

House of Assembly—No 99

As laid on the table and read a first time, 21 February 2007

South Australia

**Terrorism (Preventative Detention)
(Miscellaneous) Amendment Bill 2007**

A BILL FOR

An Act to amend the *Terrorism (Preventative Detention) Act 2005*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Terrorism (Preventative Detention) Act 2005*

- 4 Amendment of section 3—Interpretation
 - 5 Amendment of section 9—Application for preventative detention order
 - 6 Amendment of section 10—Making of preventative detention order
 - 7 Amendment of section 12—Extension of preventative detention order
 - 8 Insertion of section 12A
 - 12A Basis for applying for, and making, prohibited contact orders
 - 9 Amendment of section 13—Prohibited contact order (person in relation to whom preventative detention order is being sought)
 - 10 Amendment of section 14—Prohibited contact order (person in relation to whom preventative detention order is already in force)
 - 11 Amendment of section 15—Revocation of preventative detention order or prohibited contact order
 - 12 Amendment of section 26—Warrant under section 34E of the *Australian Security Intelligence Organisation Act 1979*
 - 13 Amendment of section 27—Release of person from preventative detention
 - 14 Amendment of section 29—Effect of preventative detention order to be explained to person detained
 - 15 Amendment of section 32—Copy of preventative detention order
 - 16 Insertion of section 33A
 - 33A Detention of persons under 18
 - 17 Amendment of section 37—Contacting lawyer
 - 18 Amendment of section 41—Disclosure offences
 - 19 Amendment of section 42—Questioning of person prohibited while person is detained
 - 20 Amendment of section 45—Offences of contravening safeguards
 - 21 Amendment of section 48—Annual report
 - 22 Insertion of section 51A
 - 51A Evidentiary provision
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Terrorism (Preventative Detention) (Miscellaneous) Amendment Act 2007*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Terrorism (Preventative Detention) Act 2005*

4—Amendment of section 3—Interpretation

Section 3(1)—after definition of *national security* insert:

nominated senior police officer for an order—see section 19;

5—Amendment of section 9—Application for preventative detention order

(1) Section 9(2)—after paragraph (g) insert:

and

(h) set out a summary of the grounds on which the police officer considers that the order should be made.

(2) Section 9—after subsection (2) insert:

(2a) To avoid doubt, subsection (2)(h) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.

6—Amendment of section 10—Making of preventative detention order

(1) Section 10(6)—after paragraph (d) insert:

and

(e) a summary of the grounds on which the order is made.

(2) Section 10—after subsection (6) insert:

(6a) To avoid doubt, subsection (6)(e) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.

(3) Section 10—after subsection (7) insert:

(8) The nominated senior police officer for the order must—

(a) notify the Police Complaints Authority in writing of the making of the order; and

(b) give the Police Complaints Authority a copy of the order; and

(c) if the person in relation to whom the order is made is taken into custody under the order—notify the Police Complaints Authority in writing that the person has been taken into custody under the order.

7—Amendment of section 12—Extension of preventative detention order

(1) Section 12—after subsection (1) insert:

(1a) Before making an application, the police officer must—

- (a) notify the person of the proposed application; and
(b) inform the person that, when the proposed application is made, any material that the person gives the police officer in relation to the proposed application will be put before the issuing authority to whom the application is made.

(2) Section 12(2)—after paragraph (c) insert:

and

- (d) set out a summary of the grounds on which the police officer considers that the period for which the order is to be in force in relation to the person should be extended or further extended.

(3) Section 12—after subsection (2) insert:

(2a) To avoid doubt, subsection (2)(d) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.

(4) Section 12—after subsection (3) insert:

(3a) The police officer must put before the issuing authority all material that the person has given the police officer in relation to the application.

(5) Section 12—after subsection (6) insert:

(7) The nominated senior police officer for the order must—

- (a) notify the Police Complaints Authority in writing of the extension or further extension; and
(b) give the Police Complaints Authority a copy of the extension or further extension.

8—Insertion of section 12A

After section 12 insert:

12A—Basis for applying for, and making, prohibited contact orders

- (1) A police officer may apply for a prohibited contact order in relation to a person only if the police officer meets the requirements of subsection (3).
(2) An issuing authority may make a prohibited contact order in relation to the detention of a person under a preventative detention order only if the issuing authority meets the requirements of subsection (3).

- 5
- (3) A person meets the requirements of this subsection if the person is satisfied that making the prohibited contact order is reasonably necessary—
- (a) to avoid a risk to action being taken to prevent a terrorist act occurring; or
 - (b) to prevent serious harm to a person; or
 - (c) to preserve evidence of, or relating to, a terrorist act; or
 - (d) to prevent interference with the gathering of information about—
 - 10 (i) a terrorist act; or
 - (ii) the preparation for, or the planning of, a terrorist act; or
 - (e) to avoid a risk to—
 - 15 (i) the arrest of a person who is suspected of having committed an offence against this Part; or
 - (ii) the taking into custody of a person in relation to whom a preventative detention order is in force, or in relation to whom a preventative detention order is likely to be made; or
 - 20 (iii) the service on a person of a control order under Part 5.3 of the *Criminal Code* of the Commonwealth.
- (4) An issuing authority may refuse to make a prohibited contact order unless the police officer applying for the order gives the issuing authority further information that the issuing authority requests concerning the grounds on which the order is sought.
- 25

9—Amendment of section 13—Prohibited contact order (person in relation to whom preventative detention order is being sought)

- (1) Section 13(4)—delete the subsection and substitute:

- 30
- (4) If the issuing authority makes the preventative detention order, the issuing authority may make a prohibited contact order that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.

Note—

35 Section 12A sets out the basis on which the order may be made.

- (2) Section 13—after subsection (5) insert:

- (6) The nominated senior police officer for the preventative detention order must—
- 40 (a) notify the Police Complaints Authority in writing of the prohibited contact order; and
 - (b) give the Police Complaints Authority a copy of the order.

10—Amendment of section 14—Prohibited contact order (person in relation to whom preventative detention order is already in force)

(1) Section 14(4)—delete subsection (4) and substitute:

(4) The issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.

Note—

Section 12A sets out the basis on which the order may be made.

(2) Section 14—after subsection (5) insert:

(6) The nominated senior police officer for the preventative detention order must—

(a) notify the Police Complaints Authority in writing of the prohibited contact order; and

(b) give the Police Complaints Authority a copy of the order.

11—Amendment of section 15—Revocation of preventative detention order or prohibited contact order

Section 15—after subsection (4) insert:

(5) A person being detained under a preventative detention order may make representations to the nominated senior police officer for the order with a view to having the order revoked.

(6) The nominated senior police officer for the preventative detention order must notify the Police Complaints Authority in writing of the revocation of the order or of a prohibited contact order in relation to the person's detention under the preventative detention order.

12—Amendment of section 26—Warrant under section 34E of the *Australian Security Intelligence Organisation Act 1979*

(1) Section 26(1)(b)—delete "section 34D" and substitute:

section 34E

(2) Section 26(4)(a)—after "authority" insert:

(within the meaning of Division 3 of Part 3 of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth)

13—Amendment of section 27—Release of person from preventative detention

Section 27(3)(a)—delete "section 34D" and substitute:

section 34E

14—Amendment of section 29—Effect of preventative detention order to be explained to person detained

(1) Section 29(2)—after paragraph (d) insert:

(da) the person's entitlement to make representations to the nominated senior police officer in relation to the order with a view to having the order revoked; and

(2) Section 29—after subsection (2) insert:

(2a) Without limiting subsection (2)(d), the police officer detaining the person under the order must inform the person about the persons that he or she may contact under section 35 or 39.

15—Amendment of section 32—Copy of preventative detention order

(1) Section 32(1)—delete paragraphs (a) and (b) and substitute:

a copy of the order

(2) Section 32(2)—delete the subsection

(3) Section 32(4)(b)—delete paragraph (b)

(4) Section 32(5), (6) and (7)—delete ", the summary" wherever occurring

16—Insertion of section 33A

After section 33 insert:

33A—Detention of persons under 18

(1) Subject to subsection (2), the police officer detaining a person who is under 18 years of age under a preventative detention order must ensure that the person is not detained together with persons who are 18 years of age or older.

Note—

A contravention of this subsection may be an offence under section 45.

(2) Subsection (1) does not apply if a senior police officer approves the person being detained together with persons who are 18 years of age or older.

(3) The senior police officer may give an approval under subsection (2) only if there are exceptional circumstances justifying the giving of the approval.

(4) An approval under subsection (2) must—

(a) be given in writing; and

(b) set out the exceptional circumstances that justify the giving of the approval.

17—Amendment of section 37—Contacting lawyer

(1) Section 37—after subsection (3) insert:

(3a) If the police officer who is detaining the person under the preventative detention order has reasonable grounds to believe that—

- 5 (a) the person is unable to communicate with reasonable fluency in the English language; and
(b) the person may have difficulties in choosing or contacting a lawyer because of that inability,

10 the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

(2) Section 37(4)—after "subsection (3)" insert:

or (3A)

18—Amendment of section 41—Disclosure offences

15 (1) Section 41(3)(c)—delete paragraph (c) and substitute:

(c) the other person is not a person the detainee is entitled to have contact with under section 39; and

(2) Section 41—after subsection (4) insert:

(4a) A person (the *parent/guardian*) commits an offence if—

- 20 (a) the parent/guardian is a parent or guardian of a person who is being detained under a preventative detention order (the *detainee*); and
(b) the detainee has contact with the parent/guardian under section 39; and
25 (c) while the detainee is being detained under the order, the parent/guardian discloses information of the kind referred to in subsection (3)(b) to another parent or guardian of the detainee (the *other parent/guardian*); and
(d) when the disclosure is made, the detainee has not had
30 contact with the other parent/guardian under section 39 while being detained under the order; and
(e) the parent/guardian does not, before making the disclosure, inform the nominated senior police officer for the order that the parent/guardian is proposing to disclose information of that kind to the other parent/guardian.

Maximum penalty: Imprisonment for 5 years.

(4b) If—

- 40 (a) a person (the *parent/guardian*) is a parent or guardian of a person being detained under a preventative detention order (the *detainee*); and

- (b) the parent/guardian informs the nominated senior police officer for the order that the parent/guardian proposes to disclose information of the kind referred to in subsection (3)(b) to another parent or guardian of the detainee (the *other parent/guardian*),

that nominated senior police officer may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 39.

Note—

The parent/guardian may commit an offence against subsection (2) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 39 and the parent/guardian does disclose information of that kind to the other parent/guardian. This is because of the operation of subsection (3)(c).

19—Amendment of section 42—Questioning of person prohibited while person is detained

Section 42—after its presents contents (now to be designated as subsection (1)) insert:

- (2) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that—
- (a) a video recording is made of the questioning if it is practicable to do so; or
- (b) an audio recording is made of the questioning if it is not practicable for a video recording to be made of the questioning.

Note—

A contravention of this subsection may be an offence under section 45.

- (3) Subsection (2) does not apply if—
- (a) the questioning occurs to—
- (i) ensure the safety and well being of the person being detained; or
- (ii) determine whether the person is the person specified in the order; and
- (b) complying with subsection (2) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.
- (4) A recording made under subsection (2) must be kept for the period of 12 months after the recording is made.

- 5
- (5) As soon as practicable after a recording is made under subsection (2), the police officer who is detaining the person must give the person a written statement of the person's right to have the videotape or audiotape played over to the person or a lawyer acting for the person in a capacity referred to in section 37 (or both).
- (6) Arrangements must be made, at the request of a person being detained under a preventative detention order or a person who was so detained, for the playing of the videotape or audiotape at a reasonable time and place to be nominated by a police officer.
- 10
- (7) A person being detained under a preventative detention order or a person who has been so detained must be provided, on request and on payment of the fee fixed by the Minister, with—
- (a) an audiotape of the soundtrack of a videotape recording made under subsection (2); or
- 15
- (b) a copy of an audiotape recording made under subsection (2).
- (8) A request under subsection (6) or (7) must be made within 12 months after the recording is made.
- (9) A person must not play to another person a videotape or audiotape containing questioning recorded under subsection (2) except if the videotape or audiotape is played—
- 20
- (a) for purposes related to the investigation of a complaint made to the Police Complaints Authority; or
- (b) for the purposes of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the questioning is relevant; or
- 25
- (c) with the permission of a court before which the videotape or audiotape has been tendered in evidence.

Note—

A contravention of this subsection may be an offence under section 45.

20—Amendment of section 45—Offences of contravening safeguards

- (1) Section 45(b)—after subparagraph (iii) insert:

(iiia) section 33A(1); or

- (2) Section 45(b)(iv)—after "section 42" insert:

(1), (2), (5) or (9)

21—Amendment of section 48—Annual report

Section 48(2)—after paragraph (d) insert:

- (e) the number of preventative detention orders, and the number of prohibited contact orders, that a court has found not to have been validly made.

22—Insertion of section 51A

After section 51 insert:

51A—Evidentiary provision

- 5
- (1) A certificate issued by an issuing authority certifying as to the making, terms or revocation of a preventative detention order or prohibited contact order is to be accepted in any legal proceedings as conclusive evidence of the matters so certified.
- 10
- (2) An apparently genuine document purporting to be a certificate of the issuing authority under subsection (1) is to be accepted in legal proceedings as such a certificate in the absence of proof to the contrary.