

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House, Canberra ACT 2600

Via email to: pjcis@aph.gov.au

1st September 2014

Dear Committee Secretary,

**Re: Question on Notice arising from testimony to the Inquiry into the National Security
Legislation Amendment Bill (No. 1) 2014**

Further to the testimony given to the Committee on 18th August 2014, I would like to submit the following answer to a Question taken on Notice.

Senator Fawcett raised a concern with a statement in EFA's submission. This statement was:

It is highly inappropriate that ASIS should be authorised to perform acts without a warrant that would require a warrant for ASIO to perform them in Australia.

The Senator rejected this statement and characterised the *Bill* this way:

What is being proposed is that ASIS can do exactly what ASIO can do overseas, which is sitting around a coffee table with someone who wants to talk to them about information. ASIO can currently do that in Australia or overseas without a warrant. What ASIS is asking for is the same ability. I am just not clear as to why you think that extends to intercepting or some technical gathering of data, because that is specifically precluded.

EFA has reviewed the relevant section of the Bill and determined that both of these quoted statements are incorrect.

EFA's statement in its submission is based on a misreading of Section 13D, which in fact says the opposite:

13D Certain acts not permitted

If ASIO could not undertake a particular act in at least one State or Territory without it being authorised by warrant under Division 2 of Part III of the Australian Security Intelligence Organisation Act 1979 or under Part 2-2 of the Telecommunications (Interception and Access) Act 1979, this Division does not allow ASIS to undertake the act.

This, however, does not preclude the collection of data under other areas of the aforementioned Acts. Section 13D above refers specifically to Part 2 of the *Telecommunications (Interception and Access) Act*. We know that ASIO is currently permitted to access so-called "telecommunications



data” without a warrant, which is regulated by Part 4 of the *TIA Act*. Furthermore they are exempt from reporting the number of data requests made in IGIS’ annual public report.

As EFA sees it, the door is open for ASIS to collect telecommunications data about Australians, which is highly concerning. A very similar situation has been playing out in the United States, where Executive Order 12333 has enabled the NSA, ostensibly a foreign surveillance agency, to collect data and communications about US citizens in massive quantities. Officials define words such as “target” in unconventional ways in an attempt to characterise this kind of collection as something other than surveillance.

If the purpose of Section 13B is truly as Senator Fawcett described it, EFA would urge the committee to ensure that collection of telecommunications data (“metadata”) of Australians is expressly prohibited.

EFA strongly recommends that in order to maintain proportionality in Australia’s national security laws, and prevent a US-style abuse of power, the Committee sufficiently address the above concern.

Yours sincerely,

Jon Lawrence
Executive Officer