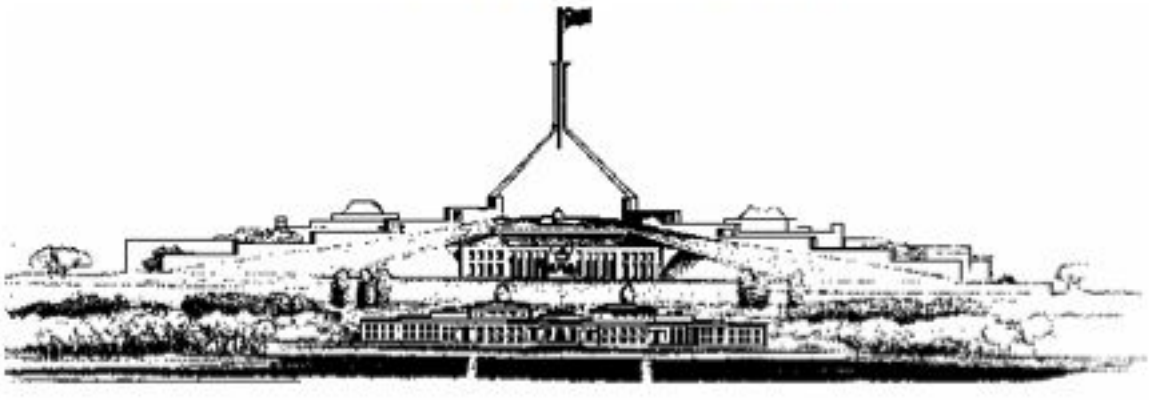
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014

Second Reading

SPEECH

Tuesday, 28 October 2014

BY AUTHORITY OF THE SENATE

SPEECH

Date	Tuesday, 28 October 2014	**Source**	Senate
Page	7998	**Proof**	No
Questioner		**Responder**	
Speaker	Lambie, Sen Jacqui	**Question No.**	

Senator LAMBIE (Tasmania—Deputy Leader and Deputy Whip of the Palmer United Party in the Senate) (18:47): I rise to briefly contribute the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 and acknowledge the sincere, well thought out and robust contributions other members of this chamber from both sides have made to this legislation. I would also like to thank and pay tribute, once again, to the public servants, security and police officers who risk their lives to protect us from our enemies.

I have real concerns about the impact that this legislation will have on the civil rights and individual democratic freedoms of Australian citizens. I understand that those civil rights and freedoms were hard fought for and that members of our ADF shed blood and died for these freedoms. Those freedoms and rights are a legacy and a precious gift of previous generations, which I cherish and reflect on every time I visit the graves and war memorials in Tasmania. So I am very reluctant to vote for legislation which brings about the lessening of these rights and freedoms for Tasmanians.

However, with the recent and unprecedented rise of Islamic extremism; their vile killings, torture and beheadings of innocents; and the Islamic extremists' declaration of war on Australia and other western nations, followed up with coordinated attacks around the world, there is a clear and pressing social and national security need to strengthen the laws that will enable the brave and courageous public servants, security and police officer do their jobs and protect us all from the maniacs and psychopaths who would do us harm for no other reason than that we will not submit to their will and barbarous medieval culture.

I would like to thank the Attorney-General and head of ASIO for their briefing on this legislation and I am glad that they have taken on board my suggestion regarding a shortening of the sunset clause time frame. The management and carriage of these laws must have strong oversight. The government's sunset time period was 10 years; I would have liked to see a review by the parliament every two to three years. The government has agreed to every four years. This is a good outcome for two important reasons: firstly, to ensure that no inefficiencies or misconduct have crept into the administration and delivery of these laws over time; and to respond to the rapidly changing types and levels of threat posed by the terrorists, their allies and their agents.

Our defence experts tell us that we are in for a long fight—it could be 100 years—against the Islamic terrorists, so a shorter period of review than 10 years contained in this bill would be an appropriate amendment to this legislation. In other words, the sunset clause must allow for review every three years. It is also worthwhile to note in the context of this debate that this legislation and its specific measures are a reaction to an aggressive, hostile ideology which has been adopted by brutal Islamic foreigners and their supporters and allies in Australia. If we are going to find a cure for the disease of extremism, we must attack the extremists' ideology and we must root out and expose the extremists supporters who are living among us, who are more than likely sustained by our welfare entitlements.

This legislation is clearly an attempt to regain control over the radical Islamic groups in Australian. The PM could also regain control over the radical Islamic groups in Australia who are freely preaching hate and urging their followers to strengthen their allegiances to foreign powers. This is by introducing new laws which strip them of the right to vote and receive public benefits. It is easy for the PM to order troops to the Middle East and make out that he is tough on terrorism; but as witnessed by an Islamic radical group's recent rally in Western Sydney and their public statements from its leaders, the PM has for a long time turned a blind eye to the real threat of home-grown terrorism in our own backyard.

Mr al-Wahwah, the president of the radical Islamic group Hizb ut-Tahrir—if the media has reported correctly—has made a speech which contains implied threats of violence against the Australian people and has clearly declared his personal allegiance and his group's allegiance to an anti-democratic foreign power. Under section 44 of the constitution he and his group's members would not be allowed to stand for the Australian parliament because of their divided loyalties and obvious allegiances to foreign powers.

Therefore the Prime Minister should introduce new laws which expand the legal principle of non-allegiance to a foreign power found in section 44 of the Constitution, which strips people who are members of groups like Hizb ut-Tahrir of their Australian citizenship and right to vote. I wonder how many of the people at Mr Al-Wahwah's rally in Western Sydney who are advocating for sharia law and loyalty to foreign powers enjoy Australian social services payments, entitlements and democratic freedoms? If they are going to carry on with that sort of rot the first thing we should ensure is that they do not receive any government funds or entitlements, that they do not have the right to vote and that they are deported immediately. Our taxes should be exclusively reserved for people who love Australia, who have undivided loyalties to our nation and who do not have formal or informal allegiances to foreign powers. They should not be used for those whose loyalties are clearly with foreign religious leaders and foreign anti-democratic laws. I will repeat what I have said before: if your loyalties and allegiances to foreign powers are so strong that you want to live under a foreign law and antidemocratic customs then please leave us in peace and get out of Australia.

These laws are dealing with the symptoms of sick, depraved minds driven by perverted ideology. I think there is also an opportunity to introduce new laws based on section 44 of our Constitution, which says that you cannot have 'allegiance, obedience or adherence to a foreign power' and expect to represent the Australian people in this parliament. These new laws could strip people of their Australian citizenship, right to vote, right to receive Australian taxpayers' money and, in some cases, deport or jail those who clearly have allegiance, obedience, or adherence to a hostile foreign power.

After those general comments and overview of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 I now turn to the specific provisions of the bill. Following the passage of this bill, an organisation can be listed as a terrorist organisation if the organisation directly or indirectly counsels, promotes, encourages or urges the doing of a terrorist act. Item 64 of schedule 1 would amend the criteria by which an organisation can be listed as a terrorist organisation under the Criminal Code. Paragraph 102.1(1A) of the Criminal Code will be amended by the addition of the words 'promotes and encourages'.

The control order provisions in division 104 of the Criminal Code allow a range of restrictions to be placed on an individual's liberty for the purpose of preventing terrorist acts. For example, an individual subject to a control order may be required to remain in a specified place at specified times and to wear an electronic monitoring device. They may also be prohibited from being in certain areas or from communicating or associating with specified individuals.

Currently, a senior member of the Australian Federal Police may seek the Attorney-General's consent to request an interim control order from an issuing court if he or she (a) considers on reasonable grounds that the order would substantially assist in preventing a terrorist act; or (b) suspects on reasonable grounds that the person has provided training to, or received training from, a terrorist organisation. The issuing court may then make an interim control order if it is satisfied, on the balance of probabilities, of either of those grounds. Where subsequently confirmed by the issuing court, a control order may last for a maximum of 12 months.

The bill would expand the grounds on which a senior AFP officer may seek the Attorney-General's consent to request an interim control order. It would do so with regard to both grounds (a) and (b) set out above. First, with regard to ground (a), the officer would need only suspect—rather than 'consider'—on reasonable grounds that the order would substantially assist in preventing a terrorist act.

Regular search warrant schemes require the officers executing a warrant to provide a copy of the warrant to the owner or occupier of the premises and allow that person to observe the search. This means that once a search is conducted, suspects are aware of police interest in their activities. This can present difficulties for law enforcement, particularly in the context of investigations into multiple suspects over an extended period.

A submission made to the parliamentary joint committee says:

If members of a terrorist group are alerted to investigator's knowledge of their activities, the success of the law enforcement operation could be jeopardised. For example, a suspect whose premises are searched under the current regime would be notified of police interest in their activities. A suspect could then undertake counter-surveillance measures, change their plans to avoid further detection, relocate their operations, or relocate or destroy evidence of their activities. It would also provide a suspect with the opportunity to notify their associates, who may not yet be known to police, allowing the associates to cease their involvement with the known suspect, destroy evidence or avoid detection in other ways.

As the name suggests, 'delayed notification search warrants' fall between regular search warrant schemes and covert search warrant schemes. Covert search warrant schemes allow searches to be conducted without any notification of the owner or occupier of premises in the same fashion as other covert methods, such as surveillance devices and telecommunications interception. Victoria, Queensland, Western Australia and the Northern Territory provide for covert search warrants for suspected terrorism offences.

Like control orders, preventative detention orders—PDOs—were introduced in the Commonwealth jurisdiction by the Anti-Terrorism Act (No. 2) 2005, following on from the COAG agreement. The purpose of the PDO regime in division 105 of the Criminal Code is to allow a person to be taken into custody for a limited time period in order to either prevent an imminent terrorist act from occurring or preserve evidence of, or in relation to, a recent terrorist act.

A member of the AFP may apply to a senior member of the AFP for a PDO against a person 16 years of age or older, for an initial period of 24 hours. An order extending the period of detention to 48 hours may only be granted by certain members of the judiciary and certain members of the AAT.

In 2005, the PDO regime was reviewed by the Independent National Security Legislation Monitor—the INSLM—and the COAG review committee, both of which recommended the repeal of the provisions. Under the bill, the PDO regime would be retained and amendments made that would make them more accessible. The INSLM made three recommendations for amendments to the PDO regime if it were, against its main recommendation, retained. The bill would implement one of them in full and another in part.

For entering or remaining in a declared area, the bill would create a new offence punishable by 10 years imprisonment which would be made out where a person enters or remains in a declared area. The Minister for Foreign Affairs would be able to declare an area in a foreign country as a declared area where he or she is satisfied that a listed terrorist organisation is engaging in hostile activity in that area. It would be a defence under subsection (3) for the person to show that they entered or remained in the declared area solely for a legitimate purpose. The legislation provides a list of legitimate purposes, such as providing humanitarian aid, making news reports or making bona fide visits to family members.

While the government is not technically reversing the onus of proof, as the prosecution must still prove the elements of the offence beyond reasonable doubt, the offence is framed in such a way that it has essentially the same effect. Criminal liability will be prima facie established wherever a person enters or remains in a declared area. No other physical elements of the offence are required. The government need not establish, for example, that the person travelled to the area for the purpose of engaging in terrorism or some other illegitimate activity. This is problematic because it is that purpose, rather than the mere fact of travel, which renders the conduct an appropriate subject for criminalisation.

The bill would establish a new offence that would be made out where a person advocates the doing of a terrorist act or a terrorism offence and is reckless as to whether another person will engage in that conduct as a result. This offence would be punishable by a maximum of five years imprisonment. To the extent that the proposed offence encompasses genuine cases of incitement—namely, where a person urges or encourages another person to commit a terrorism act or offence and does so intending that the conduct will occur—it is superfluous. By virtue of section 11.4 of the Criminal Code, it is already an offence to incite a terrorist act or a substantive terrorism offence.

Currently, section 102.1(2)(b) of the Criminal Code provides that an organisation may be listed by the Governor-General as a terrorist organisation if it advocates the doing of a terrorist act. An organisation advocates terrorism where it directly or indirectly counsels or urges the doing of a terrorist act; or directly or indirectly provides instruction on the doing of a terrorist act; or directly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of leading a person, regardless of his or her age or any mental impairment that the person might suffer, to engage in a terrorist act. The bill would amend this definition in line with the offence for advocating terrorism so that it also includes the promotion and encouragement of terrorism.

Part 3 of the Foreign Evidence Act 1994 currently provides for the admission of evidence received from foreign countries where the Attorney-General makes a formal request for that material, the evidence has been taken on oath or affirmation, and the material purports to be signed or certified by a judge, magistrate or other officer of the foreign country. As noted by the INSLM, such requirements are not practical where the foreign country

in question does not have the same levels of government administration—for example, because the country is in a state of civil war.

The bill would overcome these limitations by explicitly allowing foreign material to be adduced in terrorism related proceedings. It would give Australian courts the discretion to exclude that material where it would have a substantial adverse effect on the defendant's right to a fair hearing. Furthermore, the material could not be adduced where the court is satisfied that the information was obtained through torture or duress. The safeguards included in the bill relating to the defendant's right to a fair trial and material obtained through torture or duress are positive inclusions.

Currently, section 6 of the Crimes (Foreign Incursions and Recruitment) Act 1978—the foreign incursions act—provides a maximum penalty of 20 years imprisonment where a person enters a foreign state with intent to engage in hostile activity. Hostile activity is defined as including the overthrow of the government, armed hostilities and the unlawful destruction of property belonging to the foreign state. Section 7 provides a maximum penalty of 10 years imprisonment where a person does any act that is preparatory to that substantive offence. The bill would repeal the foreign incursions act and recreate these offences in the Criminal Code with some amendments. First, it would raise the penalty for both offences to a maximum of life imprisonment. It would also expand the definition of hostile activity to include subverting society. It would encompass serious damage to any property, serious interference with any electronic system or serious harm to any person. The section could apply, for example, to a private dispute between individuals where one person seriously damages another person's house and endangers the person's life in doing so. Such conduct might be criminal, but it should not attract a maximum penalty of life imprisonment under the foreign incursion offences.

I note and applaud that, for those persons whose passports have been cancelled or refused or visas have been cancelled under this legislation, the government can end all governments payments they are making to the person. The government is not required to provide reasons for its decision to cease the payments where doing so would require them to release security sensitive information.

In closing I note that changes are being made in passport suspension, emergency visa cancellation and Customs powers, which the Palmer United Party supports. We support this legislation after careful consideration. I end as I began by making the point that the Palmer United Party is very reluctant to support legislation which brings about the lessening of fundamental democratic rights and freedoms for Tasmanians. However, with the recent and unprecedented rise of Islamic extremism, their vile killings, torture and beheadings of innocents, and their declaration of war on Australia and other Western nations, the Palmer United Party is left with no other option but to support this legislation in its entirety.