

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. 87

Senator Barnett asked the following question at the hearing on 20 October 2008:

The AFP perform an important role in counter-terrorism in Australia. Government support for this role encompasses not only pecuniary support but also legislative support through the drafting of acts and legislation outlining the powers available to officers conducting terror investigations.

- a) Under the preventative detention powers available to the AFP, investigators have the power to detain suspects for up to 14 days, but are prohibited from asking questions relevant to the investigation. Would the AFP prefer to have the legislative ability to question suspects held under preventative detention, or the release and re-arrest under Part 1C of the Crimes Act?
- b) In the event of a major terrorist attack, under part 1C of the Crimes Act, investigators have 48 hours to interview suspects. Do you feel that this amount of time is sufficient?
- c) If so, the UK allows preventative detention up to 28 days. Why is 48 hours sufficient in Australia, if 28 days is deemed necessary in the UK?
- d) Obviously inquiries are still ongoing, but are there any legislative changes that the AFP believe are particularly important?

The answer to the honourable senator's question is as follows:

a) Commonwealth Preventative Detention Orders (PDO) legislation only allows for the preventative detention of subjects for up to 48 hours. State and Territory PDO legislation allows for up to 14 days detention. Except for the ACT, the AFP is not authorised to apply for preventative detention orders under State and Territory legislation. However, the Commonwealth legislation is designed to complement and correspond with State and Territory PDO laws.

Under the *Criminal Code Act 1995*, the AFP is only able to question the subject of a PDO to determine that they are the person specified in the order, to ensure their safety and well being and to enable the AFP to comply with the requirements of the preventative detention provisions of the Code. The AFP is also able to release a subject from preventative detention for questioning under Part 1C of the *Crimes Act 1914*, should the person voluntarily agree to answer questions.

b) The maximum amount of the questioning time (subject to voluntary agreement) available following arrest for a terrorism offence under the *Crimes Act 1914*, is up to 24 hours (referred to as the 'investigation period' under the Act). This investigation period is comprised of an initial period of up to four hours, with an additional 20 hours of extensions available by application to a judicial officer. This period does not include meal or rest breaks, travelling time or time spent by the person consulting with a legal practitioner or family member which is considered as 'downtime'. In addition there is a further period of downtime referred to as 'specified time' available for terrorism offences which has the effect of suspending questioning of the detained person to allow investigators to conduct specific inquiries related to the investigation, such as obtaining material

from overseas jurisdictions. The specified time applications are subject to judicial scrutiny and approval. Specified time is not included in the calculation of the questioning period.

Specified time provisions have been used once in Australia for terrorism offences.

c) The relevant provisions applicable in the United Kingdom have been implemented to suit their domestic agencies' investigative requirements as they have deemed appropriate.

Comparisons with the United Kingdom regime can be problematic as the United Kingdom approach essentially combines the powers available to the AFP for preventative detention and for the questioning of persons arrested for terrorist offences.

d) The AFP regularly reviews the adequacy of the legal framework for all of its functions. Where the AFP identifies issues with specific legislation, the issues are raised with the relevant Department responsible for the administration of that legislation. The AFP then works with that Department to seek policy approval from Government for an amendment.