

10 November 2014

**ASIO Submission to the Inquiry into the Counter-Terrorism Legislation Amendment Bill (No.1)
2014**

The Australian Security Intelligence Organisation (ASIO) thanks you for the opportunity to make a submission to the Committee's inquiry into the *Counter-Terrorism Legislation Amendment Bill (No.1) 2014*.

We note that the Attorney-General's Department has made a separate submission addressing four main issues including a background to the legislative framework under Part 2 of the *Intelligence Services Act 2001* (IS Act) and further policy justification for the proposed amendments. Our submission is focused on one element of the amendments: namely the criticality of preserving the Attorney-General's special role in providing his or her agreement to the issuing of certain Ministerial authorisations.

Special role of the Attorney-General in agreeing to certain Ministerial authorisations

The Ministerial authorisation scheme presently in the IS Act recognises the special role of the Attorney-General in relation to Australian persons and threats to security. It does so by requiring that agreement to a Ministerial Authorisation under section 9 of the IS Act be sought from the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) where an Australian person is, or is likely to be, involved in activities that are, or are likely to be a *threat to security*.

As the Minister with general portfolio responsibility for ASIO and as the Minister responsible for administering the ASIO Act, the Attorney-General has a special role in matters involving Australian persons and threats to security. ASIO functions include the collection of intelligence relevant to 'security' as defined in the ASIO Act. A fundamental element of the definition of 'security' is the protection of Australians from security threats such as politically motivated violence and acts of foreign interference. In contrast to ASIO's express mandate in relation to matters involving Australian persons and threats to security, the IS Act requires Ministerial authorisation for collection and other activities by IS Act agencies involving Australians and limits the circumstances in which Ministers can authorise IS Act agencies to collect intelligence on Australians.

The Attorney-General's role in respect of agreeing to certain types of Ministerial authorisations provides assurance that the complex issues concerning Australian persons who are, or are likely to be a threat to security have been appropriately considered before a Ministerial authorisation is issued in respect of an Australian person.

ASIO supports the proposed amendments to the emergency authorisation arrangements addressing practical limitations identified where Ministers are not readily available or contactable. In amending the emergency authorisation scheme the Bill appropriately preserves the Attorney-General's role in

agreeing to Ministerial authorisations concerning Australian persons who are, or are likely to be, involved in matters that are a threat to security. Further it provides for the contingency where the Attorney-General is not readily available or contactable by providing that an agency head must seek the agreement of the Director-General of Security, unless the Director General of Security is not readily available or contactable. In doing so it addresses flaws in the current emergency authorisation arrangements in the ISA Act which do not provide for any contingency where the Attorney-General is not readily available or contactable to provide his or her agreement. While previously the deficiencies in emergency provisions were not as stark because of the typical length of time it took for threats to security to develop, in the current operational environment, notice of activities that involve a threat to security can, and do, arise in very short time frames. Current limitations may mean time critical opportunities to collect vital intelligence and indeed, protect human life, are lost or compromised. If, for example, ASIO had some intelligence indicating an imminent terrorist attack by an Australian person, it is vital that IS Act agencies can be authorised to respond quickly and in accordance with their functions.

The proposed provisions further safeguard the role of the Attorney-General by requiring that, where his agreement has not been obtained, the relevant IS Act agency head must advise the Attorney-General that an authorisation has been given as soon as practicable but no later than 48 hours and the advice must state whether the agreement of the Director-General of Security was obtained.

The Bill will also amend the IS Act to enable the Attorney-General to specify classes of Australian persons who are, or are likely to be, involved in an activity or activities that are, or are likely to be, a threat to security, and give agreement in relation to any Australian person in that specified class. The class agreement may specify the period for which it could have effect, and is subject to renewal. The ability to provide a 'class agreement' in this manner will provide greater operational flexibility for IS Act agencies, which will also be particularly useful in time critical circumstances. ASIO also notes the intrinsic ability for the Attorney-General to specify conditions which apply to the agreement. For example, the agreement could be subject to a condition that the relevant IS Act agency or agencies provide a report to the Attorney-General in respect of instances of reliance on the class agreement.

ASIO notes that these new arrangements are subject to oversight by the Inspector General of Intelligence and Security (IGIS) and in particular that advice on any emergency Ministerial authorisations must be given to the IGIS within three days.