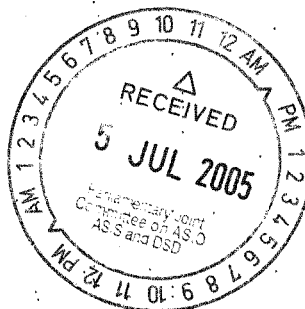


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Our Ref: P-05/62

Margaret Swieringa  
Committee Secretary  
Parliamentary Joint Committee on ASIO, ASIS and DSD  
Parliament House  
CANBERRA ACT 2600

Submission No: 104  
Date Received: 5-7-05  
Secretary:

4 July, 2005

Dear Ms Swieringa

### Supplementary submission – Review of Division 3, Part III of the *ASIO Act 1979* (Cth)

Further to the appearance of Jane Stratton and Robin Banks before the Committee on 6 June, 2005 and the written submission of the Public Interest Advocacy Centre, I take this opportunity to provide the following supplementary submission.

In our evidence before the Committee, we argued that the application of the compulsory questioning and/or detention powers ('special powers') under the *ASIO Act 1979* (Cth) ('the Act') ought to be narrowed to immediate or imminent and identifiable terrorist threats (Hansard, 62 – 63; 65 – 66). We did not, at that time, offer a threshold test for the application of the special powers.

In this submission, PIAC suggests the following amendment to the conditions that trigger the operation of those powers. These would replace existing sub-sections 34C(3)(a) and 34D(1)(b):

34C(3) The Minister may, by writing, consent to the making of the request, but only if the Minister is satisfied:

- (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence ~~that is important in relation to a terrorism offence~~ the collection of which is necessary to prevent an imminent terrorist act; and

34D(1) An issuing authority issue a warrant under this section relating to a person, but only if:

- (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence ~~that is important in relation to a terrorism offence~~ the collection of which is necessary to prevent an imminent terrorist act.

'Terrorist act' is defined in the *Criminal Code Act 1995* (Cth), Schedule 1 at section 100.1. By 'imminent', we intend that there be an identifiable and immediate terrorist act before the special powers can properly be triggered.

This position is supported by ASIO's public disclosure of the practical use of the special powers. In PIAC's opening address to the Committee, I referred to ASIO's unclassified submission in which ASIO stated that questioning warrants 'come to the fore' when:

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- the threat of harm is immediate and other methods of intelligence collection will be too slow or too indirect to be effective in the time available;
- limited insight has been gained into terrorist activity using other intelligence methods, but the security measures adopted by the individual or group have foiled ASIO's attempts to identify all those involved or to assess the full extent of the threat; or
- there is reasonable suspicion of terrorist activity but efforts to resolve it have been unsuccessful and those involved have refused to co-operate.

ASIO's description of its own criteria indicate that it understands the special powers to be a last resort measure to be used where there is a reasonably identifiable and immediate terrorist threat against which alternative intelligence gathering methods have not been or could not reasonably be used effectively.

PIAC submits that the test it offers is consistent with ASIO's own understanding of the special powers. Further, in PIAC's submission, the proposed test provides the basis for a more narrowly focused application of the special powers consistent with the purpose of preventing or minimising the effect of any terrorist act.

Yours sincerely



*per* Robin Banks  
Chief Executive Officer

**The Public Interest Advocacy Centre (PIAC) is moving**

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