



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the review of the Australian Security Intelligence Organisation Amendment Bill (No. 2) 2025

**Parliamentary Joint Committee on Intelligence and
Security**

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Introduction

1. The Department of Home Affairs (the Department) welcomes the opportunity to make this submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in its review of the Australian Security Intelligence Organisation Amendment Bill (No. 2) 2025 (the Bill) to amend the Australian Security Intelligence Organisation's (ASIO) compulsory questioning framework (the framework) set out in Division 3 of Part III in the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act).
2. The Bill proposes substantive amendments to ensure ASIO's compulsory questioning powers reflect the security environment and to further strengthen safeguards and oversight mechanisms in the framework. The Bill was introduced into the House of Representatives on 23 July 2025 and was subsequently referred to the PJCIS for review and report pursuant to subparagraph 29(1)(b)(i) of the *Intelligence Services Act 2001* (IS Act).
3. The Director-General of Security has stated that Australia's security environment is becoming more dynamic, diverse and degraded. While security threats from espionage, politically motivated violence, and acts of foreign interference are among ASIO's principal security concerns, a dynamic security environment is presenting an unprecedented number of challenges shaped by diverse drivers, and an unprecedented cumulative level of potential harm.
4. ASIO's role is to identify and investigate threats to security, wherever they arise, and to provide advice to protect Australia, its people and its interests. The framework provides ASIO with a necessary tool for investigating significant security threats confronting Australia.
5. Since the powers were introduced in 2003, they have proven valuable, supporting ASIO to obtain high-value intelligence, particularly in circumstances where ASIO's other powers were not appropriate. They have also been used judiciously, with ASIO using its compulsory questioning powers 19 times since 2003, reinforcing that they are specific, carefully targeted powers with bespoke utility. Without the powers, ASIO would be dependent upon the goodwill of a person to provide necessary information about significant national security threats to Australia during questioning.
6. The Department is the policy department responsible for administering the ASIO Act and works closely with ASIO to ensure the legislative frameworks that govern its powers remain up to date in the evolving security environment. The Department has worked with ASIO throughout the development of the Bill to ensure that ASIO's compulsory questioning powers reflect the evolving security environment.
7. The Department's submission is divided into three parts, as follows:
 - Brief overview of the history of the framework
 - Overview of the Bill
 - Other comments on the current framework.

1 Brief history of the framework

8. Following the 11 September 2001 terrorist attacks in the United States, the Australian Government introduced a suite of legislation to address the growing threat of terrorism. In 2003, ASIO's warranted powers were expanded to enable ASIO to seek a questioning warrant, or a questioning and detention warrant, in order to obtain intelligence in relation to terrorism.
9. Since its introduction in 2003, the framework has been subject to a number of Parliamentary and independent reviews, including:
 - **2002** – The Parliamentary Joint Committee on ASIO, ASIS and DSD's (PJCAAD) and the Senate Legal and Constitutional References Committee's reviews of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002.
 - **2005** – The PJCAAD's statutory review pursuant to paragraph 29(1)(bb) of the IS Act.
 - **2011 and 2012** – The former Independent National Security Legislation Monitor (INSLM), Mr Bret Walker SC, in his 2011 and 2012 Annual Reports.
 - **2014** – The PJCIS and the Parliamentary Joint Committee on Human Rights (PJCHR), in the context of their review of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014.
 - **2016** – The former INSLM, the Hon Roger Gyles AO QC, in his report on *Certain Questioning and Detention Powers in Relation to Terrorism*.
 - **2017** – The PJCIS' statutory review pursuant to paragraph 29(1)(bb) of the IS Act.
 - **2020** – The PJCIS' review of the Australian Security Intelligence Organisation Amendment Bill 2020.
 - **2023** – The PJCIS' statutory review pursuant to paragraph 29(1)(ce) of the IS Act. This review lapsed with the prorogation of Parliament in March 2025.
10. The framework was most recently amended by the *Australian Security Intelligence Organisation Amendment (No. 1) Act 2025*, which extended the sunset date for the framework by 18 months, from 7 September 2025 to 7 March 2027.
11. Prior to that, the framework was amended in 2020 by the *Australian Security Intelligence Organisation Amendment Act 2020*, which addressed a number of recommendations made by the PJCIS following its 2017 review. Reforms included:
 - Repealing the questioning and detention warrant framework in the ASIO Act. The detention power was replaced with a more limited apprehension framework that focuses on ensuring attendance at questioning, and preventing 'tipping off' or the destruction of information.
 - Extending ASIO's questioning warrant framework beyond politically motivated violence to enable the issuing of a compulsory questioning warrant for matters relating to espionage and foreign interference, in response to the security environment at the time.
 - Streamlining the process for requesting and issuing a questioning warrant by providing for the Attorney-General to be the sole issuing authority, including orally in emergency situations, consistent with ASIO's other special powers warrants.
 - Lowering the minimum age of a minor questioning subject from 16 to 14 to reflect recent attacks and plots in Australia involving minors, while also ensuring appropriate safeguards for minors.

2 Overview of the Bill

12. The Bill would make substantive amendments to the framework to ensure it reflects the security environment while further strengthening existing safeguards and oversight mechanisms. The amendments in the Bill would:
 - expand the scope of adult questioning warrants to include sabotage, promotion of communal violence, attacks on Australia's defence system, and serious threats to Australia's territorial and border integrity, as included in the definition of 'security' in section 4 of the ASIO Act, in addition to espionage, politically motivated violence and acts of foreign interference;
 - amend the eligibility and termination provisions for prescribed authorities, who supervise questioning under a compulsory questioning warrant, to provide further assurance of the independence and impartiality of persons appointed to the role;
 - introduce additional reporting requirements to ensure the Attorney-General is made aware of any relevant information regarding conduct under a compulsory questioning warrant;
 - require that post-charge questioning occur only before a prescribed authority who is a former judge of a superior court;
 - make the framework permanent by repealing the sunset provision; and
 - allow the PJCIS to undertake a further review of the framework three years after the Bill commences, should it elect to do so.
13. The proposed amendments in the Bill also respond to issues raised by civil society groups in their submissions and evidence to the 2023 PJCIS inquiry, including the Law Council of Australia and the Australian Human Rights Commission (AHRC).
14. The Department also consulted with the Attorney-General's Department (AGD), the Australian Federal Police (AFP), and the Office of the Inspector-General of Intelligence and Security (IGIS), given their respective roles in the issuing, execution and oversight of compulsory questioning warrants. The Department engaged with the Department of Foreign Affairs and Trade and the Department of Defence on the amendment to the IS Act.

2.1 Expanding the scope of adult questioning warrants to additional heads of security

15. The Bill would extend the scope of adult questioning warrants to include additional heads of security as defined under section 4 of the ASIO Act—being to protect Australia and Australians from sabotage, attacks on Australia's defence system, the promotion of communal violence, and to protect Australia's territorial and border integrity from serious threats.
16. When the powers were introduced in 2003, terrorism was the priority national security concern. As noted above, the powers were extended in 2020 to apply in relation to espionage and foreign interference, reflecting the security environment at that time. Today, ASIO's principal security concerns include espionage, politically motivated violence, and acts of foreign interference—however, a dynamic security environment is presenting an unprecedented number of challenges shaped by diverse drivers.
17. The Director-General's 2025 Annual Threat Assessment indicates that sabotage, promotion of communal violence, and attacks on Australia's defence system are expected to become elevated concerns in the coming years. Moreover, Australia is facing multifaceted, merging, concurrent and cascading threats, creating a security environment that is more dynamic, diverse and degraded.¹
18. It is critical that ASIO's compulsory questioning powers reflect the increasingly volatile threat environment. The powers will continue to be subject to extensive safeguards and oversight mechanisms that ensure they are used only where it is reasonable, necessary and proportionate.

¹ Burgess, M 2025, *Director-General's Annual Threat Assessment 2025*, Australian Security Intelligence Organisation.

2.1.1 Sabotage and Attacks on Australia's Defence System

19. While not defined in the ASIO Act, ASIO considers sabotage to be activity that damages, impairs or introduces a vulnerability to public infrastructure, including electronic systems, prejudicing Australia's national security or to advantage a foreign power. Acts of sabotage are not limited to irreversible, destructive attacks on physical infrastructure; they can include small-scale, selective and temporary acts of degradation or disruption to networked infrastructure.
20. Australia is getting closer to the threshold for high-impact sabotage, with ASIO assessing that 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 has identified at least one nation state routinely trying to explore and exploit Australian and allied critical infrastructure networks, mapping systems so they can download malware or otherwise interfere in the future.²
21. In addition, a recent report on the cost of espionage, prepared by the Australian Institute of Criminology for ASIO, noted that an economy-wide, week-long disruption to digital technology-intensive industries, enabled by sabotage, could cost the Australian economy nearly \$6 billion.³
22. Attacks on Australia's defence systems are defined in section 4 of the ASIO Act as 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.
23. Australia's defence system will face greater threats from espionage, foreign interference and potentially sabotage over the next five years. ASIO has identified foreign services seeking to target AUKUS to position themselves to collect on the capabilities, how Australia intends to use them, and to undermine the confidence of our allies. The Director-General has publicly stated that multiple countries are seeking information about our military capabilities, with AUKUS remaining a priority target for intelligence collection by other nation states. This also highlights the interconnected nature of threats, with the threats of sabotage and attacks on Australia's defence systems intertwined with the persistent threats of espionage and foreign interference. Extending ASIO's questioning powers to address all of these threats will support ASIO in obtaining the intelligence needed to protect Australia.

2.1.2 Promotion of Communal Violence

24. Section 4 of the ASIO Act defines the promotion of communal violence as 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.
25. The threats that are facing Australia are shaped by shifting geopolitics, emerging technologies, and broader social trends that include online radicalisation and the growth in extreme views, conspiracies, grievances and anti-authority beliefs.
26. In a polarised and grievance-rich threat environment, social cohesion will remain strained and spikes in communal violence are to be expected. Extending ASIO's questioning powers to the promotion of communal violence reflects the increasing likelihood of such violence driven by a wider range of extreme views, grievances and conspiracies.
27. The extension of these powers will not infringe on peaceful protest activities. Consistent with section 17A of the ASIO Act, ASIO must not undertake investigations where the only basis for the investigation is the exercise of a person's right of lawful advocacy, protest or dissent.

2.1.3 Territorial and border integrity

28. ASIO's role in relation to territorial and border integrity is to collect intelligence concerning serious threats to Australia's territorial and border integrity. This capability was introduced by the *Anti-People Smuggling and Other Measures Act 2010* to provide greater capacity for ASIO to investigate and disrupt

² Burgess, M 2025, *Director-General's Annual Threat Assessment 2025*, Australian Security Intelligence Organisation.

³ Morgan, A and Voce, A 2025, *The Cost of Espionage Report*, Australian Institute of Criminology.

people smuggling networks, as well as to protect against serious threats to Australia's territorial and border integrity that rise to the level of posing a threat to security.

29. The Australian Government is committed to combatting people smuggling, and maintaining Australia's territorial and border integrity. This is essential to disrupt organised criminal syndicates that place lives at risk, mitigate security and criminal risks relating to people arriving in Australia who are not properly identified or illicit goods being smuggled into Australia, mitigate major biosecurity and health risks relating to people and goods arriving in Australia without undergoing appropriate biosecurity and quarantine processes, and to protect the integrity of our border.
30. Extending ASIO's compulsory questioning powers to this head of security reflects the persistent threat posed by people-smuggling operations. The Director-General stated in the 2025 Annual Threat Assessment that conflict, economic decline and climate change will continue to displace large numbers of people. The Bill would help to strengthen existing border integrity operational settings to mitigate this challenge.

2.2 Changes to the appointment and termination provisions for prescribed authorities

31. The Bill proposes amendments to the eligibility and termination provisions for prescribed authorities to reinforce the independence of the role and ensure all those appointed to the role remain suitably qualified throughout their appointment. Prescribed authorities play a crucial role under the framework, independently supervising compulsory questioning to ensure it is conducted fairly and with respect for the person's human rights.
32. The Bill contains the following changes to the requirements for prescribed authorities under section 34AD of the ASIO Act:
 - extending the list of persons who are ineligible for appointment as a prescribed authority; and
 - amending the Attorney-General's discretion to terminate a prescribed authority's appointment.

2.2.1 Extending the list of persons ineligible for appointment as a prescribed authority

33. The Bill proposes to extend the list of persons who are ineligible for appointment as a prescribed authority. This amendment would ensure that additional persons who are highly likely to have an inherent and irreconcilable conflict of interest with the prescribed authority role, whether actual or perceived, are not eligible for appointment as a prescribed authority.
34. The expanded list would ensure that Australian Public Service (APS) employees, Parliamentary Service employees, members of the Australian Defence Force, members of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory, and parliamentary staff, are not eligible for appointment as a prescribed authority. This responds to the recommendation made by the Law Council of Australia in their submission to the 2023 PJCIS inquiry into the framework.⁴
35. This expanded list would also exclude persons who hold certain statutory offices which would represent an inherent and irreconcilable conflict of interest, actual or perceived, including Agency Heads within the meaning of the *Public Service Act 1999*, the Commonwealth Director of Public Prosecutions or persons performing similar functions in a State or Territory, the Solicitor-General of the Commonwealth or of a State or Territory, and examiners who exercise certain powers under the *Australian Crime Commission Act 2002* (ACC Act).
36. This list is not intended to be exhaustive, and there may be other reasons that preclude a person from being appointed as a prescribed authority. This risk is managed through existing provisions under section 34AD of the ASIO Act, which ensure the Attorney-General gives appropriate consideration to any conflicts of interest, whether actual or perceived, before appointing a person to the role. This approach allows the Attorney-General to assess each appointment on a case-by-case basis.

⁴ Law Council of Australia (LCA) 2024, *LCA submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 9.

37. The amendment would also more closely align the prescribed authority eligibility provisions with the requirements for comparable independent oversight-related roles, such as those for Public Interest Advocates under the *Telecommunications (Interceptions and Access) Regulations 2017* (TIA Regulations), who provide an independent and impartial public interest assessment on the application of a journalist information warrant before it can be issued under the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

2.2.2 Amending the Attorney-General's discretion to terminate a prescribed authority's appointment

38. The Bill proposes to impose a duty on the Attorney-General to terminate a prescribed authority's appointment where they no longer meet the criteria for appointment under subsection 34AD(1) of the ASIO Act, or in serious cases of conduct or behaviour such as bankruptcy, failure to disclose conflicts of interests, or engaging in work or interests which in the Attorney-General's opinion conflicts, or could conflict, with the proper performance of prescribed authority duties.
39. Under subsection 34AD(9) of the ASIO Act, the Attorney-General currently has a discretion to terminate a prescribed authority's appointment in certain circumstances. The proposed amendment would remove the discretion and instead make it a requirement for the Attorney-General to terminate a prescribed authority's appointment in circumstances which are sufficiently objective and serious to warrant termination of the prescribed authority's appointment. This ensures that prescribed authorities remain suitably qualified for the role throughout the duration of their appointment.
40. The Attorney-General will maintain a discretion to terminate a prescribed authority's appointment for reasons of misbehaviour or incapacity. This would ensure the Attorney-General has an opportunity to assess the particular circumstances before deciding whether termination, or another course of action, is most appropriate.
41. The proposed amendments would align the termination provisions for prescribed authorities with those of comparable oversight roles, such as the Public Interest Advocates under the TIA Regulations or examiners under the ACC Act. It also responds to the recommendation made by the Law Council of Australia on the termination of prescribed authorities in their submission to the 2023 PJCIS inquiry into the framework.⁵

2.3 Introducing additional post-warrant report requirements

42. The Bill proposes to impose additional post-warrant reporting requirements on the Director-General of Security to ensure the Attorney-General is made aware of relevant information regarding the conduct of questioning under a compulsory questioning warrant. This responds to a recommendation made by the Law Council of Australia in its submission to the 2023 PJCIS inquiry.⁶
43. Existing post-warrant reporting requirements under subsection 34HA(1) of the ASIO Act require the Director General to give the Attorney-General a written report for each questioning warrant that includes details on a range of actions taken.⁷ The report must be provided to the Attorney-General within three months of the day on which the warrant ceases to be in force. This allows the Attorney-General to assess the performance of ASIO's function of obtaining, correlating, evaluating and communicating intelligence relevant to security.
44. The Bill proposes to impose additional requirements for the written report so that they must also provide details of any actions taken in relation to the warrant that:
- did not comply with the *Guidelines to be observed by ASIO in the performance of its functions and the exercise of its powers* (the Guidelines) under section 8A of the ASIO Act;

⁵ Law Council of Australia (LCA) 2024, *LCA submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 11.

⁶ LCA 2024, *LCA submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 8.

⁷ This includes the extent to which the action taken under the warrant has assisted the Organisation, the apprehension of the subject, the seizure of materials found during a search, the extent to which compliance with a computer/data access order assisted the Organisation.

- contravened the written statement of procedures in force under section 34AF of the ASIO Act;
 - contravened the warrant or a condition or restriction in the warrant; or
 - contravened a direction given by the prescribed authority in connection with the warrant.
45. These additional requirements would ensure the Attorney-General is informed of relevant conduct issues that may arise in the exercise of ASIO's compulsory questioning powers, which may support the Attorney-General's decision-making when issuing future compulsory questioning warrants.

2.4 Post-charge questioning before a prescribed authority who is a former judge

46. The Bill proposes to require that the post-charge questioning of a subject occur only before a prescribed authority who is a former judge of a superior court, as appointed under paragraph 34AD(1)(a) of the ASIO Act. Post-charge questioning can give rise to particularly complex legal issues, which must be managed appropriately to ensure that the questioning does not adversely affect the fair trial of a subject. The Department considers that former judges with extensive experience in ensuring the fairness of trials are best placed to navigate any complexities and ensure the fair trial of the subject.
47. Post-charge questioning refers to the compulsory questioning of a person under warrant, in circumstances where the subject of the warrant has either been charged with a related offence and that charge is yet to be resolved, or such as a charge is imminent. As Australia's security service, post-charge questioning continues to be necessary for ASIO to collect intelligence in relation to ongoing security threats, even where criminal proceedings have commenced or are likely to commence. ASIO must be able to continue to investigate such matters to ensure threats to security are fully understood.
48. Existing safeguards for post-charge questioning will also be retained under the framework, including a higher threshold for issuing a post-charge questioning warrant,⁸ an obligation on prescribed authorities to make directions in relation to questioning material where it may prejudice a person's safety or fair trial,⁹ and a use immunity provision for evidence provided by the person during questioning.¹⁰

2.5 Making the framework permanent and enabling a further PJCIS review

49. The Bill proposes to make the framework a permanent part of the ASIO Act by repealing the sunset provision contained in section 34JF of Division 3 of Part III.
50. Since its introduction in 2003, the framework has been subject to a number of Parliamentary independent reviews, leading the Parliament to extend the sunset date on six occasions, including most recently by the *Australian Security Intelligence Organisation Amendment (No. 1) Act 2025* which extended the sunset date by 18 months to 7 March 2027. This has resulted in the powers being continuously in force for over 20 years, reflecting a consistent assessment that the powers remain necessary and appropriate.
51. ASIO's use of compulsory questioning powers has proven valuable, yielding high-value intelligence relevant to security over the years, particularly in circumstances where ASIO's other powers were not appropriate. Furthermore, ASIO has shown it is judicious in its use of the powers, as reflected in the small number of compulsory questioning warrants sought in the last 20 years.
52. Making the powers a permanent part of ASIO's legislative framework will provide certainty that the powers will not lapse in the future and ASIO will continue to have access to the powers as part of its toolkit to respond to Australia's increasingly complex security environment.
53. The framework contains detailed safeguards, oversight mechanisms, and accountability measures, which have been refined over the past 20 years, particularly in response to recommendations made by,

⁸ Sections 34BA and 34BB of the ASIO Act.

⁹ Section 34DF of the ASIO Act.

¹⁰ Section 34GD of the ASIO Act.

and issues raised in the course of, Parliamentary and independent reviews. These safeguards, oversight mechanisms and accountability measures strike an appropriate balance between the need for ASIO to be able to obtain a warrant compelling a person to participate in questioning, with the protection of the human rights of those subjects. The measures in the Bill propose to further strengthen existing safeguards, including by ensuring the independence and impartiality of prescribed authorities and by ensuring the Attorney-General is made aware of relevant information regarding conduct under a warrant.

54. The framework would continue to be subject to Parliamentary oversight and review. The Bill proposes to enable the PJCIS to undertake a review of the operation, effectiveness and implications of ASIO's compulsory questioning powers before the third anniversary of the commencement of the *Australian Security Intelligence Organisation Amendment Act (No. 2) 2025*. This provides a further opportunity for the PJCIS to review the framework, including the amendments to the framework as proposed in this Bill, and ensure the powers remain necessary and proportionate.

3 Other comments on the current compulsory questioning framework

55. The following section discusses matters raised in the course of the lapsed 2023 PJCIS inquiry into the framework, noting these matters may be of interest to the PJCIS's current inquiry, and relate to measures not taken forward in the Bill.

3.1 Repeal of minor questioning warrants

56. During the 2023 PJCIS review into the framework, the Department and ASIO recommended repealing ASIO's ability to seek compulsory questioning warrants in respect of minors engaged in politically motivated violence.¹¹ The Department notes that members of the PJCIS raised concerns about this proposal in the course of its 2023 review.
57. The Director-General of Security's 2025 Annual Threat Assessment stated that there continues to be an increasing concern about the radicalisation of minors, evidenced by the fact that of all the potential terrorist matters investigated by ASIO last year, almost all of the matters involved minors.¹² Given the radicalisation of minors to engage in politically motivated violence continues to be a security threat, the Department considers it appropriate that ASIO maintain their ability to compulsorily question minors who have likely engaged in, is likely engaged or is likely to engage in activities prejudicial to the protection of Australia, and its people, from politically motivated violence. The Bill therefore makes no amendments to ASIO's ability to seek compulsory questioning warrants in respect of minors.
58. These powers will continue to be subject to a robust set of safeguards. As the Director-General of Security stated during the public hearing for the 2023 PJCIS inquiry, the threshold for issuing a minor questioning warrant is appropriately a 'very high bar'. The Attorney-General must be satisfied that there are reasonable grounds for believing the minor has likely engaged in, is likely engaged or is likely to engage in activities prejudicial to the protection of Australia, and its people, from politically motivated violence. The Attorney-General must also take into account the best interests of the child as a primary consideration when deciding whether to issue the minor questioning warrant.
59. Therefore, while the circumstances in which ASIO would request a minor questioning warrant would be rare, the powers continue to provide one of a number of tools in support of ASIO's investigative processes.

3.2 Introducing a statutory necessity and proportionality test

60. The Minister for Home Affairs, the Hon Tony Burke MP, has requested that the PJCIS consider the legislated thresholds applying to ASIO's questioning framework—including whether a statutory requirement to assess necessity and proportionality in the issuing criteria for questioning warrants should be implemented as a further safeguard, noting the proactive oversight of the powers by the Inspector-General of Intelligence and Security and the requirements contained in the Guidelines, made under section 8A of the ASIO Act.
61. The proposal to introduce a statutory necessity and proportionality test for ASIO's compulsory questioning warrants was a key issue raised in submissions and evidence to the 2023 PJCIS review.¹³ The Bill does not make any amendments to introduce a necessity and proportionality test given the framework already includes obligations relating to necessity and proportionality, which apply across all of ASIO's activities.

¹¹ Australian Security Intelligence Organisation (ASIO) 2024, *ASIO submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*; Department of Home Affairs February 2024, *Department of Home Affairs submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*.

¹² Burgess, M 2025, *Director-General's Annual Threat Assessment 2025*, Australian Security Intelligence Organisation.

¹³ Law Council of Australia (LCA) 2024, *LCA submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 7.

62. In particular, section 20 of the ASIO Act currently 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. This means that compulsory questioning warrants may only be utilised when necessary to discharge ASIO's functions.
63. The Guidelines, also incorporate the principles of necessity and proportionality across all ASIO intelligence-collection activities. In particular, paragraph 3.4 of the Guidelines provides that the collection of information by ASIO must be in accordance with 11 principles, including that:
- a) *any means used for obtaining and analysing information must be appropriate and proportionate to the gravity of the threat posed and the likelihood of its occurrence, including by having regard to potential impacts on other parties.*
64. The *Australian Security Intelligence Organisation (Statement of Procedures) Instrument 2025* (Statement of Procedures), which is prepared by the Director-General and approved by the Attorney-General under section 34AF of the ASIO Act, contains more detailed requirements that apply to the exercise of authority under a questioning warrant, many of which go to proportionality. The Statement of Procedures also confirms that ASIO must observe the Guidelines to the extent it is relevant to a questioning warrant, which includes the application of the proportionality requirements in paragraph 3.4 of those Guidelines, outlined above.
65. Further, as part of the test for issuing an adult or minor questioning warrant under sections 34BA and 34BB of the ASIO Act respectively, the Attorney-General must be satisfied that it is reasonable in all the circumstances for the warrant to be issued, having regard to other methods (if any) of collecting the intelligence that are likely to be as effective. The Guidelines also require that ASIO always applies the least intrusive investigative methods first before requesting a questioning warrant.
66. Relatedly, the 2018-19 Comprehensive Review of the Legal Framework of the National Intelligence Community (Comprehensive Review) recommended that intelligence legislation, including the ASIO Act, should not be amended to include a standalone proportionality test as part of the threshold of the authorisation process, noting that the Guidelines already contained a mechanism for the assessment of proportionality.¹⁴

3.3 Re-introducing judicial oversight for issuing of questioning warrants

67. A further key issue raised in submissions and evidence to the 2023 PJCIS review was the proposal to re-introduce independent judicial oversight and scrutiny of the issuing of compulsory questioning warrants as part of a 'double-lock' process.¹⁵
68. Under the current framework, all compulsory questioning warrants are issued by the Attorney-General. The framework previously provided for a double-lock process for the issuing of all questioning warrants, which required the Director-General to seek the consent of the Attorney-General before applying to an issuing authority, who was a judge of a Federal Court appointed by the Attorney-General in their personal capacity, to issue the warrant.
69. The double-lock process was removed under the framework by the ASIO Amendment Act 2020 in response to a finding by the PJCIS in its review of ASIO's questioning and detention powers in 2018. The PJCIS found it appropriate that a questioning warrant be solely issued by the Attorney-General, accepting that ASIO required an agile framework in light of the threat environment and that the double-lock process was inefficient and impeded timely and effective operations.
70. The Department considers it is appropriate for the Attorney-General to remain the sole issuing authority for compulsory questioning warrants. The role of the Attorney-General in authorising ASIO warrants is long-standing, and reflects the recommendations made by Justice Hope in his 1974-1977 *Royal Commission on Intelligence and Security* (the First Hope Royal Commission), which informed the

¹⁴ Attorney-General's Department 2019, *Comprehensive Review of the Legal Framework of the National Intelligence Community Report*, Recommendation 29.

¹⁵ Law Council of Australia (LCA) 2024, *LCA submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 5; Australian Human Rights Commission (AHRC) 2024, *AHRC submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 3.

design of the ASIO Act. The Comprehensive Review revisited the role of the Attorney-General in issuing ASIO warrants, and considered that:¹⁶

The Attorney-General is the Government's principal legal adviser and has a duty to maintain public confidence in the administration of justice and uphold the rule of law. Given the inherent tension that arises in relation to a security service in a democratic society, the Attorney-General's role in authorising ASIO warrants... is long-standing and critical.

71. Further, the framework will continue to be subject to a comprehensive set of oversight and accountability provisions which will ensure public confidence in the use of ASIO's compulsory questioning powers without the need for a double-lock process. The framework expressly provides that IGIS can attend the questioning or apprehension of a subject under a warrant,¹⁷ and all questioning is overseen by an independent prescribed authority.

3.4 Changes to the role of lawyers during questioning

72. The Department has considered the submissions made by the Law Council of Australia, the AHRC and the New South Wales Council for Civil Liberties to the 2023 PJCIS review in relation to the role of lawyers under a compulsory questioning warrant.
73. The Department considers the current arrangements in relation to lawyers to be appropriate, noting that compulsory questioning warrants are an intelligence collection mechanism in which lawyers are not intended to play an active role. The framework contains several provisions relating to access to, and the role of, lawyers during the questioning process that reflect the intelligence collection purpose of, and particular security requirements relating to, compulsory questioning by ASIO. These provisions effectively support a person's right to effective legal assistance, while also ensuring the questioning process is not compromised or frustrated.
74. Notably, minors cannot be questioned without a lawyer present, and adults may only be questioned in the absence of a lawyer in limited circumstances.¹⁸ The prescribed authority has the power to appoint a lawyer on behalf of the subject where the subject is unable to access their own legal representation. Financial assistance may be provided for the subject's appearance under a compulsory questioning warrant.
75. Where permitting the subject to contact a particular lawyer may present a security risk, because doing so may result in a person involved in an activity prejudicial to security being tipped-off on the investigation into the activity, or a record or other item important to the investigation being destroyed or damaged, the prescribed authority may limit the subject's contact with that lawyer.¹⁹ While such circumstances may be rare, it remains important that the independent prescribed authority retains the power to minimise risks of compromise to ongoing ASIO investigations. Importantly, a decision by the prescribed authority to limit contact with a particular lawyer does not preclude the subject obtaining alternative legal representation—and, as outlined above, the framework generally requires that subjects be legally represented and provides for the appointment of a lawyer if the subject is unable to access their own legal representation.
76. The ASIO Act also deals with the role of lawyers during questioning. Lawyers must not intervene in the questioning process, except to request a clarification or a break to advise the subject.²⁰ A lawyer may be removed from questioning where the prescribed authority considers their conduct to be unduly disruptive, in which case the subject may contact a replacement lawyer.²¹ These provisions are important to prevent unnecessary delays in questioning, in particular where delays impact other aspects of an ongoing investigation or relate to a time-sensitive security matter. In March 2025, the former Attorney-General, the Hon Mark Dreyfus KC MP, approved an updated Statement of Procedures under

¹⁶ Attorney-General's Department 2019, *Comprehensive Review of the Legal Framework of the National Intelligence Community Report*, Volume 1, Paragraph 14.20.

¹⁷ Section 34JB of the ASIO Act.

¹⁸ An adult questioning subject can only be questioned in the absence of a lawyer where they have voluntarily chosen to have no legal representation, or where the prescribed authority makes a direction on the basis that reasonable time for a lawyer to attend questioning has passed (section 34FA of the ASIO Act).

¹⁹ Section 34F of the ASIO Act.

²⁰ Subsection 34FF(3) of the ASIO Act.

²¹ Subsections 34FF(6) and (7) of the ASIO Act.

the ASIO Act which introduces an additional safeguard, providing that the prescribed authority may warn the lawyer prior to their removal.²²

77. The Director-General may also redact information from a copy of a warrant provided to a lawyer, if it is considered necessary to avoid prejudice to security, defence, international affairs or individual privacy. Given the high likelihood that such documents will contain highly sensitive national security information, this ensures such information is not improperly disclosed.

3.5 Safeguards for vulnerable persons

78. The Department has considered the proposal made by the Law Council of Australia to introduce additional, statutory safeguards for vulnerable persons (for example, persons with a disability) who are the subject of a compulsory questioning warrant.²³ However, the Department considers the current arrangements to be appropriate given existing safeguards to protect vulnerable persons who are the subject of compulsory questioning warrants.
79. Notably, all questioning is overseen by an independent prescribed authority, ensuring that questioning is conducted fairly and with respect for the subject's human rights. Any person exercising authority under a questioning warrant or implementing or enforcing a direction given by the prescribed authority, must treat all subjects with humanity and respect for human dignity.²⁴
80. To support the exercise of legal capacity, minor subjects cannot be questioned without a lawyer and a minor's representative present (noting in some circumstances the lawyer may also be the minor's representative). The minor's representative can also be present during apprehension, search and transportation of the minor. Adults may only be questioned without a lawyer in certain circumstances, and there is scope for the Attorney-General to apply certain conditions or restrictions on the warrant, for example a requirement that a vulnerable subject only be questioned in the presence of a lawyer.
81. When issuing a minor questioning warrant under s 34BB of the ASIO Act, the Attorney-General must consider the best interests of the minor as a primary consideration, including factors like the physical and mental health of the minor. The Statement of Procedures includes a requirement that ASIO must seek expert advice in assessing the particular needs and special requirements of minors.²⁵
82. Likewise, the Statement of Procedures was recently updated to provide that ASIO may seek expert advice in assessing the particular needs and requirements of a vulnerable person, to ensure the conditions of apprehension, search and questioning take account of known vulnerabilities.²⁶ This allows ASIO to take a case-by-case approach to providing supports for vulnerable persons. Where the subject has a known vulnerability, the prescribed authority may seek advice from a medical practitioner or psychologist to ensure they understand the explanations given on their rights and obligations.²⁷ The subject may also access an interpreter if they have a physical disability that impacts their ability to communicate or understand.²⁸

3.6 Enabling entry to premises for ASIO officers

83. ASIO's submission to the 2023 PJCIS review recommended that ASIO be given the power to access private premises to serve a written notice of a compulsory questioning warrant on a person. The Department considers that the current framework affords sufficient flexibility for ASIO to serve warrant notices, including in circumstances where the person may be evasive of the notice.

²² Subsection 9(19) of the Statement of Procedures.

²³ Law Council of Australia (LCA) 2024, *LCA submission to the Parliamentary Joint Committee on Intelligence and Security: Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979*, Recommendation 1.

²⁴ Section 34AG of the ASIO Act.

²⁵ Section 13(6) of the Statement of Procedures.

²⁶ Section 13(7) of the Statement of Procedures.

²⁷ Section 9(9) of the Statement of Procedures.

²⁸ Sections 34DN and 34DO of the ASIO Act.

Conclusion

84. The Department thanks the Committee for the opportunity to make a submission to its review of the Bill and hopes that this submission assists the Committee in further understanding the proposed measures.
85. ASIO's compulsory questioning powers remain a vital capability for ASIO in its mission to protect Australia and Australians from threats to their security. The Bill ensures that ASIO continues to have the powers it needs to navigate an increasingly complex, challenging and changing security environment, and deliver on its mission.