AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

FURTHER REVISED SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Attorney-General, the Honourable Daryl Williams AM QC MP)
AMENDMENTS TO THE AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

OUTLINE
The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, as introduced into the House of Representatives, amends the Australian Security Intelligence Organisation Act 1979 (‘ASIO Act’) to enhance the capacity of the Australian Security Intelligence Organisation (‘ASIO’) to combat terrorism. It achieves this by giving ASIO powers with regard to the collection of intelligence that may substantially assist in the investigation of terrorism offences. The Government amendments to the Bill will clarify that:

- in deciding whether to consent to the making of a request for a subsequent warrant, the Minister must (1) take into account the fact of the issue of the previous warrant and (2) only consent to the making of the request if the Minister is satisfied that the issue of the warrant to be requested would be justified by information additional to that known to the Director-General of ASIO at the time of the request for consent to the issue of the previous warrant; and

- in considering a request for a subsequent warrant, the issuing authority must (1) take into account the fact of the issue of the previous warrant and (2) be satisfied that issuing the requested warrant is justified by information additional to that known to the Director-General of ASIO at the time of the request for consent to the issue of the previous warrant; and

- a request for consent to issue a warrant must include, in addition to a statement of particulars and outcomes of all previous requests for the issue of a warrant under section 34D, details of the duration of detention and questioning under those warrants.

The amendments also provide that a person may not be detained for a continuous period of more than 168 hours, and that the Parliamentary Joint Committee on ASIO, ASIS and DSD review of the Bill will occur at least six months prior to the Bill’s sunset provision coming into effect.

FINANCIAL IMPACT STATEMENT

The amendments will have no financial impact.
NOTES ON ITEMS

Item 1

This item amends item 24 of Schedule 1 to the Bill as introduced. The amendment is technical, and is consequential on item 2, which inserts a new paragraph (d) into subsection 34C(2).

Item 2

This item amends item 24 of Schedule 1 to the Bill as introduced to insert a new paragraph (d) into subsection 34C(2). Proposed subsection 34C(2) sets out the matters which must be addressed by the Director-General in seeking the Minister’s consent to requesting the issue of a warrant under section 34D.

The effect of this item is to require that, in addition to including details of the particulars and outcomes of all previous warrants under section 34D in relation to the person, the request must include details of the periods for which the person was questioned under those warrants, and, if a previous warrant authorised the detention of the person, the period for which the person was detained under the warrant.

Item 3

This item amends item 24 of Schedule 1 to the Bill as introduced to insert a new subsection 34C(3D).

New proposed subsection 34C(3D) requires that, in circumstances where a warrant has previously been issued under section 34D in relation to the person, the Minister must take account of that fact in deciding whether to consent to the request for a further warrant. In addition, the Minister may only consent if the Minister is satisfied that the issue of the warrant is justified by additional information which was not known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the previous warrant.

This amendment makes it clear that due consideration must be given to the existence of the previous warrant and that the Minister must take account of the fact that a previous warrant has been issued in relation to the person in determining whether the issue of a further warrant is justified on the basis of additional information not previously known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the previous warrant. This requirement is in addition to the matters set out in section 34C(3) of the Bill that the Minister must be satisfied of before consenting to the making of a request for a warrant.

Item 4

This item amends item 24 of Schedule 1 to the Bill as introduced to insert a new subsection 34D(1A).
New proposed subsection 34D(1A) requires that, in circumstances where a warrant has previously been issued under section 34D in relation to the person, the issuing authority must take account of that fact in deciding whether to issue the warrant requested. In addition, the issuing authority may only issue the warrant if the authority is satisfied that the issue of the warrant would be justified by information additional to that known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the previous warrant.

This amendment makes it clear that due consideration must be given to the existence of the previous warrant and that the issuing authority must take account of the fact that a previous warrant has been issued in relation to the person in determining whether the issue of a further warrant is justified by information additional to that known to the Director-General at the time the Director-General sought the Minister’s consent to request the issue of the previous warrant. This requirement is in addition to the matters set out in section 34D(1) of the Bill that the issuing authority must be satisfied of before issuing a warrant.

Item 5

This item amends item 24 of Schedule 1 to the Bill as introduced to include a new proposed section 34HC. The effect of this amendment is to provide that a person may not be detained under proposed Division 3 of the Act for a continuous period of more than 168 hours.

Item 6

This item amends item 27D of Schedule 1 to the Bill as introduced to replace the reference to ‘as soon as possible after the third anniversary’ with a reference to ‘within 30 months’.

Item 27D requires that the Parliamentary Joint Committee on ASIO, ASIS and DSD to review the operation, effectiveness and implications of amendments made by the Bill as soon as possible after the third anniversary of the receipt of Royal Assent of the Bill. This amendment will replace that requirement with a requirement to review the operation, effectiveness and implications of the Bill within 30 months of the receipt of Royal Assent.

This amendment is consequential upon an amendment to item 3 of the Bill as introduced to provide for sunsetting of proposed Division 3 three years after Royal Assent to the Bill. Under the review clause as amended by this item the Committee will be required to review the Bill within 30 months of its commencement, allowing the review to commence prior to sunsetting of the detention and questioning regime.