

The Senate

Legal and Constitutional
Legislation Committee

Provisions of the National Security Information
(Criminal Proceedings) Bill 2004 and the
National Security Information (Criminal
Proceedings) (Consequential Amendments)
Bill 2004

August 2004

© Commonwealth of Australia 2004

ISBN 0 642 71429 0

MEMBERS OF THE LEGISLATION COMMITTEE

Members

Senator Marise Payne, **Chair**, LP, NSW
Senator the Hon. Nick Bolkus, **Deputy Chair**, ALP, SA
Senator Brian Greig, AD, WA*
Senator Joseph Ludwig, ALP, QLD+
Senator Brett Mason, LP, QLD
Senator Nigel Scullion, CLP, NT

Substitute Member

- * Senator Aden Ridgeway, AD, NSW to replace Senator Brian Greig for matters relating to the Indigenous Affairs portfolio
- + Senator Kerry O'Brien, ALP, TAS to replace Senator Joseph Ludwig for matters relating to the Indigenous Affairs portfolio

Participating Members

Senator the Hon. Eric Abetz, LP, TAS	Senator Gary Humphries, LP, ACT
Senator G. Barnett, LP, TAS	Senator Linda Kirk, ALP, SA
Senator Mark Bishop, ALP, WA	Senator Susan Knowles, LP, WA
Senator George Brandis, LP, QLD	Senator Meg Lees, APA, SA
Senator Bob Brown, AG, TAS	Senator Ross Lightfoot, LP, WA
Senator Kim Carr, ALP, VIC	Senator Sue Mackay, ALP, TAS
Senator Grant Chapman, LP, SA	Senator Julian McGauran, NPA, VIC
Senator Alan Eggleston, LP, WA	Senator Jan McLucas, ALP, QLD
Senator Christopher Evans, ALP, WA	Senator Shayne Murphy, IND, TAS
Senator the Hon. John Faulkner, ALP, NSW	Senator Kerry Nettle, AG, NSW
Senator Alan Ferguson, LP, SA	Senator Robert Ray, ALP, VIC
Senator Jeannie Ferris, LP, SA	Senator the Hon. Nick Sherry, ALP, TAS
Senator Brian Harradine, IND, TAS	Senator Ursula Stephens, ALP, NSW
Senator Leonard Harris, PHON, QLD	Senator A. Ridgeway, AD, NSW
	Senator Natasha Stott Despoja, AD, SA
Senator Andrew Bartlett, AD, QLD for matters relating to the Immigration and Multicultural Affairs portfolio.	Senator Tsebin Tchen, LP, VIC
	Senator John Tierney, LP, NSW
	Senator John Watson, LP, TAS

Secretariat

Mr Phillip Bailey	Acting Secretary
Dr Kathleen Dermody	Secretary, Corporations and Financial Services Committee
Ms Julie Dennett	Acting Principal Research Officer
Ms Marina Seminara	Executive Assistant

Suite S1.61 Telephone: (02) 6277 3560 Fax: (02) 6277 5794
Parliament House E-mail: legcon.sen@aph.gov.au

TABLE OF CONTENTS

TABLE OF CONTENTS	v
MEMBERS OF THE LEGISLATION COMMITTEE	iii
RECOMMENDATIONS.....	vii
ABBREVIATIONS	ix
CHAPTER 1	1
INTRODUCTION	1
Background.....	1
Purpose of the Bill	1
Conduct of the inquiry	1
Acknowledgment.....	2
Note on references	2
CHAPTER 2	3
BACKGROUND TO THE PROPOSED LEGISLATION.....	3
Background.....	3
The ALRC's investigation into the use of sensitive information	4
Key provisions of the Bill.....	7
CHAPTER 3	13
KEY ISSUES.....	13
General response to the Bill	13
Definition of national security.....	15
The right to a fair and public trial.....	19
The right to be tried in own presence and to defend in person	22
The right to know the evidence supporting the conviction	26
The right to prepare a defence including the right to call and question witnesses	28

Adequate time to prepare defence	30
Right to a fair hearing in a reasonable time.....	32
Certificate to be considered as conclusive evidence	33
The right to legal assistance of own choosing.....	34
Admissibility of evidence.....	40
Weighing national security against the right to a fair trial	41
Intervention of the Attorney-General	43
Omissions from the Bill.....	45
Conclusion.....	45
ADDITIONAL COMMENTS BY SENATOR BRIAN GREIG ON BEHALF OF THE AUSTRALIAN DEMOCRATS	47
APPENDIX 1	49
SUBMISSIONS RECEIVED.....	49
Correspondence published by the Committee.....	50
APPENDIX 2	51
WITNESSES WHO APPEARED BEFORE THE COMMITTEE	51
Sydney, Monday 5 July 2004	51