

2006

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

TERRORISM (EXTRAORDINARY TEMPORARY POWERS) BILL 2006

SUPPLEMENTARY EXPLANATORY STATEMENT

Circulated with the authority of
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Overview

The Terrorism (Extraordinary Temporary Powers) Bill 2005 (the Bill) gives effect in the Australian Capital Territory to the agreement between the Commonwealth, State and Territory Governments adopted at the Council of Australian Government's (COAG) Terrorism Summit held in Canberra on 27 September 2005. At the summit COAG considered the evolving security environment in the context of the terrorist attacks in London in July 2005 and agreed that there is a clear case for Australia's counter-terrorism laws to be strengthened. Leaders agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism and contain appropriate safeguards against abuse, such as parliamentary and judicial review, and be exercised in a way that is evidence-based, intelligence-led and proportionate.

The amendments dealt with in this explanatory statement replace subclauses 12 (5) (a), 12 (5) (c), 21 (10) and 52 (12). The amendments relate to some of the queries raised by the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) in its Scrutiny Report dated 8 May 2006.

Amendment details:

Clause 12 (5) (a)

The amendment effectively replaces subclauses 12 (5) (a) and (c) of the Bill. Clause 12 restricts the making of multiple preventative detention orders over the same person relating to the same act or period or based on the same supporting information. Subclause 12 (5) relaxes these restrictions in relation to orders that extend interim or final orders or that follow on from previous orders under the laws of other jurisdictions.

Specifically, subclause 12 (5) (a) allows orders to be made *after* the making of an earlier interim order in relation to the same terrorist act. Similarly, subclause 12 (5) (c) allows orders to be made *after* the making of a corresponding preventative detention order from another state or the Commonwealth in relation to the same terrorist act.

The intent of the provision is to allow an existing order to be made in the ACT which, in effect, extends an order under these circumstances. The intention is that, while subclause 12 (5) relaxes the prohibitions on multiple orders to allow extensions, the 14-day maximum time limit for detention still applies.

The Scrutiny of Bills Committee is concerned that by using the term "after" in the provision it may not be sufficiently clear that the order must immediately follow on from an existing order, that is that the order is merely extending an existing order that is currently in force. The amendment removes the reference to the words 'after the making of' an interim or corresponding preventative detention order and replaces them with the words 'while the person is detained under' an interim or corresponding preventative detention order.

This makes abundantly clear the intent that an existing order may be extended under these circumstances only when it is in force and the person is in detention.

Clause 12 (5) (c)

This amendment is a technical amendment and relates to the previous amendment to clause 12 (5) (a).

The previous amendment replaced subclauses 12 (5) (a) and (c) of the Bill. This amendment removes subclause (c) which is no longer required as the policy intent has been clarified and included in subclause (a).

Clause 21 (3)

Clause 21 lists the matters that must be contained in the preventative detention order. Two key aspects relate to the time an order commences and the time an order ends.

Subclause 21 (3) defines the "end time" for single orders and for successive orders. Paragraph 21 (3) (a) states that an order must end no later than 14 days after a person is first taken into custody and detained, or detained, under a preventative detention order.

The 14-day time limit in paragraph 21 (3) (a) is directed to *any* orders in relation to the same terrorist act whether or not they are made on the same basis (to prevent a terrorist act or to preserve evidence of a terrorist act). This may limit the making of orders to preserve evidence where an earlier order was made to prevent the relevant terrorist act or the making of orders to prevent the same terrorist act occurring in a different period.

The intention behind the prohibitions on multiple orders (in clause 12) is that successive orders may be made in relation to the same terrorist act, provided they relate to different periods or different purposes. This amendment clarifies that the 14-day time limit only applies to orders for the same terrorist act that are "made on the same basis".

Clause 21 (10)

Division 2.11 deals with contact provisions under preventative detention orders. Clause 50 provides for contact with family members etc. Currently subclause 50 (4) provides that 'the detained person is also entitled to have further contact with the person's family or anyone else that is allowed under the preventative detention order'. The clause makes clear that the court may allow a detainee to have additional contact rights to those expressly provided for under the legislation.

One area specifically covered relates to contact with the detainee's children under. However the court would be able to create other contact entitlements in the order, consistent with the ordinary power of the court to control its orders.

Clause 21 does not specify that the court may include additional contact rights, even though it may grant such rights under 50 (4). This amendment clarifies that a court may state in the order any additional contact rights it grants under subclause 50 (4). The amendment does not change the rights that may be conferred by a court but does create consistency in the drafting of the legislation.

Clause 52 (12)

Subclause 52 (12) provides that 'any communication between a person detained under a preventative detention order and the person's lawyer is subject to legal professional

privilege and it is not admissible in evidence against the person in any court proceeding.’ The Committee is concerned that this provision is ambiguous.

The intention of the provision is to prevent communications between a detainee and his or her lawyer from being disclosed in court and to confer the protections that would otherwise attach to legal privilege, within and beyond the setting of the court, without the need to satisfy the various tests for client legal privilege in Division 1 of the *Evidence Act 1995*.

The amendment clarifies this intent and removes any ambiguity.