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Committee Secretary Parliamentary Joint Committee on Intelligence and Security PO Box 6021
Parliament House Canberra ACT 2600

Submission: Opposition to the Removal of Sunset Provision in Section 34JF of the ASIO Act

Dear Committee Members,

I write to express unequivocal opposition to the proposed removal of the sunset provision contained in section 34JF of the *Australian Security Intelligence Organisation Act 1979*, as outlined in the *ASIO Amendment Bill (No. 2) 2025*. This legislative change would entrench extraordinary powers—originally introduced as temporary emergency measures—into permanent law, without adequate judicial oversight, proportional safeguards, or meaningful public accountability.



1. Sunset Clauses as Democratic Circuit Breakers

Sunset provisions are structural safeguards designed to prevent the normalisation of emergency powers. Section 34JF was introduced precisely because ASIO's compulsory questioning regime was deemed exceptional and rights-intrusive. Removing this clause would:

- Eliminate the requirement for periodic parliamentary review
- Undermine the principle of proportionality in emergency law
- Set a dangerous precedent for making extraordinary powers permanent

The Australian Human Rights Commission has recommended that the regime be allowed to sunset as originally intended, citing its incompatibility with international human rights law (1).

2. Lack of Judicial Oversight and Executive Overreach

The questioning regime allows the Attorney-General—not a judge—to issue warrants compelling individuals to appear for questioning. This bypasses the judiciary and concentrates coercive power in the executive branch.

- The Law Council of Australia has repeatedly called for judicial authorisation of questioning warrants, warning that the current framework lacks independent scrutiny (2)
- The ASPI Strategist notes that authorisation by a political figure fails to provide assurance of impartiality and risks politicising intelligence operations (3)

In comparable democracies, such as the UK and Canada, intrusive intelligence powers require judicial review or approval by independent commissioners (4).



3. Questioning of Minors and Non-Suspects

The regime permits the questioning of individuals as young as 14 years old, even if they are not suspected of committing a crime. This violates:

- The Convention on the Rights of the Child
- The International Covenant on Civil and Political Rights (ICCPR)
- Basic principles of due process and presumption of innocence

ASIO itself has acknowledged that it has never used or requested a questioning warrant for a minor and now recommends that the power be repealed (5). The Home Affairs Department, Law Council, and Human Rights Commission have echoed this call (6).

4. Expansion of Powers Without Safeguards

The bill not only removes the sunset clause but also expands the scope of questioning powers to include:

- Sabotage
- Attacks on defence systems
- Promotion of communal violence
- Threats to territorial integrity

This expansion occurs without corresponding increases in oversight, transparency, or legal protections. It risks mission creep and the use of intelligence powers in contexts far removed from terrorism or espionage (7).

5. Australia's Surveillance Trajectory

Since 2001, Australia has passed over 100 pieces of national security legislation, many of which have incrementally eroded civil liberties (8). The ASIO questioning regime was described by legal scholars as “one of the most controversial pieces of legislation ever passed by the Commonwealth Parliament” (9).

The Independent National Security Legislation Monitor (INSLM) has previously warned that coercive powers must remain distinct from law enforcement and be subject to strict temporal and legal limits (10).

6. International Oversight Norms

Australia's intelligence oversight lags behind its Five Eyes partners:

Country	Judicial Oversight	Independent Review	Sunset Clauses
UK	Yes (Judicial Commissioners)	Yes (Investigatory Powers Commissioner)	Yes
Canada	Yes (Intelligence Commissioner)	Yes (NSIRA)	Yes
New Zealand	Yes (Commissioner of Intelligence Warrants)	Yes (IGIS)	Yes
Australia	No (Attorney-General only)	Limited (IGIS)	Proposed removal

The House of Commons Library notes that Australia's lack of judicial oversight is anomalous among liberal democracies (11).

Recommendations

In light of the above, I respectfully urge the Committee to:

1. Reject the removal of the sunset provision in section 34JF
2. Introduce mandatory judicial oversight for all ASIO questioning warrants
3. Prohibit the questioning of minors under 18
4. Require that subjects of questioning be suspected of criminal conduct
5. Mandate independent review of the regime every three years
6. Align Australia's intelligence oversight with international best practice

Australia must not allow temporary emergency powers to become permanent instruments of unchecked surveillance. The removal of the sunset clause is a dangerous precedent that undermines democratic accountability and civil liberties. I urge the Committee to uphold the principles of proportionality, transparency, and judicial independence.

Yours sincerely, **Jason Moore** Digital Rights Advocate & Public Policy Correspondent

References

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