section may only occur, subject to there being no prejudice to national security, in the presence of the detained person’s lawyer.

[video tapes—lawyer present]

(22) Schedule 5, item 24, page 85 (line 26) to page 86 (line 17), omit section 105.47, substitute:

105.47 Biannual report

(1) The Attorney-General must, as soon as practicable after each 30 June and each 31 December, cause to be prepared a report about the operation of this Division during the preceding 6 months.

(2) Without limiting subsection (1), a report relating to a 6-month period must include the following matters:

(a) the number of initial preventative detention orders made under section 105.8 during the year;
(b) the number of continued preventative detention orders made under section 105.12 during the year;
(c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;
(d) particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to:
   (i) the Commonwealth Ombudsman; or
   (ii) the Internal Investigation Division of the Australian Federal Police;
(e) the number of prohibited contact orders made under sections 105.15 and 105.16 during the preceding 6 months; or
(f) the number of interim control orders, urgent interim control orders, urgent control orders and control orders made under Division 104 during the preceding 6 months.

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 5 sitting days of that House after the report is completed.

[biannual report]

(23) Schedule 4, item 24, page 90 (lines 6 to 11), omit “10” (twice occurring), substitute “5”.

[sunset of 5 years]

(24) Schedule 5, item 10, page 96 (after line 16), after subsection 3UD(2), insert:

(2A) Any search of a person conducted under this section must be conducted:

(a) in an area that provides adequate personal privacy to the person being searched; and
(b) be conducted by a person of the same sex as the person being searched.
[rules for searches of a person]

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

[sunset of 5 years]

(26) Schedule 7, page 109 (line 2) to page 115 (line 14), TO BE OPPOSED.

[sedition]

(27) Schedule 7, item 12, page 112 (after line 29), after section 80.2, insert:

80.2A Exemption or good faith defence
Sections 80.1 and 80.2 do not apply to anything said or done reasonably:
(a) in the creation, performance, exhibition or distribution of an artistic work; or
(b) in the course of any statement, publication, discussion or debate made or held for
any genuine academic, artistic or scientific purpose or any other genuine purpose in
the public interest; or
(c) in making or publishing:
   (i) a fair and accurate report of any event or matter of public interest; or
   (ii) a fair comment on any event or matter of public interest if the comment is an
expression of a genuine belief held by the person making the comment.

[exemption]

(28) Schedule 10, page 134 (after line 22) after item 12, insert:

12A After subsection 25(1)
   Insert:
      (10A) A warrant may only be extended for more than 28 days in the case of any investigation
relating to a suspected terrorist activity or a terrorism offence.

[warrant extensions]

(29) Schedule 10, page 135 (after line 10), after item 16, insert:

16A After subsection 27(4)
   Insert:
      (4A) A warrant may only be extended for more than 28 days in the case of any investigation
relating to a suspected terrorist activity or a terrorism offence.

[warrant extensions]

(30) Schedule 10, page 135 (after line 12), after item 17, insert:

17A After subsection 27AA(9)
   Insert:
      (9A) A warrant may only be extended for more than 28 days in the case of any investigation
relating to a suspected terrorist activity or a terrorism offence.

[warrant extensions]

(31) Schedule 10, page 135 (after line 14), after item 18, insert:
18A After subsection 27A(3)

   Insert:

   (3A) A warrant may only be extended for more than 28 days in the case of any investigation relating to a suspected terrorist activity or a terrorism offence.

   [warrant extensions]