Australian Government
Australian Security Intelligence Organisation

ASIO 70TH 1949 2019

Response to Questions on Notice from the Senate Environment and Communications References Committee Inquiry into Press Freedom Public Hearing on 15 November 2019

28 November 2019

On 15 November 2019, the Senate Environment and Communications References Committee (SECRC) held a public hearing into the Inquiry into Press Freedom. Arising from the public hearing, ASIO took four questions on notice. ASIO's responses to the questions are below.

Question 1

How many public interest disclosures made in relation to alleged disclosable conduct within ASIO have been elevated to the Inspector-General of Intelligence and Security (IGIS)?

Response to Question 1

Of the public interest disclosures made in relation to alleged disclosable conduct within ASIO since 2014, one was initially submitted to the IGIS and, on assessment by the IGIS, was allocated to ASIO to investigate. The remaining public interest disclosures were made to authorised officers within ASIO.

ASIO notifies the IGIS within 14 days regarding the receipt of a disclosure under the Public Interest Disclosure scheme and provides annual reporting to the IGIS for inclusion in the Ombudsman's Annual Report under section 76 of the *Public Interest Disclosure Act 2013*.

Question 2

Does the minister request information on the number of disclosures [under the Public Interest Disclosure scheme] from ASIO on a regular basis or an annual basis? Does the minister receive a briefing on [Public Interest Disclosure] matters that are disclosed internally?

Response to Question 2

To date, neither the minister responsible for ASIO nor the minister responsible for the administration of the Public Interest Disclosure (PID) legislation has requested information from ASIO pertaining to the number of disclosures [under the PID scheme] received by ASIO. There is no legal requirement under the PID legislation for the Director-General of Security (as a Principal Officer) to report directly to either minister on public interest disclosures made within ASIO.

The PID legislation requires the Ombudsman (assisted by the IGIS) to prepare an Annual Report, for presentation to parliament by the responsible minister, containing information about the number of

disclosures received within agencies. ASIO contributes information for the preparation of the Annual Report. The Director-General of Security would certainly choose to brief the minister responsible for ASIO if the outcome of a PID investigation revealed significant or systemic wrongdoing or maladministration within ASIO.

Question 3

[With regard to PID matters] under section 29 of the Act, could you indicate what was alleged, in an aggregate way so as not to reveal any personal particulars or details?

Response to Question 3

In respect of the seven disclosures investigated, or referred for investigation under another authority, the allegations pertained to the following [noting that the allegations in some cases were not singular but a mixture of the listed categories]:

- s29(1) Item (7)(a) and (b)—wastage of public money or property;
- s29(1) Item (5)—abuse of public trust;
- s29(1) Item (4)—maladministration (including misconduct, abuse of position, political bias); and
- s29(2)(b)—conduct engaged in that could, if proved, give reasonable grounds for disciplinary action against a public official.

Regarding the three disclosures for which a decision was made not to investigate, the allegations related to:

- s29(1) Item (5)—abuse of public trust; and
- s29(1) Item (4)—maladministration.

Question 4

In the context of ASIO [and the Protective Security Policy Framework], where does the power exist in legislation or regulation that enables an officer to make a decision as to the classification of a document? What obligations are associated with that power?

Response to Question 4

ASIO referred this question to the Attorney-General's Department, which has responded as follows:

- Section 21 of the *Public Governance Performance and Accountability Act 2013* requires the accountable authority of a non-corporate Commonwealth entity to govern the entity in accordance (with paragraph 15(1)(a) of that Act) in a way that is not inconsistent with the policies of the Australian Government.
- In October 2018, the Attorney-General reissued the *Directive on the Security of Government Business* to reflect the new Protective Security Policy Framework (PSPF). The directive articulates the Government's requirements for protective security to be a business enabler that supports entities to work together securely, in an environment of trust and confidence.
- The directive establishes the PSPF as a policy of the Australian Government, which non-corporate Commonwealth entities are required to apply as it relates to their risk environment.

- PSPF Policy 8: 'Sensitive and classified information' sets out the core and supporting requirements for maintaining the confidentiality, integrity and availability of official information. This includes determinations of whether the information is security classified and the appropriate marking and protection of that information.
- The secrecy offences in the Criminal Code only apply to information that has a security classification of SECRET or TOP SECRET if the prosecution can demonstrate that the classification was applied in accordance with the PSPF such that the information, if disclosed, could be expected to cause serious damage to the national interest or organisations or individuals, or exceptionally grave damage to the national interest. This would have to be demonstrated beyond reasonable doubt in any prosecution; the application of a security classification marking would not in itself be sufficient.
- Further questions about the Protective Security Policy Framework or secrecy offences should be referred to the Attorney-General's Department.