

## **Senate Legal & Constitutional Legislation Committee inquiry into the provisions of the Anti-Terrorism Bill 2004**

### **Questions on notice**

#### Question 1 (p.3, *Proof Hansard*)

**Senator BOLKUS**—I am a bit intrigued. I am working on the premise that ASIO has a capacity to question someone and you are part of that process. Are there any categories of people who would not have intelligence but would be suspects? In other words, a person of interest because of their intelligence capacity would for me include anyone who would be suspected of the offence.

**Commissioner Keelty**—While I think through the proposition, I will say that one difference is that under the ASIO Act the witness is compelled to respond to the questions. We cannot then turn that around as admissible evidence. We have to then separately interview the person under the provisions of part 1C. I am just trying to think of a circumstance that might apply to your scenario.

**Senator BOLKUS**—You might want to take that on notice.

**Commissioner Keelty**—Yes.

#### **I am advised that the answer to the honourable Senator's question is as follows:**

Whilst the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP) both play a role in ensuring Australia's national security, the two agencies have distinctly different roles. ASIO's primary role is to gather information and produce intelligence that will enable it to warn the government about activities or situations that might endanger Australia's national security. The AFP's primary role is to enforce Commonwealth criminal law, and to secure evidence which will be used in criminal prosecutions.

In most instances, both the AFP and ASIO will be interested in a person for similar reasons, however, the processes employed when collecting information are necessarily separated, as these are subject to different legal accountabilities, thresholds for further use and collection and collation standards.

A person who is compelled to provide information to ASIO in relation to a terrorism matter can be any person who has intelligence in regards to that matter. This could include persons suspected of involvement in terrorism offences, witnesses and other third parties. This process is for intelligence gathering purposes.

Police do not have powers to compel arrested persons to provide information relating to a terrorism offence. Information obtained during interview outside of the provisions of Part 1C of the Crimes Act 1914 is inadmissible in court proceedings. Nothing in Part 1C abrogates a person's right to silence. Part 1C provisions only apply to persons who have been arrested and persons can only be arrested if a constable has reasonable grounds to believe that a person has or is committing an offence and proceeding by summons would not be effective.

Question 2 (p.3, Proof Hansard)

**Senator LUDWIG**—Have you participated in any review of part 1C with the Attorney-General's Department or another department?

**Commissioner Keelty**—Could I take that on notice? I thought there was to be a review after a specific period, but my memory is—

**Senator LUDWIG**—That is why I was asking the question; I thought there was too. Has the AFP or any state police force that you are aware of made submissions to the government about the adequacy of the current provisions, which have generated the amendments that have been put forward and that are currently before the committee?

**I am advised that the answer to the honourable Senator's question is as follows:**

During the development of the *Measures to Combat Organised and Serious Crime Bill 2002* the AFP participated in a review of Part 1C of the Crimes Act 1914 conducted by the Attorney-General's Department.