

APPENDIX 5

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

Answers to Questions on Notice

Senate Legal and Constitutional Legislation Committee
Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005

PUBLIC HEARING

THURSDAY, 17 NOVEMBER 2005

Questions on notice

Australian Security Intelligence Organisation

Question 1 (p.61, *Proof Hansard*)

Senator NETTLE—I presume you asked for those three additional powers.

Mr O’Sullivan—Yes.

Senator NETTLE—When did you ask for those?

Mr O’Sullivan—During the process I described to Senator Brandis.

Senator NETTLE—Can you remind me what the date of that was?

Mr O’Sullivan—I do not have a specific date, but it was after the government decided to consider whether it would strengthen the framework it set up under the departmental committee, and as part of that process we made those suggestions.

Senator NETTLE—Can you take that on notice and come back to us with a date?

Mr O’Sullivan—I can, but I do not know that there was a specific date. We can tell you the date when it was finally put in formal terms.

Senator NETTLE—That would be helpful, if you could supply that.

Mr O’Sullivan—Sure.

Answer: *These amendments were first raised with the Attorney-General’s Department in July 2005 when it was consolidating proposals for new legislation following the London bombings. ASIO outlined the proposals in formal terms on 27 July 2005.*

Question 2 (p.63, *Proof Hansard*)

Senator LUDWIG—Is the number of warrants that you have sought available in your annual report?

Mr O’Sullivan—Yes, it is in the annual report.

Senator LUDWIG—Is the annual report available?

Mr O’Sullivan—Yes, it is.

Senator LUDWIG—Does it also indicate multiple warrants that have been sought for the same or similar issue?

Mr O’Sullivan—I would have to check on what is available. I will take it on notice.

Senator LUDWIG—What I am trying to establish is whether or not a warrant has been sought for a particular reason, you have not had sufficient time to undertake the work that you might otherwise have wanted to undertake during that warrant and that has necessitated a second warrant being requested because of the expiration of the time, which might provide a reason for why you require a tripling of the time.

Mr O’Sullivan—I see. The short answer to your question is: yes, it is the case. I do not know whether this information is available in the annual report or not, but in any case that expiry of warrants has led to the renewal of warrants which have then been renewed again and so forth. So there is no question that there has been this process of administrative extension.

Senator LUDWIG—If that information is available to the committee, it might be helpful in explaining the tripling of the time limit for the warrants.

Mr O’Sullivan—I will take that on notice.

Answer: *Details of the number of warrants sought by ASIO are reported in ASIO’s classified Annual Report. Copies of this report are provided to the National Security Committee of Cabinet. A copy is also made available to the Leader of the Opposition under section 94 (2) of the ASIO Act.*

ASIO’s unclassified Report to Parliament 2004-05 (page 40) notes that ‘warrants are issued for specified limited time periods. At the expiry of each warrant ASIO must report to the Attorney-General on the extent to which the operation helped ASIO carry out its functions. The Inspector-General of Intelligence and Security has access to all warrant material and regularly monitors the process.

In 2004-05 the Attorney-General approved all warrant requests submitted to him.’

Under section 94 (1A) of the ASIO Act ASIO is required to report publicly on the number of questioning and detention warrants it sought and obtained. Details of other warrants sought and obtained by ASIO are not made publicly available for reasons of national security.

In terms of the extension of the duration of the warrants the Committee may wish to note the following:

Search Warrants: The amendments extend the maximum period for which a search warrant can be in force from 28 days to 90 days.

- *This will reduce the need for fresh warrants to be sought in unavoidable situations where it has not been practicable or possible to execute the warrant within 28 days.*
- *It is important to note that, as is currently the case, the Minister will continue to be able to evoke the warrant before the period has expired, and the Director-General will continue to be able to cease action under the warrant to be discontinued (under section 30) if the intelligence case changes.*

Inspection of postal and delivery service articles warrants: The amendments extend the maximum period for which inspection of postal articles warrants and inspection of delivery service articles warrants can be in force from 90 days to six months.

- *The extension of these periods to six months will harmonise these warrant periods with the time periods of other special power warrants, such as those for listening devices and telecommunications interception warrants.*
- *It is important to note that, as is currently the case, the Minister will continue to be able to revoke the warrants before the period has expired, and the Director-General will continue to be able to cause action under the warrants to be discontinued (under section 30) if the intelligence case changes.*

Foreign intelligence gathering warrant: The amendments extend the maximum time periods for foreign intelligence gathering warrants under section 27A so that the periods are consistent with those applying to the relevant activity.

- *The period for which search warrants are valid is extended from 28 days to 90 days, and the period for which inspection of postal and delivery service articles warrants are valid from 90 days to six months.*
- *Gathering information for foreign intelligence gathering warrants under section 27A is linked to the time period specified for activities available to ASIO under these other types of warrants.*
- *Accordingly, the amendments extend the time period for search activities conducted under foreign intelligence warrants to 90 days, and extend the time period for postal and delivery service article inspection activities to six months, so that they are consistent with the periods those types of warrants would be valid for.*

Question 3 (p.64, Proof Hansard)

Legal Adviser—That is right. The intention is that the items can only be withheld for a longer period than the time needed to inspect and examine if there is a security reason for holding onto them.

Senator LUDWIG—Could you have a look at it to see whether the alternative is not returning the item at all? It is reasonably open from the reading of that section. If that is not the intention, could you have a look at whether or not it does require an amendment for it to be clarified?

Legal Adviser—That is perhaps an issue that we can take up with the Attorney-General's Department. That is not what is intended.

CHAIR—Just to clarify—are you reading section 4(24) in schedule 10, Senator Ludwig?

Senator LUDWIG—Yes.

Answer: *As indicated to Senator Ludwig, ASIO has discussed this issue with the Attorney-General's Department. The Department considers that the amendment would only authorise ASIO to retain an item removed under a search warrant, beyond the period referred to in sections 25(4)(d) and 25(4A)(c), if the return of the item would be prejudicial to security. ASIO would be required to return the item when it was no longer the case that returning the item would be prejudicial to security.*

