



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Intelligence Services Legislation
Amendment Bill 2011**

In Committee

SPEECH

Monday, 4 July 2011

BY AUTHORITY OF THE SENATE

SPEECH

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Questioner
Speaker Brandis, Sen George

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Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (19:56): The opposition opposes the Greens amendments. Let me explain why. Before I do, let me affirm the opposition's full confidence in ASIO, and in its Director-General in particular. I listened to the exchanges between Senator Ludlam and Senator Feeney, and the opposition joins with the government in being of the view that the safeguards provided for in the ASIO Act and the mechanisms of institutional scrutiny through the director-general of intelligence services and parliamentary scrutiny through the joint parliamentary committee provide for an appropriate and thorough range of safeguards. There are also—and this is a point that Senator Feeney made—statutory protections in the ASIO Act itself which are unaffected by this legislation. So, on a statutory basis, from the point of view of parliamentary oversight and from the point of view of institutional oversight through appropriate oversight agencies, the opposition is well satisfied that we have the appropriate balance between giving ASIO, the particular agency in this case, the operational flexibility it needs and ensuring that it does not overreach its functions and that, were there to be any overreach or inappropriate use of power, that overreach or inappropriate use of power would be identified and arrested by institutional and parliamentary scrutiny.

Against that background, let me address the amendments which Senator Ludlam moved. The effect of the amendments is to oppose the proposed amendments to the ASIO Act which change the definition of 'foreign intelligence'. Let me deal with them seriatim. The first of the amendments opposed by the Greens would insert a new definition of 'foreign intelligence' into the ASIO Act. The new definition would define foreign intelligence as 'intelligence about the capabilities, intentions or activities of people or organisations outside Australia'.

The current definition of 'foreign intelligence' in the act, which would be replaced by that definition, is intelligence relating to the capabilities, intentions or activities of a foreign power. A foreign power in the ASIO Act is defined as a foreign government, an entity that is directed or controlled by a foreign government or governments, or a foreign political organisation. The term 'foreign political organisation' is not defined. There is no question at all that the effect of this amendment would be to expand the scope of foreign intelligence that might be lawfully gathered by ASIO, in particular, by identifying individuals which the current act does not provide for and expanding, by making more generic, the character of organisations which might properly be the subject of intelligence gathering by ASIO.

I am bound to say that in the changed national security and international security environment, particularly with the growth of terrorist organisations of a very amorphous form, many of them identified with individuals and inspired by individuals, and those organisations which are unstructured and represent a much less easily defined character of threat to Australia and its interests, it seems to the opposition to be absolutely prudent for the definition of foreign intelligence to be made more flexible than being defined merely by reference to foreign governments or foreign powers, given the rigidity of the definition of 'foreign powers' in the ASIO Act. There is much talk, as we know, in this area of policy about non-state actors, but non-state actors can assume a variety of forms, and it is because of the variety of forms which non-state actors may represent that it is, in our view, important that the intelligence capability of ASIO be made more flexible. None of the safeguards in the act is affected by this amendment. This is a jurisdictional amendment to reflect the realities of the practice of international terrorism in particular. It leaves the protections in the ASIO Act entirely unaffected.

The other two government amendments to the ASIO Act which are opposed by the Greens are amendments to sections 27A(1)(b) and 27B(b) of the ASIO Act. They have a common form. In both cases, they extend the interests which might be the subject of a ministerial directive from the interests as currently defined which are—and I will paraphrase—limited to the collection of intelligence relating to matters important to the defence of the Commonwealth or the conduct of the Commonwealth's international affairs—that is the language of the current act—to intelligence relating to the interests of Australia's national security, Australia's foreign relations or Australia's national economic wellbeing. Apart from the substitution of the term 'Commonwealth' for the use of the word 'Australia', there are two substantive changes effected by those amendments. The first is to broaden the first category from Australia's defence to Australia's national security.

I will pause here and challenge Senator Ludlam to tell the chamber why it is that it is unwise to define the proper subject of a ministerial directive to the Director-General of ASIO as a matter relating to Australia's national security rather than Australia's defence. National security has a broader connotation, but surely what ASIO is concerned with is protection by the gathering of intelligence in relation to Australia's national security—'national security' being a somewhat more comprehensive and more modern term—rather than Australia's defence in a purely military sense. That seems, to the opposition, to be the very thing that ASIO ought to be concerned with.

The second respect in which these two proposed amendments of the ASIO Act expand the scope of a ministerial directive is to include a new category—that is, Australia's national economic wellbeing. Senator Ludlam, who could possibly imagine that in the modern world in which economic warfare, in particular cyberwarfare, is identified by any intelligent observer as one of the great threats to a nation's wellbeing, there is something wrong or perverse or overreaching in character about identifying a new category—that is, Australia's economic wellbeing—as a matter properly to be within the purview of a ministerial directive to the director-general of intelligence? For those reasons the two material changes, the second and third of the government amendments which you oppose, are appropriate amendments by redefining defence as national security and including a new category—that is, the protection of Australia's economic wellbeing. These seem to the opposition to be entirely suitable amendments and, for that reason, the opposition supports the government's amendments and opposes your amendments which would seek to delete them from the bill.