

ADDITIONAL COMMENTS BY LIBERAL SENATORS

1.1 Liberal senators agree with Recommendations 1 to 3 and 5 to 6 of the committee's report. However, Liberal senators do not agree with the committee's conclusions regarding the investigative dead time proposed in subsection 23DB(11) of the National Security Legislation Amendment Bill 2010.

1.2 Evidence presented to the committee confirmed that there is general support for limiting the amount of time a person can be held in pre-charge detention. The evidence also demonstrated fundamental disagreement regarding the form and extent of that limitation, the latter of which was essentially based upon the weighting assigned to national security and counter-terrorism interests as opposed to individual rights.

1.3 Liberal senators are mindful of the nature and purpose of the bill and, in this instance, prefer the evidence received from law enforcement agencies, which are best placed to determine what legislative support they currently require for the effective investigation of security and terrorism offences.

1.4 At the public hearing, the Australian Federal Police (AFP) described its operational requirements in detail and in context:

Terrorism presents a high risk to public safety and terrorism investigations are often undertaken with minimal lead time or prior knowledge. These investigations must be thorough and broad ranging. They often involve multiple suspects, the execution of multiple search warrants, considerable forensic analysis and significant inquiries and liaising with Australian and overseas partners. It is essential in this pre-charge detention that there is sufficient time for us to conduct those inquiries to ensure the proper interviewing and charging of the arrested person and any associates, the protection of the public and the prevention of terrorist acts or potential further terrorist acts should an act have already occurred.¹

1.5 The AFP supported the seven day cap proposed in subsection 23DB(11) and told the committee that, in the AFP's view, the proposed provision strikes the appropriate balance between the rights of an arrested person and the needs of law enforcement.²

1 Commander Scott Lee, Australian Federal Police, *Committee Hansard*, 21 May 2010, p. 46.

2 Commander Scott Lee, Australian Federal Police, *Committee Hansard*, 21 May 2010, p. 46.

1.6 In its evidence, the Attorney-General's Department (Department) affirmed that its position in drafting the bill was to strike such a balance.³ However, a representative also noted the necessity for a flexible and appropriate time limit within the dead time provisions:

[I]f there is a set cap that is set too low...law enforcement officials may feel pressured to do things more quickly and perhaps infringe on some of those things that the suspect needs in order to keep [the] investigation done within the time frame that [officers] have.⁴

1.7 In the Department's view, the AFP's evidence justified a seven day cap. Officers also noted the existing and further provision of legislative safeguards designed to protect the rights of an individual in pre-charge detention.⁵

1.8 The AFP told the committee that:

[The Haneef] experience shows that specified time provisions provide police with a flexible framework and sufficient oversight for pre-charge detention where the investigation is undertaken with limited lead in time.⁶

1.9 Similarly, the Australian Crime Commission supported a seven day cap on investigative dead time as proposed in the bill:

In the absence of experience to suggest that the necessary information gathering tasks would invariably be capable for completion in a shorter period, the A[ustralian]C[rime]C[ommission] considers it would not be prudent at the present time to impose a shorter limit.⁷

1.10 Liberal senators consider it important that the Australian Government enables and facilitates national security and counter-terrorism investigations. The evidence from law enforcement agencies states that they require investigative dead time provisions which are both flexible and allow for a maximum of seven days pre-charge detention. If the bill fails to satisfy these requirements, Liberal senators understand that the investigation process might be jeopardised.

1.11 Liberal senators therefore support proposed subsection 23DB(11) of the bill and do not agree with Recommendation 4 in the committee report.

3 Ms Annette Willing, Attorney-General's Department, *Committee Hansard*, 21 May 2010, p. 48.

4 Ms Annette Willing, Attorney-General's Department, *Committee Hansard*, 21 May 2010, p. 52.

5 Answer to questions on notice, received 3 June 2010, p. 4.

6 Answer to questions on notice, received 4 June 2010, p. 2.

7 Answer to questions on notice, received 1 June 2010, p. 1.

Senator Guy Barnett
Deputy Chair

Senator Stephen Parry