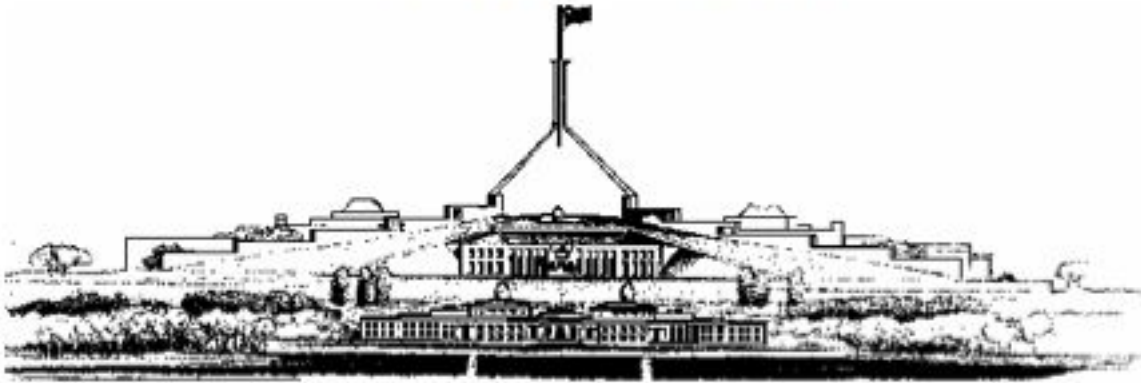




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

QUESTIONS WITHOUT NOTICE

National Security

QUESTION

Tuesday, 3 March 2015

BY AUTHORITY OF THE SENATE

QUESTION

Date Tuesday, 3 March 2015
Page 22
Questioner Lambie, Sen Jacqui
Speaker

Source Senate
Proof Yes
Responder Brandis, Sen George
Question No.

National Security

National Security

Senator LAMBIE (Tasmania) (14:39): Mr President, I refer the Attorney-General to the Commonwealth Criminal Code Act 1995 which states that if any Australian engages in conduct that assists by any means whatever, with intent to assist, another country or an organisation that is engaged in armed hostilities against the Australian Defence Force, they are guilty of treason and should face life in jail. I also refer the Attorney-General to the fact that his government acknowledges more than 120 Australian citizens are engaged in armed hostilities against the Australian Defence Force and fighting for Islamic State. His government has identified hundreds of Islamic Australian citizens living on home soil who have assisted Islamic State. Can the Attorney-General explain why those citizens have not been charged with the high crime of treason or sedition?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:40): Senator Lambie, the problem you identify of Australian citizens who are engaged in fighting with ISIL, or Daesh, as people more commonly refer to them today, is indeed a very grave problem. I can tell you, Senator Lambie, and indeed the Senate, that the last figures on which I was briefed by ASIO tell me that the assessment of the current number is 92. That number has grown significantly over recent months.

Those people do commit a crime. I am not going to prejudge any issues but undoubtedly, if you fight in a foreign civil war—particularly if you fight against Australian personnel—you commit a crime against Australian law. The crime, Senator Lambie, is much more specific than the treason and sedition offences in the Criminal Code. Indeed, one of the measures that this Senate passed last year—with your support, Senator Lambie, for which I am grateful—is the foreign fighters bill which, among other things, incorporated some pre-existing provisions from 1979 into the Criminal Code which make it clear that, if you are an Australian citizen and you are engaged in fighting in a foreign civil war, that is an offence against Australian law. People have been prosecuted and convicted of that offence—not just in the Middle East, by the way, but in other theatres as well.

You asked me about the Australians onshore who are engaged in supporting or assisting those people. To facilitate terrorism—to finance terrorism—is also an offence against other provisions of the Criminal Code and again, Senator Lambie, those are much more specific and targeted provisions than the treason and sedition offences you identify. Perhaps your supplementary will give you the opportunity to— (*Time expired*)

Senator LAMBIE (Tasmania) (14:42): Mr President, I ask a supplementary question. I refer the Attorney-General to the fact his government has sufficient evidence to take away the passports and prevent the travel of hundreds of Australian citizens who have tried to assist the Islamic State enemy. If the Attorney-General has enough evidence to take away the passports of Australian citizens who want to assist the Islamic State enemy, can the Attorney-General detail why he has failed to use that evidence to lay charges of treason or sedition?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:42): There are three answers to that, Senator Lambie. First of all, the test for withdrawing a passport is a different test from the test for commencing a prosecution. There must be a reasonable belief held by the foreign minister, who is the minister of the government who cancels passports, and the Attorney-General must advise the Foreign Minister to that effect. The test for a criminal prosecution, of course, is proof beyond reasonable doubt, which is a much higher threshold. Secondly, as I indicated in my answer to your primary question, the relevant offences in the circumstances you have described are much more specific than treason and sedition, and I mentioned what the particular offences would be. Thirdly, Senator Lambie, in our system—except in very rare circumstances—the Attorney-General has no involvement in the decision to initiate a prosecution. That is a matter for the Commonwealth Director of Public Prosecutions.

Senator LAMBIE (Tasmania) (14:43): Mr President, I ask a further supplementary question. I again refer the Attorney-General to division 80 of the Commonwealth Criminal Code Act 1995, which states that if any Australian engages in conduct that assists by any means whatever, with intent to assist, an organisation that is engaged in armed hostilities against the Australian Defence Force, they are guilty of treason or sedition. Which part of 'conduct that assists by any means whatever' does the Attorney-General not understand? It is time he started cleaning up his own backyard first, before he sends troops overseas. (*Time expired*)

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:44): Senator Lambie, if I may say so with respect, I think I do understand those provisions very well; and I hope I also understand very well the more specific provisions which have a direct bearing on the question of foreign fighters to which I referred in my answer to your primary question, because I was involved in the drafting of those provisions myself. So I certainly hope I understand them.

Senator Lambie, you are absolutely right to identify the gravity of these circumstances. You are absolutely right in your acknowledgment by implication that the government has, by the measures that you supported in the Senate last year, acted swiftly and properly to deal with the threat by introducing these provisions and expanding their reach. But, as I said a moment ago, it is not for me; it is for the Commonwealth Director of Public Prosecutions to make these decisions.