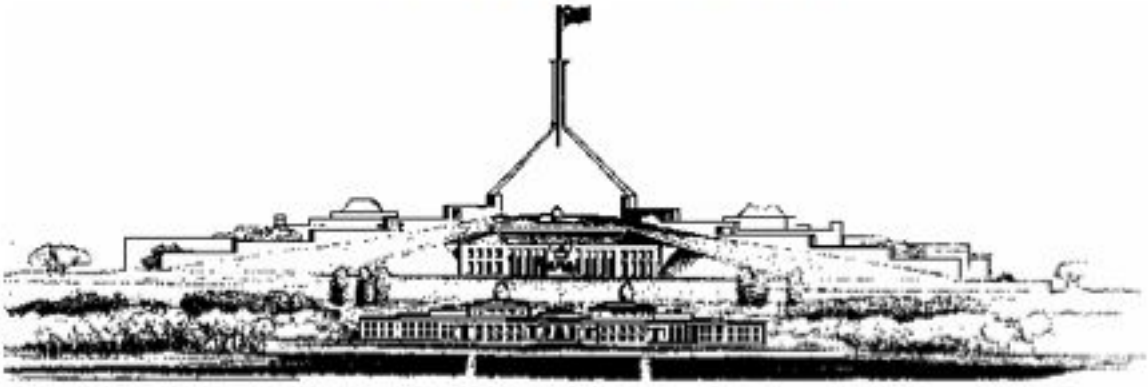
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 2006

In Committee

SPEECH

Thursday, 30 March 2006

BY AUTHORITY OF THE SENATE

SPEECH

Date	Thursday, 30 March 2006	**Source**	Senate
Page	42	**Proof**	No
Questioner		**Responder**	
Speaker	Stott Despoja, Sen Natasha	**Question No.**	

Senator STOTT DESPOJA (South Australia) (12.31 pm)—by leave—I move Democrat amendments (23) and (24) on sheet 4869 standing my name:

(23) Schedule 2, item 5, page 62 (line 29) to page 63 (line 1), omit the item, substitute:

5 At the end of section 46A

Add:

46B Warrant for B-party interception

(1) Where an agency applies to an eligible Judge for a warrant in respect of a person and the Judge is satisfied, on the basis of the information given to the Judge under this Part in connection with the application, that:

(a) Division 3 has been complied with in relation to the application; and

(b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, more than one telecommunications service; and

(d) there is a substantial likelihood that information to be intercepted under the warrant would assist in connection with the investigation by the agency of a serious offence by a person who is expected to contact the person subject to the warrant; and

(e) having regard to the matters referred to in subsection (2), and to no other matters, the Judge should issue a warrant authorising such communications to be intercepted;

the Judge may, in his or her discretion, issue such a warrant.

(2) The matters to which the Judge must have regard are:

(a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant communications made to any telecommunications service used by the person in respect of whom the warrant is sought; and

(b) the gravity of the conduct constituting the offence or offences being investigated; and

(c) how much the information referred to in paragraph (1)(d) would be likely to assist in connection with the investigation by the agency of the offence or offences; and

(d) to what extent methods (including the use of a warrant issued under section 46) of investigating the offence or offences that do not involve the use of a warrant issued under this section in relation to the person have been used by, or are available to, the agency; and

(e) how much the use of such methods would be likely to assist in connection with the investigation by the agency of the offence or offences; and

(f) how much the use of such methods would be likely to prejudice the investigation by the agency of the offence or offences, whether because of delay or for any other reason.

(3) The Judge must not issue a warrant in a case in which this section applies unless the person making the application on behalf of the enforcement agency states in an affidavit at the time of its application, or in the case of a telephone application within one day after the day on which the warrant is issued, that:

(a) the agency has exhausted all other methods of identifying the telecommunications services used, or likely to be used, by the person involved in the offence or offences referred to in paragraph (1)(d); and

(b) interception of communications made to or from a telecommunications service used or likely to be used by that person would not otherwise be possible; and

(c) communications intercepted from the communications service are not likely to breach any person's legal professional privilege.

(24) Schedule 2, item 6, page 63 (lines 2 and 3), omit the item, substitute:

6 Section 47

Omit "or 46A", substitute ", 46A or 46B".

Amendment (24) is a consequential amendment. Amendment (23) moves to increase significantly the threshold that is required in order to obtain a B-party warrant. I think that important aspects to note are the requirements that: firstly, there is a substantial likelihood that the information to be intercepted under the warrant would assist in connection with the investigation by the agency of a serious offence; and, secondly, that it is expected that the person of interest will contact the third party. We believe that operation of the B-party warrants does pose a serious risk for privacy rights in Australia. Where there are no adequate or appropriate measures to ensure that these privacy rights are not respected, then the schedule should not be passed.

We have heard various arguments for that today. It is not as if we have come in here deliberately trying to gut or tear down the act or have a deleterious impact on operational matters. But it is evident that the legislation in its current form does not strike a proportioned balance between crime fighting and security and safety on the one hand, and the civil liberties and privacy rights of Australians on the other hand. We have lost that balance. The attempt in this debate by parties such as the Democrats to inject some safeguards into this legislation has effectively failed—though we have still got almost a page of amendments to go in terms of the running sheet.

Having said that, I note that some of the really substantial changes that could have been made to give people some confidence in the operation of this Telecommunications (Interception) Amendment Bill have not been made, and I think that is significant. It is significant and certainly of great concern to the Australian Democrats who have been involved in the discussions and deliberations on this bill from the beginning—and I include predecessors in that involvement. In terms of this specific piece of legislation, we have been present at the inquiry and have prepared a report—and along with Senator Ludwig, I have to say, I also smirk a little at it too. The *Supplementary report with additional comments of dissent by the Democrats*—I think we were aiming for the longest name of a Senate committee report. Nonetheless, it did sum up the fact that we endorse heartily the recommendations contained in the chair's report and I put on record again that it was a majority report. We have backbenchers in here today who signed off on the legislative report but were forced to vote against the recommendations contained in that report. Doesn't anyone have a problem with that? I think that it is quite extraordinary. Some of the safeguards built into that majority report and proposed for the legislation have since been voted against by the people who mooted them.

Maybe the Senate committee process is a farce now. I am not suggesting that we abandon it, but it seems extraordinary that we spent the day, albeit a short period of time, on a truncated inquiry with not enough time for verbal and written submissions and not enough time for us to deliberate over some of the questions on notice and questions that were responded to. I do acknowledge the work of the officers because I know that we gave questions without notice and on notice and they were responded to with what I would describe as alacrity considering the time frame. But still it is not enough to turn up on Monday, table a report and expect that report to be dealt with—discussed and digested—and then have us rock up on Tuesday morning—I think Monday evening was the original suggestion—and debate a significant piece of legislation that poses a great risk to privacy rights in this nation.

These are some of our last attempts to put some constraints and some safeguards on B-party warrants. Again, they are not intended to gut or destroy the legislation but build in safeguards. That has not happened. Yes, amendment (23) that the Democrats are moving does go further than the majority report, as Senator Ludwig has pointed out. There is good reason for that because the majority report did not go far enough. Those recommendations contained in the majority report signed off by coalition and Labor backbenchers were good recommendations and even they have been flouted in the chamber today. These are further Democrat changes proposed to the operation of B-party warrants. I think that they are reasonable changes that would increase the threshold in a way that would have a positive impact in terms of privacy as well as the security and safety of Australians. I commend the amendments to the chamber.