

Wednesday, March 23, 2005

The Secretary
Parliamentary Joint Committee on ASIO, ASIS and DSD
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Submission No:	240 30
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Secretary:

Dear Committee members

RE REVIEW OF ASIO'S DETENTION AND QUESTIONING POWERS

Thank you for the opportunity to make a submission to the Committee on ASIO's detention and questioning powers.

I am writing to express my grave concern about the amendments made in 2003 to the *Australian Security and Intelligence Organisation Act 1979*. I am deeply concerned about 34VAA "secrecy relating to warrants and questioning". I believe that these provisions severely limit freedom of the press in Australia.

I am particularly concerned that the legislation leaves open the possibility of third parties, such as journalists, facing hefty jail terms for disclosing information connected to or in relation to a warrant issued under the Act, for a full two years after the warrant's issue.

I am also concerned that there is a strict liability clause for anyone who is the subject of a warrant issued under the legislation, or their legal representatives and advisors. Under the Act, neither the subject of the warrant or their legal advisors can disclose any information relating to the warrant or the questioning or detention of persons in connection with the warrant, for up to 28 days. The penalty for breaching this section is imprisonment for five years.

Equally disturbing is that the subject of the warrant or their legal advisors cannot disclose information if that information is "operational information" for up to two years after the expiry of the warrant. "Operational information" is loosely and broadly defined under the Act. Again, the penalty is imprisonment for up to five years.

These sections effectively gag public debate about ASIO's detention and questioning techniques and the subject matter of any operations. While I appreciate that certain security information is sensitive, I am deeply disturbed these amendments gag all discussion of ASIO operations, leaving the door open to arbitrary arrests and human rights abuses.

In a democratic society, it is important that national security is balanced with civil and human rights. I believe the current legislation unduly sacrifices media freedom. It is important that our public institutions are open to public scrutiny and are accountable. To inoculate them from such scrutiny is the first step on a slippery slope to autocracy.

I call on the Committee to recommend that the sunset clause (34Y) of Division III of the Act be maintained so that the Division ceases to have effect after 23 July 2006.

Yours sincerely