

IN CONFIDENCE

House of Representatives

Supplementary Order Paper

Wednesday, 23 October 2019

Terrorism Suppression (Control Orders) Bill

Proposed amendments

Hon Andrew Little, in Committee, to move the following amendments:

New clause 6A

After *clause 6* (page 5, line 13), insert:

- 6A Duty to have regard to specified aspects of evidence relied on**
- (1) In determining whether evidence establishes or helps to establish compliance with **section 6**, the court must have regard to—
 - (a) the source of that evidence; and
 - (b) the validity, authenticity, and reliability of that evidence.
 - (2) The **subsection (1)** duty also applies in respect of a determination of the validity, authenticity, and reliability of any conviction or other foreign country action at issue in terms of **section 6(1)(c), (d), or (e)**.
 - (3) This section does not limit or affect any other rules of law relating to the admission or use of evidence.

Clause 11(2)(a)

In *clause 11(2)(a)*, before “risk” (page 6, line 24), insert “real”.

Clause 14

In *clause 14(1)(b)*, before “risks” (page 8, line 10), insert “real”.

In *clause 14(2)(b)(ii)*, before “risks” (page 8, line 20), insert “real”.

Clause 16

In *clause 16(c)*, before “risk” in each place (page 9, lines 33 and 34), insert “real”.

Clause 19(1)(a)

In *clause 19(1)(a)*, before “risks” (page 11, line 19), insert “real”.

New clause 35

After *clause 34* (after page 17, line 29), insert:

35 Additional requirements for decisions that supporting information is not disclosable

- (1) This section applies when the court is considering making under other relevant law any order, direction, or other decision to the effect that any information supporting any application made under this Act is not disclosable to, or to any person acting for,—
 - (a) a person who is or may be a relevant person; or
 - (b) any other non-Crown party.
- (2) The court, when considering making a decision of that kind, must—
 - (a) have regard to whether the interests or factors supporting a decision of that kind are or include a real risk to any identifiable person or people; and
 - (b) request the Solicitor-General to appoint a Special Advocate as a counsel assisting the court under rule 10.22 of the High Court Rules 2016; and
 - (c) empower a person appointed under **paragraph (b)** to act in the interests of the person who is or may be a relevant person, and to present arguments on the relevance and reliability of the supporting information; and
 - (d) allow the person appointed under **paragraph (b)** to receive instructions from any person acting for the person who is or may be a relevant person.

Explanatory note

This Supplementary Order Paper sets out amendments to the Terrorism Suppression (Control Orders) Bill.

New clause 6A(1) requires the court, in determining whether evidence establishes or helps to establish compliance with *clause 6*, to have regard to—

- the source of that evidence; and
- the validity, authenticity, and reliability of that evidence.

New clause 6A(2) ensures that the *new clause 6A(1)* duty also applies in respect of a determination of the validity, authenticity, and reliability of any conviction or other foreign country action at issue in terms of *clause 6(1)(c), (d), or (e)*.

New clause 6A(3) ensures that *new clause 6A* does not limit or affect any other rules of law relating to the admission or use of evidence.

Clause 11(2)(a) is amended to make it clear that the court may make a control order only if satisfied that the relevant person poses a *real* risk of engaging in terrorism-related activities in a country (*emphasis added*). Similar amendments are made to references to any specified risk or risks in *clauses 14, 16, and 19*.

New clause 35 imposes additional requirements for decisions that supporting information is not disclosable. *New clause 35* applies when the court is considering making under other relevant law a decision to the effect that any information supporting any application made under the Bill is not disclosable to, or to any person acting for, a person who is or may be a relevant person, or any other non-Crown party. *New clause 35* requires the court, when considering making a decision of that kind, to—

- have regard to whether the interests or factors supporting a decision of that kind are or include a real risk to any identifiable person or people; and
- request the Solicitor General to appoint a Special Advocate as a counsel assisting the court under rule 10.22 of the High Court Rules 2016; and
- empower a person appointed to act in the interests of the person who is or may be a relevant person, and to present arguments on the relevance and reliability of the supporting information; and
- allow the person appointed to receive instructions from any person acting for the person who is or may be a relevant person.