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# ASIO submission to the Parliamentary Joint Committee on Intelligence and Security

**Review of the ASIO Amendment Bill (No. 2) 2025**

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Securing Australia—protecting its people

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## Introduction

1. The Australian Security Intelligence Organisation (ASIO) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) review of the Australian Security Intelligence Organisation Amendment Bill (No. 2) 2025 (the Bill).
2. The submission outlines the value of ASIO's compulsory questioning warrant framework to effectively investigate significant threats to Australia's security, ASIO's position on the proposed amendments within the Bill, and how the Bill ensures ASIO's powers remain reasonable, necessary and proportionate in the current and future security environment.
3. ASIO also made a submission to the PJCIS review of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* last year, which lapsed with the end of the 47th Parliament. Acknowledging the PJCIS intends to consider the submissions and oral evidence that were previously provided to the lapsed review, this submission provides necessary updates to ASIO's position on the matters under consideration as well as new elements of the Bill.
4. ASIO's purpose is to protect Australia and Australians from threats to their security as defined in section 4 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act). ASIO achieves its purpose by obtaining, correlating, evaluating and communicating intelligence relevant to security.
5. The compulsory questioning powers framework provides ASIO with a unique and critical tool for investigating security threats. Consistent with the *Guidelines to be observed by the Australian Security Intelligence Organisation in the performance of its functions and the exercise of its powers* (the Guidelines), ASIO applies, where possible, the least intrusive investigative methods first, and only requests a compulsory questioning warrant if it is reasonable, necessary and proportionate to the threat. ASIO's judicious use of compulsory questioning warrants over the last two decades demonstrates ASIO's application of these principles. The sparing use of ASIO's compulsory questioning powers does not indicate a lack of utility, but rather that these are specific, carefully targeted powers, and that ASIO only uses them when less intrusive methods have been exhausted or would have been ineffective.

## Part 1: Current and Predicted Threat Environment

6. Australia is confronted by multifaceted, merging, intersecting, concurrent and cascading threats, being driven by the convergence of major geopolitical, economic, social and security challenges. Australia's already complex, challenging and changing security environment is becoming more dynamic, more diverse and more degraded.
  - Dynamic, because we are confronting an increasing number of threats and ASIO assesses Australia is more likely to have more security surprises in the second half of the 2020s than in the first half. Diverse, because threats are intersecting and boundaries are blurring – for example, some nation states are using criminal proxies to conduct foreign interference, espionage and politically motivated violence. And degraded, because authoritarian regimes are more willing to engage in reckless, high-harm activities.
7. The most confronting thing about the security environment – the prevailing security environment and the future security environment – is there is no single security concern. The security environment is presenting an unprecedented number of challenges across ASIO's heads of security, and an unprecedented level of cumulative harm.
  - Espionage and foreign interference are at extreme and unprecedented levels. More Australians are being targeted for espionage and foreign interference than at any point in Australia's history. A new iteration of great power competition is driving a relentless hunger for strategic advantage and an insatiable appetite for inside information. The Australian Institute of Criminology, in partnership with ASIO, has calculated the cost of espionage to Australia in 2023-24 was \$12.5 billion<sup>1</sup>, although both the Institute and ASIO believe this is a significant underestimate. Multiple nations are using espionage and foreign interference

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<sup>1</sup> *The Cost of Espionage*, prepared by the Australian Institute of Criminology for ASIO, July 2025.

to advance their interests and undermine Australia. ASIO anticipates these threats will only intensify further.

- Politically motivated violence is expected to remain an elevated concern. In 2024, ASIO raised the national terrorism threat level to PROBABLE. ASIO did so in response to the degrading terrorism threat environment, which was characterised by increases in the pace and scale of radicalisation, the diversity of extremist ideologies being embraced by Australians, and the number of Australians willing to use violence to advance their cause. This environment is becoming more complex due to the emergence of new actors, ideologies, targets and methods. All while threats from traditional actors, such as transnational terrorist groups, continue.
- We are seeing spikes in political polarisation, intolerance, uncivil debate and unpeaceful protest; a growth in anti-authority beliefs; the spread of conspiracy theories; reduced trust in institutions; and a normalisation of provocative and inflammatory behaviours. In a more polarised, grievance-rich environment, ASIO expects Australia will experience communal violence directed at or between groups in the community. And, in a more connected world, global events, overseas conflicts, and mis- and disinformation can also drive the likelihood of communal violence. The normalisation of violent protest and intimidating behaviour has lowered the threshold for provocative and potentially violent acts.
- Australia's defence system will face greater threats from espionage, foreign interference and potentially sabotage. Multiple countries are relentlessly seeking information about Australia's military capabilities. AUKUS will remain a priority target for intelligence collection, including by countries we consider friendly.
- Sabotage will pose an increasing challenge and could escalate quickly, especially if we face increasing tension or conflict in Australia's region. ASIO assesses the threshold for high impact sabotage is closer than we have observed in decades. ASIO assesses authoritarian regimes are growing more willing to disrupt or destroy critical infrastructure to impede decision-making, damage war-fighting capabilities and sow social discord.
- ASIO expects persistent, small scale people smuggling operations to continue. Conflict, economic decline and climate change will continue to displace large numbers of people who will seek refuge and economic security.

8. This is the scale of the challenge ASIO faces as a security service, and that Australia faces as a nation. It is vital that ASIO's powers enable the Organisation to fulfil its mission of protecting Australia and Australians from threats to their security.

## Part 2: Extending the application of questioning powers to all elements of 'security' as defined in section 4 of the ASIO Act

9. The threat environment underpins the proposal to extend adult compulsory questioning powers to all heads of security. Australia has never faced so many different threats, at such scale, at once. ASIO considers it necessary that the compulsory questioning warrant framework reflects the current and predicted threat environment, and therefore, considers the availability of these powers across all heads of security as vital moving forward.
10. Extending ASIO's adult compulsory questioning powers framework to all heads of security – sabotage, attacks on Australia's defence system, the promotion of communal violence, and serious threats to Australia's border integrity, in addition to existing application over espionage, foreign interference and politically motivated violence – will assist ASIO to collect critical intelligence across the range of security threats Australia faces. This is particularly critical in an environment where the traditional distinctions between threats are blurring. For example, an attempt to physically damage a nuclear-powered submarine could simultaneously be an act of sabotage, an act of politically motivated violence, an act of foreign interference and an attack on a defence system.

11. ASIO's previous submission to the related PJCIS inquiry in 2024 detailed a range of realistic hypothetical scenarios that illustrated the significant potential value of compulsory questioning powers (this has been supplemented with an additional scenario in Part 6 of this submission).
12. Since the introduction of the framework, ASIO's judicious use of compulsory questioning powers has produced valuable intelligence and intelligence outcomes that could not have been obtained through other means.

### Part 3: Safeguards

13. ASIO's existing compulsory questioning warrant framework contains a robust set of safeguards, oversight mechanisms and accountability measures that balance ASIO's ability to compel subjects to participate in questioning with the protection of human rights. The safeguards, oversight mechanisms and accountability measures in the existing framework include:
  - All questioning under warrant is overseen by an independent prescribed authority who can make directions during questioning to ensure it is conducted appropriately and humanely. The prescribed authority must be either a former judge, President or Deputy President of the Administrative Review Tribunal, or a Senior Counsel.
  - The subject of the warrant has the right to contact a lawyer and to have a lawyer present during questioning.
    - The prescribed authority may direct the subject be prevented from contacting a particular lawyer in limited circumstances if this could result in specific detrimental outcomes for security.
  - If the subject is a minor they may also have a minor's representative present during questioning, being a parent or guardian of the subject, or another person who is able to represent their interests.
  - The framework expressly provides that the Inspector-General of Intelligence and Security (IGIS), or an IGIS official, may be present during questioning or when a person is apprehended.
  - The subject has the right to make a complaint in relation to ASIO, the Australian Federal Police (AFP) or state and territory police at any point during questioning and a right to seek a remedy from a federal court in relation to the warrant or treatment under the warrant.
  - The Director-General must provide a written report to the Attorney-General about each compulsory questioning warrant, which provides details of the extent to which any action taken under the warrant has assisted ASIO in carrying out its functions.
  - The Director-General must provide the IGIS with copies of every questioning warrant request and the warrant itself, a statement detailing any seizure of items or apprehension that occurred, a statement of any action taken in the event the IGIS or an IGIS official raises a concern regarding conduct of the interview, and any video recordings made under the relevant provisions.
  - Limitations around the use and disclosure of questioning material, including an obligation on the prescribed authority to provide directions necessary to facilitate the subject's safety and right to a fair trial in the future.
  - The *Australian Security Intelligence Organisation (Statement of Procedures) Instrument 2025* (Statement of Procedures) prepared under 34AF of the ASIO Act is to be followed when exercising authority under a questioning warrant. The Statement of Procedures includes particulars of the conduct of questioning, provisions to ensure the health and welfare of the subject during the questioning process, and arrangements for liaison with the AFP and IGIS.
14. ASIO is also subject to accountability and oversight requirements in the Guidelines and the Statement of Procedures. The Guidelines and Statement of Procedures contain additional reporting requirements to the Attorney-General and IGIS and further considerations for the health, welfare and rights of the person.

15. For ASIO to effectively fulfil its mission, the Organisation must maintain the confidence and trust of the Australian people, Parliament and Government. Appropriate oversight and accountability are critical to maintaining such trust. ASIO is supportive of the proposed amendments to further strengthen the safeguards, oversight and accountability elements of the compulsory questioning powers framework and considers these measures appropriate and balanced.

## Part 4: Sunsetting and Review

16. As noted earlier, the threat environment remains complex, challenging and changing, and is becoming more dynamic, diverse and degraded. ASIO considers the compulsory questioning powers framework will remain a vital tool for ASIO into the future.
17. Since its introduction in 2003, the compulsory questioning powers framework has been subject to a number of Parliamentary and independent reviews, which has resulted in the Parliament extending the sunset date on six occasions.
18. Removing the sunset provision from the compulsory questioning powers framework recognises that compulsory questioning warrants are a vital capability that ASIO has used judiciously for the past 20 years, makes it consistent with ASIO's other warranted powers which do not sunset and ensures ASIO has continued use of the powers to address the current and future threat environment.
19. ASIO notes and supports the continued Parliamentary oversight enabled by proposed amendments that will provide for the PJCIS to undertake a further review of the framework three years after the commencement of the Bill, should it elect to do so.

## Part 5: Other Matters

### Minor Compulsory Questioning Warrants

20. ASIO's previous submission to the PJCIS review of Division 3 of Part III of the ASIO Act in 2024 proposed the repeal of the power to question minors. ASIO considers it vitally important to acknowledge when our powers may not be reasonable, necessary or in proportion to the threat.
21. ASIO has continued to carefully consider these powers following engagement with the previous PJCIS process considering this framework. Since that time, ASIO has raised the terrorism threat level to PROBABLE, and released our assessment of future security threats.
22. Given the increase in the prevalence of minors in ASIO's terrorism caseload – all attacks and major counter-terrorism disruptions in 2024 involved minors or young people – the numbers of minors being radicalised online, and the way minors are moving towards violence more quickly, ASIO considers the retention of these powers is necessary and proportionate to the potential threat to security.
23. While the circumstances under which ASIO would request a minor questioning warrant will be rare, the powers represent a valuable intelligence gathering tool that may be necessary in exceptional circumstances to help protect Australia and Australians from threats of politically motivated violence.
24. The ability to request a compulsory questioning warrant for a minor continues to be subject to a strict set of safeguards, in addition to those that are required for adult questioning warrants. Currently, for the Attorney-General to issue a questioning warrant for a minor they must be satisfied that there are reasonable grounds for believing that the person *has likely engaged in, is likely engaged in, or is likely to engage in* activities prejudicial to the protection of, and of the people of, the Commonwealth and the States and Territories from politically motivated violence. These powers do not extend to other heads of security beyond politically motivated violence. The Attorney-General is also required to consider if it is still reasonable for the warrant to be issued after considering all other methods of intelligence collection that are likely to be as effective.
25. The Attorney-General must also have regard to whether the warrant would be in the best interests of the person considering the:

- age, maturity, sex and background of the person;
- physical and mental health;
- benefit of having a meaningful relationship with the person's family and friends;
- the right to receive an education;
- the right to practice their religion; and
- any other matter considered relevant.

26. While the Bill would retain ASIO's ability to request a minor questioning warrant, ASIO continues to stress the need for whole-of-government, whole-of-community and whole-of-society responses to youth radicalisation and violent extremism.

### Necessity and Proportionality

27. ASIO notes that the Minister for Home Affairs requested the PJCIS consider the legislated thresholds applying to ASIO's compulsory questioning powers framework. In particular, whether a statutory requirement to assess necessity and proportionality in the issuing criteria for compulsory questioning warrants should be implemented.
28. The powers are already subject to consideration of necessity and proportionality in deciding to seek a compulsory questioning warrant. The existing necessity and proportionality obligations are contained in:
- Section 20 of the ASIO Act which provides that the Director-General must take all reasonable steps to ensure that the work of the Organisation is limited to what is necessary for the purposes of the discharge of its functions.
  - Sections 1.8, 3.4 and 4.3 of the Guidelines, made under section 8A of the ASIO Act, which incorporate the principles of necessity and proportionality across all ASIO intelligence collection activities.
  - Sections 5 and 6 of the Statement of Procedures prepared under section 34 AF of the ASIO Act and approved by the Attorney-General which contain more detailed requirements that apply to the exercise of authority under a questioning warrant, many of which go to proportionality.
29. Noting the robust safeguards already embedded in the ASIO Act, the Guidelines and the Statement of Procedures to ensure ASIO's activities are limited to what is appropriate and proportionate for the purposes of the discharge of ASIO's functions, ASIO considers that a statutory requirement to assess necessity and proportionality in the issuing criteria for questioning warrants is not required. Adding a statutory requirement that duplicates existing requirements would further complicate ASIO's legislative framework and provide no additional safeguard.
30. The Comprehensive Review of the Legal Framework of the National Intelligence Community also considered the issue of introducing a statutory necessity and proportionality test for the issuing of a warrant. The review concluded the existing obligations were sufficient and introducing a more explicit test would not result in any material difference or improvement in ensuring the exercise of powers are necessary and proportionate.

### Enabling ASIO to give notice of a questioning warrant by entering private premises

31. In ASIO's submission to the PJCIS' review of Division 3 of Part III of the ASIO Act in 2024, ASIO proposed amending the framework to enable ASIO to give notice of a questioning warrant by entering private premises.
32. ASIO has continued to consider this proposal and on further assessment has determined the framework provides sufficient flexibility to serve warrant notices including to subjects at private premises.

## Part 6: Hypothetical Scenario – Border Security

33. ASIO's previous submission to the PJCIS review of Division 3 of Part III of the ASIO Act provided hypothetical scenarios for the use of compulsory questioning warrants for six of the heads of security.

34. As the Bill proposes to extend the powers to all heads of security including the protection of Australia's territorial and border integrity from serious threats, ASIO has prepared an additional hypothetical scenario demonstrating circumstances where ASIO could require a compulsory questioning warrant in relation to border security.
35. As with ASIO's other hypothetical scenarios in the previous submission it is important to highlight that ASIO applies, where possible, the least intrusive methods first, before requesting a compulsory questioning warrant, and only if it is reasonable, necessary and proportionate to the threat.

#### Scenario 1: The protection of Australia's territorial and border integrity from serious threats

ASIO commences an investigation after receiving reporting that an Australian citizen is offshore, helping to organise a large-scale maritime people smuggling venture to Australia. On return to Australia, ASIO attempts a voluntary interview of the individual to explore the allegations but they decline to engage. Subsequently, ASIO receives information from a partner intelligence agency that supports the allegations, indicating a people smuggling venture may be imminent, but there is not enough information to identify and work with partners to disrupt the venture.

A further attempt at engagement is undertaken and again refused. A questioning warrant is then sought and executed against the individual. Under questioning, the individual provides ASIO information which validates and adds value to other reporting streams from the region, informing an intelligence assessment on the likely departure location and timing of the venture. The assessment supports a successful on-water interdiction of the people smuggling vessel, preventing a serious threat to Australia's territorial and border integrity.