THE SENATE

ANTI-MONEY LAUNDERING
AND COUNTER-TERRORISM
FINANCING BILL 2006

ANTI-MONEY LAUNDERING
AND COUNTER-TERRORISM
FINANCING (TRANSITIONAL
PROVISIONS AND CONSEQUENTIAL
AMENDMENTS) BILL 2006

Second Reading

SPEECH

Thursday, 7 December 2006

BY AUTHORITY OF THE SENATE
Senator NETTLE (New South Wales) (4.29 pm)—Before question time I was outlining the terrorism laws that have been put forward by this government, to which the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 and the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006 that we are debating are adding. I was speaking about the way in which the Attorney-General has banned the Kurdistan Workers Party on the advice of ASIO, using laws that would have allowed the present governments of South Africa and East Timor to also be banned.

What we have before us now are more laws giving enormous powers to another government agency—AUSTRAC—to require banks and other agencies to identify people they perceive to be a terrorism risk. Joo-Cheong Tham, from the University of Melbourne, said in the Age earlier this month:

Arguably, the most egregious feature of the bill is that it opens the way to increased racial and religious discrimination. Representatives of financial institutions have publicly contemplated breaching anti-discrimination statutes so they can comply with the provisions of the bill.

Joo-Cheong Tham gives the example of how the bill would affect Murali, a second generation Sri Lankan Australian who regularly sends money to his relatives in Sri Lanka:

Many of Murali’s relatives—

who live in areas controlled by the Tamil Tigers—

were badly affected by the 2004 tsunami. To assist them in rebuilding their homes, Murali sends thousands of dollars to Sri Lanka. Alerted by Murali’s “ethnic” name and the transfer of funds, a bank employee reports him to AUSTRAC, Australia’s financial intelligence unit. Her report describes Murali as posing a “risk of financing terrorism” and is accompanied by a dossier detailing all his financial transactions. AUSTRAC communicates this to ASIO and the Australian Federal Police, who then raid Murali’s home and charge him under anti-terrorism laws—

for funding the Tamil Tigers. Such racial profiling would normally be against the law, but this legislation overrides antidiscrimination law. By doing so, such immunity will mean that racial and religious profiling of not just Tamils but also many other ethnic and religious communities will become the norm. That is why the Greens will be moving an amendment in the committee stage of this bill to ensure that this bill and any associated guidelines which implement this bill comply with existing Commonwealth, state and territory antidiscrimination law. If we want to remove discrimination in this country, we need to ensure that it applies across the board. We should not remove these fundamental principles of our society and democracy when it comes to legislation dealing with terrorism.

This week the Parliamentary Joint Committee on Intelligence and Security tabled a report on Australia’s terrorism legislation. The committee highlighted the negative impact that Australia’s terror laws are currently having on the Arab and Muslim communities. That is something that has also been identified by the Human Rights and Equal Opportunity Commission and the government’s own Sheller review into their terrorism legislation. The Greens have consistently argued that Arab and Muslim communities will be particularly affected by all of our existing terrorism legislation and, indeed, also by this piece of legislation.

Perhaps the worst aspect of this bill is that it not only sanctions discrimination but also provides immunity from legal action in relation to anything done in good faith to comply with the bill. For example, banks can report on you and provide your financial details to government authorities on the basis that you fit a risk profile—in other words, that you look different, sound different or have an ethnic name. That can be perfectly legal under this piece of legislation that overrides our antidiscrimination laws. The risk management strategy of the bank can be used to provide financial details of all of its Arabic customers, if it chooses, to AUSTRAC and through them to the police. This is perfectly legal under this legislation.

The government is effectively outsourcing this profiling to the banking and financial industry and its workers. The industry is required to put in place risk management strategies to identify anybody who is a risk. The problem
for the industry, according to Adam Courtenay, writing in the *Australian Financial Review*, is that this is not being set out in the legislation. The banks are required to put in place a risk management strategy. Some time later, down the track, after this legislation has been dealt with by the parliament, AUSTRAC will develop guidelines about this process. No wonder the banks are worried! AUSTRAC is not accountable to this parliament and its operations are unlikely to be transparent. In the *Australian Financial Review* Adam Courtenay said:

While individual financial institutions have been left to work out how they are potentially exposed to the threat of money laundering and terrorism financing, and allowed to work out ways to address these risks, they have no idea how the new regulator, Australian Transaction Reports and Analysis Centre (AUSTRAC), will treat them and rate their efforts.

In the same article, Chris Cass, a partner at Deloitte in Sydney, said that he was not sure that ‘Australia’s financial community is mature enough to deal with a risk based approach to anti-money-laundering compliance’. He said:

‘The industry has come out of 18 years of a prescriptive reporting system and now they’re being left do their own thing.’

“A risk-based approach has its advantages but I’m issuing a word of warning to industry—the execution of a risk-based approach is a lot harder than actually saying it.”

The industry does know, however, that it will face penalties of up to $11 million for failure to comply with the new regime. So we should not be surprised when companies zealously implement a risk management strategy, throwing the net wide open and snaring anybody who may fit a terrorism-supporting stereotype.

We have already seen this happening in Australia under existing legislation that relates to the financing of terrorism. The Senate inquiry examining the new terrorism laws of 2002 outlined how a Melbourne businessman had his assets frozen because his record store shared the same name as a relatively obscure Peruvian terrorist group, the Shining Path. As a result, his record store was in limbo, as his accounts were frozen by the Commonwealth Bank. He spent several months pleading for assistance from the bank, the Federal Police, the Attorney-General’s Department and ASIO to try to rectify the situation. But all he experienced was buck-passing. It was only when he went to the media and told his story that someone—I am not quite sure who—gave the order to unfreeze his accounts.

If this had happened now, there could have been far more serious consequences for him. He could have been detained without trial, held for several weeks and prevented from telling his story because he posed a terrorism risk, and any court proceedings could have been held in secret. The government claimed that this was an isolated case. Guess what—it happened again. Just this week, there was a report on the *Daily Telegraph* entitled: ‘My bank thinks I’m a terrorist’. The report said:

IN the space of just one week—

an Iranian woman—

says she went from well-respected small business owner to terror suspect in the eyes of her bank.

The 32-year-old, who runs Sydney import company … is angry and bewildered at Westpac’s handling of what should have been two routine fund transfers last week, after she was told the bank had “reasonable grounds to believe” she was laundering money to Iran.

She is demanding a written apology from Westpac for the “offensive, explosive” language used by the senior manager who conveyed the decision to her.

Today … she is at a loss to explain why, after eight years of trading, the financial institution suddenly suspects her of being involved in terrorist activities.

“I have nothing against being asked about my business, I just want it to be done in a professional and respectful manner,” she said. “I’d really like to know what’s going on if they think I’m breaching Australian law. They need to give me some evidence if there’s reasonable grounds for them to suspect me.”

Instead … she was called on to answer a series of increasingly aggressive questions about who she was transferring funds to and why—questions she claims the bank could have avoided by checking her financial history.

She went on to say:

“I’ve had an account with Westpac for eight years and on any one day we’ve got 70 transactions between restaurants, hotels, food stores which they can have a look at,” she said.
“They have all the information they need to establish the fact that we are a legitimate business. The only thing I can think of is that it’s a transfer to Iran.”

She says:

… she is still unable to access the $25,000 she needs to pay suppliers for stock she has imported—a claim the bank denies.

According to the article, a Westpac spokesperson confirmed that her transfers had been halted but said:

… the company was simply complying with antiterrorism legislation introduced in 2002.

So, under the existing legislation, these are the not isolated cases that we see occurring. It is a very real danger with this bill as well—that the banks and financial institutions told to look out for terrorists suddenly discover them in every customer who comes from the Middle East.

This bill will make a bad situation far worse. Well, what should happen with this bill? The Greens believe that we should start again. The Senate Standing Committee on Legal and Constitutional Affairs, in its report examining an earlier draft of this bill, said:

The committee does remain concerned about the apparent lack of formal consultation with privacy, civil rights and consumer representative groups in the development of the regime to this point. … this may have resulted in some fundamental privacy, consumer and civil rights issues being overlooked.

As I have outlined, that problem remains in this version of the bill. At least earlier versions of the bill adopted a more direct approach in setting out exactly what needed to be done in the legislation. But this bill, after pressure from the industry, now allows a far more deregulated approach. As a result, there are no clear guidelines in the legislation about how this will work and there are no safeguards in place to protect civil rights.

The rules that set out the real boundaries of the law in this area will be set by AUSTRAC, and there is no requirement for them to consult with consumers who will be directly affected by these laws. The parliament is being asked to put in place major changes to the privacy and human rights of Australians, yet how this will all work is being left to an unaccountable agency—one that is not required to report to parliament.

The Greens will be moving amendments that address some of the worst aspects of this bill that threaten human rights. In particular, we will seek to limit the scope of the terrorism offences that will be used as the basis for conducting a risk assessment, as suggested in a submission by Liberty Victoria to the Senate committee inquiry into this legislation. The Greens believe that the scope should be limited to those terrorist offences directly related to violence—namely, those under division 103 of the Criminal Code—and we will move amendments to that end. The Greens want to see balance return to the problems of national security. Once again, the government has gone too far with this bill and got the balance wrong. The result is that people’s rights are threatened.

The Greens believe it is important to keep the threat of terrorism in perspective. Justice Michael Kirby of the High Court, in a speech to security and government officials last year, said that AIDS, poverty, malaria and ethnic violence were ‘more potent dangers for more members of humanity than the terrorism of al-Qaeda’. He went on to say:

If a small proportion of the energy and capital that has been devoted to the dangers following 11 September 2001 had been lavished on the problem of AIDS, I feel sure that the world would be a better and probably a safer, certainly a kinder place.

You could also add to that list the threat of climate change.

The Greens have consistently said that we believe that the longstanding practices and processes of criminal law and of civil rights should underpin our response to terrorism. The Greens will continue to lead a campaign to defend our democracy from terrorism laws that take away our civil liberties and that the coalition and the Labor Party continue to force through both our federal and our state parliaments. The Greens will continue to seek to focus the debate on the root causes of terrorism and the sources of injustice and inhumanity that plague us all.

The Greens would support an appropriate, balanced and sensible approach to dealing with the problem of terrorist financing, but unfortunately this bill is not that approach. It fails to set out in legislation clear guidelines for accountability and it will diminish human rights. As such the Greens cannot support the bill. We are operating in an environment where a guillotine is about to fall on the Senate debate on this bill—this piece of legislation which is 282 pages long and to which there are 18 amendments currently on the table to be debated. We are not
able to amend this bill to make it the kind of legislation that achieves that proper balance between strong laws that crack down on terrorist financing and safeguards that ensure that people’s privacy is looked after and that we are not overriding antidiscrimination legislation that exists in state, territory and Commonwealth jurisdictions. That is the sort of legislation that the Greens would be very happy to support—if we were able to bring forward amendments to address those concerns. I will be able to move some of those amendments here on behalf of the Greens; I do not know with how much time, given that a guillotine is about to drop on this debate and all this discussion.

We have this bill before us, 282 pages of it, which says that banks and financial institutions have to come up with their own risk management strategies and then, sometime down the track, government agencies might provide some guidance on this issue. We should be dealing with comprehensive legislation that sets out the detail of what is proposed. It should be underpinned by the antidiscrimination legislation that exists in Australia and it should provide a balanced approach to this very serious issue of financing of terrorism. But we do not have that bill here before us and we do not even have the opportunity to go through the amendments that could ensure that we did have a proper piece of legislation that the Greens would be able to support. As such, I need to indicate that we will not be able to support this legislation, but we will seek to move a series of very important amendments to try to bring some balance back into the way in which this piece of legislation currently operates. They were proposed by people who made submissions to the very brief inquiry into this legislation and I hope they will be supported. (Time expired)