



An Australian Government Initiative

**Briefing on the**  
***Anti-Terrorism Act 2005***  
**and the**  
***Anti-Terrorism (No.2) Bill 2005***  
**for the**  
**Muslim Community Reference Group**

*Tuesday, 29 November 2005*

## Anti-Terrorism Act 2005

The *Anti-Terrorism Act 2005* introduced a number of interpretative amendments to our terrorism offences to ensure that the policy of the existing offences is implemented in the way it was originally intended.

The legislation was passed on 3 November 2005 after an urgent sitting of the Senate and received Royal Assent later that day.

The amendments clarify that when proving someone is intending to commit a terrorist act it is not necessary for the prosecution to identify intention to commit a *specific* act.

These amendments were enacted in response to a specific threat and the assessment that a terrorist attack in Australia is feasible and could well occur. This assessment was backed up by an ongoing flow of credible intelligence.

The Prime Minister briefed the Leader of the Opposition and the Shadow Minister for Homeland Security on the serious and ongoing concern about potential terrorist threats.

The Government was satisfied on the advice provided to it that the immediate passage of this bill would strengthen the capacity of law enforcement agencies to effectively respond to this situation.

The Prime Minister raised this matter in some detail with all of the state premiers and received their unanimous agreement to the immediate introduction and passage of this amendment if the Government judged on continuing advice that it was necessary.

The substance of these amendments was originally part of the larger *Anti-Terrorism (No.2) Bill 2005* discussed below.

# Anti-Terrorism (No.2) Bill 2005

## Control Orders

- the Australian Federal Police (AFP) must have reasonable grounds that issuing an interim control order would substantially assist in preventing a terrorist act or that a person has trained with a listed terrorist organisation before applying for an interim control order;
- the Attorney-General must consent to the application being made;
- if the Attorney-General consents, the AFP may apply to a court for the issue of an interim control order;
- A court would then be required to approve the interim order if:
  - i. the AFP has made the request in accordance with the legislation
  - ii. the court has received and considered such further information it requires and the court is satisfied on the balance of probabilities that:
    - that the issuing of a control order would substantially assist in preventing a terrorist act or that a person has trained with a listed terrorist organisation; and
    - that each of the controls in the order is reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act.
- there is no provision for a person to be given advance notice of a control order in case a person tips off associates who are involved in terrorism. This would potentially undermine the purpose of the orders;
- however, once a court has issued an interim control order it must be given to a person as soon as practicable, with a summary of the grounds of making the order, and the effect of the order must be explained to the person. The person's lawyer is also able to obtain a copy of the order and a summary of the grounds of making the order;
- if the person is a Queensland resident and the order is made in that State, the Public Interest monitor must be notified of the order;
- the control order does not come into effect until the person, the subject of the order, is notified;
- once notified, the person can immediately apply for revocation of the order. The same court that issued the control order can revoke it;
- an interim control order is made initially. The person the subject of the order may attend the Court and make representations on their behalf when the court decides to confirm, vary or revoke the order;

- in addition normal judicial review processes would apply to decisions to issue or revoke control orders;
- control orders would not apply to people under 16 and would apply in a modified way to people between 16 and 18; and
- each year, the Attorney-General would report to Parliament on the operation control orders;
- the provisions will sunset after 10 years and will be reviewed by COAG after 5 years.

### ***Preventative Detention***

- An AFP officer must be satisfied that there are reasonable grounds to suspect a person will engage in a terrorist act, possess a thing connected with the preparation for or engagement in a terrorist act or has done an act in preparation for, or planning a terrorist act;
- In addition, the AFP must have reasonable grounds that making the order for preventative detention would:
  - i. substantially assist in preventing a terrorist attack and detaining the person is reasonably necessary to do so or,
  - ii. where a terrorist act has occurred, preserve evidence and detaining the person is reasonably necessary to do so.
- an AFP officer could issue an order for an initial 24 hours; that period could be extended by an issuing authority for a further 24 hours only; the total detention period allowable would be a maximum of 48 hours; an issuing authority would be a Magistrate or Judge who agrees to act as an issuing authority in their personal capacity;
- a person detained could not be questioned except to confirm their identity or to enable safe detention;
- once an order has been issued the person the subject of the order is to be given a copy of the order with a summary of the grounds of making the order. The person's lawyer is also able to obtain a copy of the order and a summary of the grounds of making the order
- any preventative detention order, as well as the treatment of the person detained, would be subject to judicial review;
- any preventative detention order, as well as the treatment of the person detained, could be subject to investigation by the Commonwealth Ombudsman;
- a person detained would be given an opportunity to contact a lawyer for these purposes as well as being entitled to contact a family member and employer solely for the purpose of letting them know they are safe but are not able to be contacted for the time being;

- in some circumstances, the right to contact a lawyer or other person could be limited - for example, if there are facts or grounds to suggest that the lawyer or other person is linked to the terrorist act; the contact with a lawyer or other person would be monitored to ensure that the communication relates solely to the purposes permitted under the legislation;
- where the person is unable to contact their nominated lawyer for security reasons, access to a security cleared lawyer would be offered to them;
- preventative detention would not apply to people under 16;
- a person under the age of 18 and people incapable of managing their own affairs are able to have a parent or guardian or other suitable person visit them each day or part-day the person is in preventive detention. The person who makes the order can also authorize additional contact. Police responsible for detaining the person may also permit additional contact. Where more than one parent or guardian has contact with the young or incapable person in detention, it is not an offence for those parents or guardians to disclose to the other the fact that the person is in preventative detention;
- consistent with Australia's international human rights obligations, any person being preventatively detained must be treated with humanity and respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment. Any official who fails to treat a detained person in accordance with these obligations is subject to an offence punishable by two years' imprisonment; and
- each year, the Attorney-General would report to Parliament on the operation of preventative detention orders.

### *Use of force*

- in taking a person into custody under a preventative detention order and ensuring that the person remains in custody, a police officer has the same powers and the same obligations as the police officer would have if the police officer were arresting the person for an offence, or ensuring that the person remains in custody after being arrested for an offence, in their own jurisdiction;
- those powers emphasise that the minimum amount of force necessary must be used and that that lethal force may only be used if it is necessary to prevent serious injury or the death of another person;
- for the AFP, the Crimes Act provisions would apply;
- police officers of the States or Territories would rely either on the powers under their equivalent legislation or the powers under the common law.

## ***Incitement***

- existing sedition offences in sections 24A to 24F of the Crimes Act are unduly complicated and are not considered suited to being used to counter the incitement of terrorism.
- modernising the offence of sedition in a way which deals with incitement by urging a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups where such action would threaten the peace, order and good government of the Commonwealth.
- updating the existing sedition offence, and will address problems with those who incite directly against other groups within our community, including against Australia's forces overseas and in support of Australia's enemies. The old offences refer to incitement against classes of people and are a relic of the Cold War.
- The penalty for sedition would be increased from 3 to 7 years imprisonment.
- An example of sedition under the new offence would be where someone sympathetic with terrorist causes puts up a notice on the internet calling on young people from a particular race to start fighting with young people of different races until they leave Australia.
- There is a good faith defence where the communication is merely about criticising government policy.
- For example, a notice on the internet calling for a more restrictive immigration policy in relation to young people from certain countries might enrage many young people from those countries but would not amount to sedition if it was genuinely about immigration policy.

## ***Expanding the definition of a terrorist organisation to include advocating***

- Making membership of or assisting an organisation that advocates the doing of a terrorist act an offence.
- Currently this type of offence is limited to organisations who engage in, prepare, plan, assist or foster the doing of a terrorist act.
- Advocating would be defined in a way which captures statements in support of previous activity as well as any prospective activity.
- An example of conduct of this type might be where the organisation has arranged for the distribution of a book that tells young people that it is their duty to travel overseas and kill Australian soldiers stationed in another country.

Another might be where the organisation puts a message on a web site following a terrorist act stating that it was a brave act that should be repeated.

### ***Stop, question and search powers***

- The powers of the AFP to stop, question and search will be extended where there are reasonable grounds that a person might have just committed, might be committing, or might be about to commit a terrorism offence in a place occupied by the Commonwealth ( a Commonwealth place).
- The powers would be exercisable where:
  - the officer suspects on reasonable grounds that a person might have just committed, might be committing, or might be about to commit a terrorism offence; or
  - it is necessary for the prevention of, or in response to terrorism, and the Attorney-General declares a specified area or place (such as a transport hub or place of mass gatherings) as a 'prescribed security zone'.
- The Attorney can only declare a Commonwealth place or part of it to be such a zone if it would assist in preventing a terrorist act occurring or a terrorist act has just occurred.  
This restricts the use of the power to genuine emergencies.
- The declaration lasts for 28 days.
- The Attorney obliged by law to revoke the declaration where he or she is satisfied there is no longer a terrorism threat or in the aftermath of an attack it is no longer required.
- The declaration would be required to be publicised in a way which clearly identifies the zone on television or radio in the relevant area, as well as on the internet and in the Government Gazette where it would be picked up by local press.
- Failure by the police or the Attorney to comply with the requirements of these additional powers would be capable of being remedied in the courts and police conduct is subject to a complaints mechanism which is supervised by the Ombudsman.
- The Ombudsman would be able to investigate any non-compliance with the procedures in the legislation, including:
  - using more force or subjecting the person to greater indignity that is reasonable and necessary in order to conduct the search;
  - restricting the search to non-invasive frisk and ordinary searches;
  - unnecessarily damage to property;
  - notification of owners about seized property and returning it within a reasonable time;

- limiting the stopping to finding out the identity of the person, where they live and the reason they are at the place.

### ***Notice to produce***

- facilitates lawful AFP requests for information that will assist with the investigation of terrorism and other serious offences.
- does not extend beyond certain specified financial and other types of records relating matters such as travel, utilities and the persons' residential address.
- AFP can require the production of documents that relate to matters such as bank accounts, travel, and telephone usage.
- Where the investigation relates to a serious terrorism offence, the request can be authorised by the AFP.
- In recognition of the seriousness and urgency associated with the investigation of terrorism matters, requests relating to serious terrorism offences must be complied with as soon as practicable.
- For the investigation of other serious offences, notices to produce must be authorised by a Federal Magistrate, and persons on whom notices are served have 14 days in which to comply. There is an offence for failing to comply with a notice to produce.
- use and derivative use immunities, protect the person who provides the document from prosecution if the document reveals any criminality by that person.
- A person on whom the notice is served can be prohibited from forewarning others about the existence or nature of the notice. This aspect of the Bill is modelled on the Proceeds of Crime Act 2002.

### ***Access to airline passenger information***

- allow AFP officers to demand documents or ask questions if the officer believes on reasonable grounds that an operator of an aircraft or ship has information or documents relevant to a terrorist act.
- authorises ASIO officers to demand information and documents from the operator of an aircraft or vessel for the purposes of carrying out ASIO's functions.
- powers can be exercised by authorised officers and the information or document must be provided as soon as practicable. This is similar to provisions in the Customs Act.



## ***ASIO warrant regime***

ASIO's special powers warrant regime is being refined to:

- clarify the definition of 'electronic equipment', and allow for entry onto premises, in the computer access warrant provisions
- extend the validity of search warrants from 28 days to 3 months
- extend the validity of mail and delivery service warrants from 90 days to 6 months
- amend the search warrant provisions to provide that material may be removed and retained for such time as is reasonable "for the purposes of security".

## ***Strengthening existing offences and creating new offences***

- Strengthen existing offences for financing of terrorism, providing false or misleading information under an ASIO questioning warrant and for threatening aviation security.
- Terrorism offences in the Criminal Code will be clarified.