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Committee Secretary

Parliamentary Joint Committee on Intelligence & Security

Parliament of Australia, via pjcis@aph.gov.au

Dear Committee Secretary,

**Review of the Australian Security Intelligence Organisation Amendment (no.2) Bill 2025**

Further to the call for submissions to the review of the Australian Security Intelligence Organisation Amendment Bill (no.2) 2025 [hereafter ASIO Amendment Bill (no.2), 'the Bill'], my submission to the review follows. Please note that the views expressed in this submission are my own as an analyst at the Australian Strategic Policy Institute, which does not have institutional views.

The Bill confirms in a suitably transparent fashion the reality of an extraordinary, rarely used but important in contingencies, capability for ASIO that has been a part of Australian national security law for 22 years – namely ASIO's compulsory questioning powers. The Bill also hones and configures those powers for the needs of the Australian security environment, now and foreshadowed.

***ASIO's Compulsory Questioning Powers***

The *ASIO Amendment Act (no.1) 2025* was introduced into this Parliament in late July and passed at the beginning of September. It extended the current sunsetting date for ASIO's compulsory questioning powers to 7 March 2027, in anticipation of the substantive reforms to those powers proposed in this second Bill. Otherwise, the powers would have ceased as of 7 September 2025.

What are ASIO's compulsory questioning powers?

- Questioning Warrants (QWs) – requiring a person to appear before ASIO and answer questions truthfully for the purpose of ASIO obtaining intelligence (including then detaining that person for up to 7 days for this purpose), and restricting that person's ability to alert others to ASIO's interest or destroy relevant material.

- Questioning Detention Warrants (QDWs) – also pre-emptively detaining a person for the purpose of the above questioning.

The powers can be exercised in relation to persons 14 years old and older, although there are some additional limitations on their use in relation to minors.

***Proposed changes to the Compulsory Questioning Powers***

The ASIO Amendment Bill (no.2) makes the following principal changes:

- Removes the powers from future sunsetting. The powers will henceforth be permanent. Although they will be the subject of a PJCIS review in three years' time.

- Expands the scope of the powers (for questioning of adults) beyond the current grounds of politically motivated violence (PMV), espionage and foreign interference to include all ASIO's heads of security. Henceforth sabotage, promotion of communal violence, attacks on Australia's defence system, and protection of territorial and border integrity will also be grounds for QWs and QDWs (but they will not apply to the separate 'carrying out of Australia's responsibilities to any foreign country in relation to [security]').

- Bolsters the oversight protections associated with the powers through some minor amendments (such as further limiting who can be a 'prescribed authority' overseeing questioning).

The Bill therefore raises two principal questions for the PJCIS's consideration:

- Should the powers be retained permanently?

- Should the powers apply to all elements of security?

***The powers should be made permanent***

These powers have often been described publicly (and typically by critics) as a temporary measure only, as of their creation via the *ASIO Legislation Amendment (Terrorism) Act 2003*, after lengthy debate and abortive previous legislative initiatives. However. the powers have been episodically prolonged since 2003 - in 2006, then in 2014, 2018, 2019, 2020 and now in 2025. Their application has also been expanded, from PMV alone to include espionage and foreign interference (in 2020).

The powers have been used rarely. Indeed, according to the public record, ASIO has only requested a compulsory questioning warrant five times since 2006. Nor has ASIO ever exercised such a warrant in relation to a minor. Twenty warrants in total have been sought and issued, in 22 years.

The underlying rationale at the time the powers were introduced was, primarily, that Australia faced, through terrorism, an unprecedented and extraordinary threat, and that responding required extraordinary powers. The introduction of sunset clauses was, in many ways, an acknowledgement of this, a political device that tempered initial concerns and ensured passage through the Senate. But as time has passed, it's become increasingly clear that what was rightly then regarded as extraordinary (given Australia's relatively benign security environment before 2001) has become the norm as the security threats facing Australia have broadened and been entrenched.

Importantly, the consistent actions of the Parliament since 2006 in retaining the powers, including in the face of multiple Independent National Security Legislation Monitor (INSLM) reports arguing for repeal, demonstrate that these are in matter of fact not temporary powers but de facto permanent powers. Rather than continue to pretend they are temporary, their status should be definitively addressed by the Parliament. In doing so, the Parliament would benefit from reflecting on the security circumstances faced by Australia rather than seeing the post-9/11 moment as somehow an aberration.

That the powers have only been used sparingly does not invalidate them or make them redundant. Rather they are tools for use in extraordinary circumstances where other means for intelligence collection are inapplicable. In this way they continue to reflect the original argument for the powers in 2003, 'as a measure of last resort' to be 'used rarely and only in extreme circumstances'.[1] In addition, authoritative accounts of the use of the powers (by, for example, the Inspector-General of Intelligence & Security (IGIS) and their staff, as well as the INSLM)

[1] Hon Daryl Williams QC MP, Attorney General, House of Representatives Hansard, 27 March 2003, as quoted in PJCIS report on 'ASIO's questioning and detention powers', 10 May 2018, p.6 at https://www.aph.gov.au/parliamentary_business/committees/joint/intelligence_and_security/~/link.aspx?_id=7EADCC903F744F8EAE0EC4D1BCDFE190&_z=z

suggest ASIO exercises the powers judiciously and sensitively.[2] A point reinforced by the further amendments made in this Bill to the oversight arrangements governing their use.

It is equally important to acknowledge that the powers will remain subject to a robust warrant regime – even in the absence of a sunset clause. ASIO's annual reporting regime – mandated by the *ASIO Act* – requires their use to be reported publicly. This is in addition to public testimony, for example at Senate Estimates.

It also worth noting that no questions or deficiencies have been raised about the broader warrants regime.

In short, while the exercise of these powers remains extraordinary, their presence permanently on the statute books would not be extraordinary. Going forward, attention can instead be, rightly, paid to how the warrants process is exercised rather than a faux debate about whether or not such laws should exist at all (given their 'temporary' existence for over two decades).

***The powers should apply to all elements of security (per ASIO Act)***

The nature of the security environment and ongoing developments means that the compulsory questioning powers should be applicable to the broad range of security threats.

Application to the promotion of communal violence ('activities that are directed to promoting violence between different groups of persons in the Australian community so as to endanger the peace, order or good government of the Commonwealth') is apt given ongoing attempts by extremists to fracture social cohesion in Australian society.[3] That this has included covert interference efforts by a hostile foreign actor (namely the Islamic Republic of Iran) underscores the blurring of the lines across the heads of security in the *ASIO Act*.[4]

But it is two other aspects of security that are particularly appropriate to be included within the potential exercise and which this submission reflects on in some more detail, namely attacks on Australia's defence system ('activities that are intended to, and are likely to, obstruct, hinder or interfere with the performance by the Defence Force of its functions or with the carrying out of other activities by or for the Commonwealth for the purposes of the defence or safety of the Commonwealth') and sabotage.

These two security threats are closely related, and increasingly pertinent.

As I noted in an article[5] published last year in the wake of Israeli intelligence's audacious sabotage of Hezbollah's communications network, sabotage—destroying, damaging or obstructing for military and/or political advantage—'is back'. Relevant edited excerpts follow.

> 'Hezbollah's pagers and radios surreptitiously changed into anti-personnel explosive devices and detonated across Lebanon and Syria. Russia-linked fires plague European and American factories supporting Ukraine's defence. Ukrainian nationals implicated in the Nord Stream 2 pipeline bombing. Concerns raised about Chinese components in systems internationally, at moments of future crisis. Alarm on the Olympics' opening day, as arsonists strike France's high-speed railway network.
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> 'In fact, sabotage never really went away. Just as we've become habituated to fraud in a digital society, we became tolerant of sabotage. Until Russia's invasion of Ukraine, Europe accepted too many acts against it. We should not repeat these mistakes in the Indo-Pacific.

[2] See for example, IGIS's submission to the PJCIS review of ASIO questioning and detention powers in relation to terrorism', 12 April 2017, at https://www.igis.gov.au/sites/default/files/2024-01/Submission%201_2.pdf
[3] Definitions here and elsewhere in this submission drawn from section 4 of the *ASIO Act 1979*.
[4] See the Prime Minister's statement of 26 August 2025 jointly with the Ministers for Foreign Affairs and Home Affairs, 'Response to Iranian attacks', at https://www.pm.gov.au/media/response-iranian-attacks
[5] ''You'll shut me down with a push of your button': 21st century sabotage', *The Strategist*, 24 September 2024, at https://www.aspistrategist.org.au/youll-shut-me-down-with-a-push-of-your-button-21st-century-sabotage/

> ‘Sabotage for military advantage had its heyday during World War II when Britain’s Special Operations Executive (SOE) was instructed to set occupied Europe ablaze. During the early Cold War, western security services focused on protecting industrial plants. This interest was deepened in the 1970s by revelations of Soviet planning for sabotage in Britain and elsewhere should the Cold War turn hot.
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> ‘Until recently, modern sabotage was conceived as a matter of ones and zeroes. Even during the Cold War, the best-known example of anti-USSR sabotage was in the 1980s, when the CIA modified software destined for Soviet gas pipeline controls. Once installed, it caused explosions resulting in massive system malfunctions and devastating damage, undermining the commercial viability of energy exports and wasting Moscow’s limited hard currency.
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> ‘Then there was Stuxnet, an early 21st century computer virus that was designed to destroy Iran’s nuclear centrifuges and was attributed to both the US and Israel by media reporting.
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> ‘Should we be worried about [sabotage] being used against Australians, including by terrorists?
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> ‘The fundamental answer, especially in an Australian context, is prosaic but also more insidious. When your manufacturing base exists almost wholly outside of your borders and includes potential adversaries, you’re unavoidably vulnerable. While state actors may not have the intent now, they certainly could in a conflict scenario, hence why ‘suppliers of concern’ were excluded from our 5G communications systems.
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> ‘This asks a hard question of government: to what extent are the supply chains of our critical infrastructure dominated by rivals or adversaries who might wish to harm us, perhaps even before a conflict?
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> ‘What should be done to guard against sabotage?
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> - Be more security conscious in government procurement. Think about security in the same way we typically think about insurance: as an investment in addressing risk. Test procured equipment randomly and systematically and have standing technical capabilities to do so.
> - Know your supply chain, as difficult as this is amid the lack of clarity inherent in globalisation.
> - Randomise and obfuscate sensitive procurement channels and destinations. And recognise the potential value of seemingly benign logistical and technical information and take appropriate steps to protect it.
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> ‘However, also be clear-eyed. There are economic costs that must be balanced against considered risks and the opportunity costs of using security resources in this way. Those costs reveal an additional objective to sabotage: diverting resources away from defence capability to securing supply chains and inventories.’

As Australia’s investment in the AUKUS program grows and as the prospect of major power conflict in our region becomes ever more concerning, the implications of this international resurgence in sabotage as a coercive tool - potentially applied to Australia’s often niche and concentrated defence capabilities – are greatly concerning. ASIO being able to respond with the same suite of intelligence collection capabilities as are available against other security threats, including extraordinary powers used only in extraordinary circumstances, will be vital.

The blurring of security threats noted above means there is also a case for the comprehensive inclusion within the questioning powers of the final head of security – that is, threats to territorial and border integrity. Given previous advice to the committee from ASIO (see submission from 2024 to the then review of Division 3 of Part III of the *ASIO Act*[6]) that ‘ASIO does not consider the use of questioning warrants in relation to our border

[6] ‘ASIO submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Organisation Act 1979’, p.5, at

security activities to be necessary or reasonable' ASIO would need to provide updated advice to the PJCIS (and to the public) about why that requirement does now exist. This head of security category has often been dismissed as an outlier (reflecting its later addition to the *ASIO Act* via the *Anti-People Smuggling and Other Measures Act 2010*). However, this dimension to ASIO's work nonetheless goes to the protection of some of the most fundamental of national interests – and with significant implications for social cohesion if not upheld. Therefore, the existence of this last resort power for all of the heads of security would offer consistency across the full suite of threats that will continue to face Australia in the decades to come.

I commend the ASIO Amendment Bill (no.2) Bill to the committee as an appropriate and proportionate enhancement of the tools available to Australia in the face of an increasingly challenging security environment.

Kind regards,

**Chris Taylor**

**Head, Statecraft & Intelligence Policy Centre**

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ASIOActCQP2023/Submissions