

March 24, 2005.

Committee Secretary
Parliamentary Joint Committee on ASIO, ASIS and DSD
Parliament House
Canberra ACT 2600
[mailto:pjcaad@aph.gov.au]

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*.

The Progressive Law Students' Network (University of Technology, Sydney) appreciate the opportunity to participate in this Review.

The Progressive Law Students' Network organises events and action around legal issues, volunteers for community legal projects, and engages in progressive community legal discourse and education. Since the formation of the Network in 2001, students have extensively discussed legal issues and responses to 'terrorism'.

We believe the extensive powers granted to ASIO under the Act are excessive and severely erodes rights, and access to justice, for all Australians. We believe the Act restricts and inhibits democratic participation.

We wish to express the following concerns regarding the operation, effectiveness and implications of Division 3 Part III of the *Australian Security Intelligence Organisation Act 1979* ('the Act'):

Lack of necessity for ASIO powers

In its annual report for 2003-2004, ASIO reported that it had made only three requests for questioning warrants under s34C. These people were placed under ASIO custody for 15 hours 57 mins, 10 hours 32 mins, 42 hours 36 mins, respectively. The minimal use of the power granted under the Act indicates such expansive powers are unnecessary.

Further addition to the broad and discretionary definition of terrorism

The Act refers to the definition of terrorism in the *Criminal Code*, a definition that is problematic and excessively broad. The scope of the *Criminal Code* definition means that legitimate political activities and political association may fall within the definition, and thus within the ASIO powers of surveillance and detention. The definition in the *Criminal Code* enables ASIO to target particular communities, racial or religious groups, or specific political groups.

Scope of ASIO powers creates uncertainty and barriers to democratic participation

The breadth of the ASIO powers, lack of information about their application, and broad and discretionary nature of their operation create uncertainty and insecurity for politically active Australians. This uncertainty hinders political participation, undermines democracy, and further limits freedom of political speech and association. More information regarding the application and operation of the Act and ASIO powers must be made available to the Australian community.

Targeting and victimisation of certain parts of the community

In the current political climate of fear and insecurity, there is strong evidence to suggest it is mostly, if not exclusively, members of the Arab and Muslim communities in Australia that are targeted under the Act. Within our communities, there is a pervasive belief that people of a particular racial or religious profile are 'more likely' to be terrorists. The scope of the Act, and limited reporting of ASIO operations, perpetuate and reinforce this view. Few people in our communities feel confident enough to speak out against government changes in response to terrorism.

Reversal of the onus of proof

Persons questioned under an ASIO warrant are denied the common law right to silence, and must answer all questions. Failure to answer can result in a five year prison sentence. The *ASIO Act* reverses the burden of proof and places non-suspects who are being detained and questioned in the position of having to positively prove that they do not know something. If ASIO thinks you have information relating to terrorism, the onus is on you to prove that you do not. It is extremely difficult to prove that you do not know something. The reversal of the onus of proof creates a situation where people are effectively guilty until proven innocent.

Secrecy and accountability

Operations under the Act are conducted in a pervading sphere of secrecy. A person detained under the Act may not talk to anyone else about it (excluding certain government and legal officers, and/or parents and guardians in some limited circumstances). If they do so within a two-year period, then they are liable to five years in prison. This is likely to have an extremely debilitating and destabilising effect, especially for someone who was not even involved in 'terrorism'.

This secrecy not only impacts on persons detained under the Act, but also on public awareness and accountability. This secrecy silences the Australian community, and raises serious concerns about the accountability of ASIO and other government agencies to the Australian public.

Lack of publicly available information for this review

We note the lack of information regarding the use, scope and operation of these powers, or the effectiveness and necessity of these laws. ASIO reports are limited and largely inaccessible to the communities affected by these laws. We rely largely on personal and anecdotal experience. To allow for effective community participation in reviews such as this, more information, particularly information independent of ASIO, needs to be available in the future.

Submission deadline

The Progressive Law Students' Network would like to express concern regarding the short period of time to prepare submissions. Only two months were allowed – this is not long enough to prepare discussion and research. The lack of time seriously inhibits many parts of the Australian community to participate in the review.

Conclusion

Paranoia of terrorist attacks does not justify the expansive powers that are given in the name of intelligence gathering. The creation of such extreme provisions, at a time of ostensible peace, without much opposition or recognised threat, is the real threat to the liberty and security of Australians.

We would like to invite the Committee to contact the authors if we can be of further assistance. Our email is holly_tara@hotmail.com; phone 041 768 2541.

We thank the Committee for the opportunity to contribute to this review.

Sincerely

Holly Creenaune and Benish Haider

For the University of Technology Progressive Law Students' Network

This submission was prepared with the help and resources of the UTS Students' Association.