2004-2005

The Parliament of the Commonwealth of Australia

THE SENATE

Intelligence Services Legislation Amendment Bill 2005

(Amendments to be moved by Senator Bishop on behalf of the Opposition in committee of the whole)

(1) Schedule 1, page 5 (after line 21), after item 15, insert:

15A Section 3

[definition]

(2) Schedule 1, page 7 (after line 21), after item 23, insert:

23A At the end of section 9

(6) The responsible Minister must notify the Attorney-General within 24 hours of giving an authorisation under this section for an activity, or series of activities, of a kind mentioned in subparagraph 8(1)(a)(i) or (ii).

(7) The responsible Minister must notify the Attorney-General in writing and must specify the facts and other grounds on which the responsible Minister gave the authorisation.

(3) Schedule 1, page 8 (after line 6), after item 24, insert:

24A After section 9

Insert:

9B Warrants

The relevant agency head of ASIS, DSD and DIGO must obtain a warrant from the Attorney-General under section 9C before:
(a) undertaking an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on an Australian person who is in Australia; or

(b) undertaking, in accordance with a direction under paragraph 6(1)(e), an activity, or a series of activities, that will, or is likely to, have an effect on an Australian person who is in Australia.

[warrants]

(4) Schedule 1, page 8 (after line 6), after item 24, insert:

24B After section 9

Insert:

9C Issue of warrants

(1) A request by the relevant agency head of ASIS, DSD and DIGO for the issue of a warrant in respect of activities in paragraphs 9B(a) and (b) must specify:

(a) the facts and other grounds on which the relevant agency head considers it necessary that the warrant should be issued; and

(b) the grounds on which the relevant agency head considers that the issue of the warrant advances Australia’s national security interests.

(2) Where, on receipt by the Attorney-General of a request by the relevant agency head for the issue of a warrant under subsection (1), the Attorney-General is satisfied that:

(a) any activities which may be done in reliance on the warrant will be necessary for the proper performance of a function of the agency concerned; and

(b) there are satisfactory arrangements in place to ensure that nothing will be done in reliance of the warrant beyond what is necessary for the proper performance of a function of the agency; and

(c) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in reliance on the warrant will be reasonable, having regard to the purposes for which they are carried out;

the Attorney-General may, by warrant under his or her hand, subject to any conditions or restrictions that are specified in the warrant, authorise the relevant agency to undertake the activities of a kind mentioned in paragraphs 9B(a) and (b).

(3) Before the Attorney-General issues a warrant under this section for an activity, or a series of activities, of a kind mentioned in paragraph 9B(a) or (b), the Attorney-General must also:

(a) be satisfied that the Australian person mentioned in either of those paragraphs is, or is likely to be, involved in one or more of the following activities:

(i) activities that present a significant risk to a person’s safety; or

(ii) acting for, or on behalf of, a foreign power; or

(iii) activities that are, or are likely to be, a threat to security; or

(iv) activities related to the proliferation of weapons of mass destruction or the movement of goods listed from time to time in the Defence and Strategic Goods List (within the meaning of regulation 13E of the Customs (Prohibited Exports) Regulations 1958); or

(v) committing a serious crime by moving money, goods or people; or

(vi) committing a serious crime by using or transferring intellectual property; or
(vii) committing a serious crime by transmitting data or signals by means of guided and/or unguided electromagnetic energy; or
(viii) an activity or activities that are, or are likely to be, a threat to security (whether or not covered by another subparagraph of this paragraph in addition to subparagraph (iii)).

[issue of warrants]

(5) Schedule 1, page 8 (after line 6), after item 24, insert:

24C After section 9
Insert:

9D Content of warrants
(1) The Attorney-General may issue a warrant following a request in accordance with section 9C in relation to:
   (a) an activity, or class of activities, specified in the warrant; or
   (b) acts of a staff member or agent, or a class of staff members or agents, specified (whether by name or otherwise) in the warrant; or
   (c) activities done for a particular purpose connected with the agency’s functions.
(2) A warrant is subject to any conditions specified in it.
(3) A warrant must be in writing and must specify how long it will have effect. The period of effect specified in a warrant for an activity or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i) or (ii), must not exceed 6 months.
(4) A warrant issued in accordance with section 9C may be revoked by the Attorney-General at any time before the end of the specified period of effect.
(5) If the Attorney-General issues a warrant under this section in relation to an agency, the relevant agency head must ensure that a copy of the warrant is kept by the agency and is available for inspection on request by the Inspector-General of Intelligence and Security.

[content of warrants]

(6) Schedule 1, page 8 (after line 6), after item 24, insert:

24D After section 9
Insert:

9E Issue of subsequent warrants not prevented
(1) Subsection 9D(3) does not prevent the issue of any subsequent warrant.
(2) Before a subsequent warrant can be issued, the relevant agency head must again comply with subsection 9C(1).

[issue of further warrants not prevented]

(7) Schedule 1, page 10 (after line 6), after item 36, insert:

36A At the end of section 15
Add:
(7) The retention of incidentally obtained intelligence concerning Australians that is not publicly available, must be minimised.

[minimising circulation of incidental intelligence]