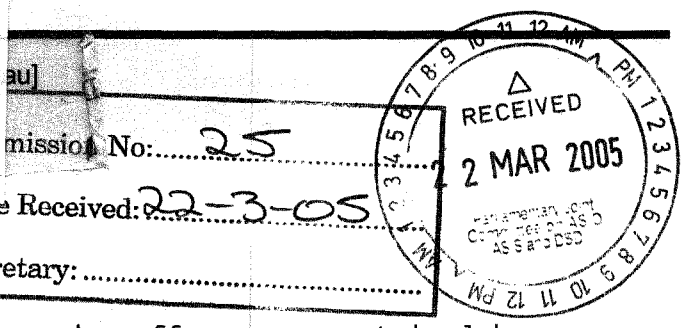

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mission No: 25

Date Received: 22-3-05

Secretary:

Dear Secretary

Review of ASIO's special powers relating to terrorism offences as contained in Division 3 Part III of the Australian Security Intelligence Organisation Act 1979

I appreciate having the opportunity to participate in the above review. Although this was a form letter I have made some changes to the original letter as it was not correct for my situation nor did I agree with all the views that it expressed. I wish to express the following concerns regarding the operation, effectiveness and implications of Division 3 Part III of the Australian Security Intelligence Organisation Act1979 ('the Act'):

Breadth of ASIO Special Powers Relating to Terrorism Offences ASIO's powers to detain and question ('ASIO's special powers') are not limited to those suspected of involvement in terrorist activities or links to terrorist organizations. Anyone with important information relating to terrorism activities could be the subject of detention and questioning.

In previous times, the extremely broad definition of terrorism adopted in the Act may have included activities associated with the African National Congress (ANC) and East Timorese independence movements. This unreasonably broadens the category of person potentially subjected to questioning and/or detention under the Act. The definition of terrorism used in these laws and the process of deciding which groups and organisations are named as terrorist organisations makes any group of persons in opposition to the government face the risk of being labelled as terrorists trade unions and political groups could be affected by these undemocratic laws.

Secrecy
Those held under ASIO's special powers for periods of up to a week are held in secret. For two years afterwards it is an offence to discuss what happened with anyone other than one's lawyer and certain other authorities. This means that it is an offence tell one's friend, family and community what occurred.

The serious and coercive nature of ASIO's special powers is exacerbated by the secrecy that surrounds them. The capacity of individuals and communities to express concern about the exercise of the powers and to keep ASIO accountable for its actions is curtailed. Someone questioned can't even tell their family where they had been or what they were doing.

A system of open and accountable government and government agencies is a prerequisite for true and meaningful democracy. These laws open the door for abuses of power and, of even greater concern, the concealment of these abuses. The secrecy provisions contained in the act are unreasonable in an open, democratic society and should be amended to allow the people of Australia to have an active part in the running of our country.

Right to silence
Those questioned under the ASIO Powers have no right to silence. Failure to answer questions is a crime punishable by up to five years' imprisonment. Failure to answer questions is an offence even if the person does not have the information ASIO is seeking, unless the person can show that they did not have the information.

The right to silence is a fundamental principle of our justice system. It is of great concern to us that it is abrogated in such broad circumstances, in a scheme shrouded in secrecy and lack of public accountability.

Legal Representation
Where a person is being questioned under the Act, there is no requirement that ASIO permits the person to obtain legal advice or to have a lawyer present. Where a person is permitted to contact a lawyer, ASIO may still question them prior to the lawyer arriving and before they have a chance to obtain legal advice. Where a person's chosen

lawyer is deemed to be a security risk they may be prevented from contacting that lawyer. Where a person's lawyer is found to be disruptive during questioning the lawyer may be removed.

The right to legal representation is unduly limited and uncertain under ASIO 's special powers. Given the absence of the right to silence and the seriousness of matters being investigated in such cases, it is critical that people undergoing questioning have unfettered access to legal advice before and during questioning.

Passports and Leaving Australia
Where a warrant is sought in relation to a person, that person must surrender their passport and must not leave Australia. This applies whether or not a warrant is ultimately issued. Prior to the issue of a warrant or where no warrant is issued, there is no justification for such significant restrictions on a person's freedom of movement.

Length of Questioning
Where an interpreter is required, a person may be questioned for up to 48 hours. We note that one person questioned under a warrant issued in 2003-2004 was questioned for 42 hours 36 minutes. While the use of an interpreter may mean that the questioning process takes longer, questioning a person for 48 hours without reasonable sleep is excessive and inhumane. This must also cast doubts on the reliability of any information or evidence obtained through such a process. Whether or not an interpreter is used does not alter the unreasonableness of being questioned for extended periods. Questioning for 24 hours is far beyond excessive and unwarranted, 4 hours is a reasonable length for questioning.

Lack of publicly available information for this review
Those affected by the ASIO powers have almost no capacity to comment or provide information about the operation of these powers because of secrecy provisions in the Act.

As a result, the main source of information about the operation of these powers comes from ASIO's reports, and is extremely limited in scope. There is an absence of publicly available information from sources independent of the agency exercising these powers.

This lack of independent information undermines the capacity of the people of Australia to comment on the operation, effectiveness and implications of the ASIO powers. It also impedes the Committee's ability to conduct an effective review.

The best way to fight terrorism is to have the will of the people expressed in the laws of a country and by having accountabilty to the people for all government services,organisations and activities, not by restricting and violating the rights of a nation's citizens, visitors and asylum seekers which the terrorism laws have done and will continue to do unless ammended.

I submit that in future additional material about the operation of these and similar powers should be made available to the public so as to assist in the process of review.

I thank the Committee for the opportunity to contribute to the above Review and for the time taken by the reader to read this submission. If you have any questions regarding my submission, please contact me on PH:62595862 or write to S.Turner 4 Shellshear Pl. Florey ACT 2615

Yours faithfully

S. Turner