

## **SECOND READING SPEECH:**

### **NATIONAL SECURITY LEGISLATION AMENDMENT BILL 2014**

The Bill contains a package of targeted reforms to modernise and improve the legislative framework governing the activities of the Australian Intelligence Community. It principally amends the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and the *Intelligence Services Act 2001* (IS Act).

Intelligence is at the forefront of Australia's national security capability, and our intelligence agencies serve us well in this regard.

It is a testament to their hard work and professionalism – and that of our law enforcement agencies – that four planned terrorist attacks on Australian soil have been disrupted since the enactment of Australia's counter-terrorism legislation in 2002.

In addition, 23 people have been convicted of terrorism offences under Australian law. Most prosecutions have made significant use of intelligence information.

However, it is imperative that the statutory framework governing the operations of Australia's intelligence agencies keeps pace with the contemporary, evolving security environment.

If our agencies are to remain effective, they must be supported by legislation that allows them to respond rapidly to emerging security threats, both global and domestic.

Among these are international activities of security concern such as transnational terrorism. This includes the involvement of terrorist organisations in civil conflicts or insurgencies, such as in Syria and Iraq.

As this Parliament is aware, the activities in Syria and Iraq have led to an increase in individuals travelling overseas to participate in hostilities. Among them are, regrettably, a number of Australians, including some who have fought or trained with terrorist organisations.

On the most recent information, around 60 Australians are participating in the conflict zones in Syria and Iraq. A total of 150 Australians, both onshore and offshore, are involved in the conflict, from engagement in fighting to providing support such as funding or facilitation.

The Attorney-General has this week returned from a visit to the UK, where discussions highlighted that the primary national security concern of common interest is the threat posed by returning foreign fighters. This is the most significant risk to Australia's domestic security that we have faced in many years.

There is a risk that such participants will become further radicalised. They may return to Australia with an increased capability and commitment to pursue violent acts in the community.

The threat of a terrorist attack on Australian soil is real and undiminished. The threat of 'home grown' terrorism is enduring.

In addition, rapid developments in information and communications technology, particularly in the online environment, have led to its increased use in activities of security concern.

Terrorist groups and individuals are becoming sophisticated in their use of technology to organise themselves and evade detection.

Espionage also remains a security threat. Recent international high-profile cases are a reminder of the risk presented by so-called ‘trusted insiders’ in this regard.

It is important that our intelligence agencies are equipped with powers that enable them to function effectively in this environment.

To this end, the Bill contains measures to address practical limitations in the current legislation, which were largely identified by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in its *Report on Potential Reforms of Australia’s National Security Legislation*, as tabled on 24 June 2013.

The Bill implements the Government’s response to Chapter 4 of this report, on Australian Intelligence Community legislation reform. Importantly, this report was bipartisan. We thank our colleagues on that Committee, across all sides of the chamber, for identifying the need to modernise the legislation governing the powers of the intelligence agencies – the report was undertaken on the principles of security and accountability, not politics.

Consistent with the bipartisan nature of the report, the Government supports, in full or in part, 21 of the Committee’s 22 recommendations.

The only recommendation not being implemented, recommendation 25, was a suggested extension of ASIO’s warrant based powers, which is considered unnecessary.

The Bill forms part of our commitment to respond to the recommendations of several recent reviews of national security and counter-terrorism legislation.

## **Outline of measures in the Bill**

Against this background, the Bill enhances the capability of our intelligence agencies in seven key areas.

### **(1) Modernising ASIO's statutory employment framework**

First, the Bill contains amendments to modernise the employment provisions in Part Five of the ASIO Act to better align them with contemporary organisational needs, and Commonwealth public sector employment practices, including inter-agency mobility.

Modernisation of these provisions is necessary. They have not been updated significantly since their enactment some 30 years ago.

The Bill also implements consistent terminology to describe persons who are in an employment relationship with the Organisation, or otherwise affiliated with it.

### **(2) Modernising and streamlining ASIO's warrant-based intelligence collection powers**

The second key area of reform is to modernise and streamline ASIO's warrant-based powers, in line with the majority of the PJCIS recommendations.

Division Two of Part Three of the ASIO Act enables the issuing of warrants authorising the Organisation to exercise powers of search, to access computers, to use surveillance devices, and to inspect postal or delivery service articles.

The proposed amendments will address a number of practical limitations. In particular, the Bill will ensure that the warrants regime regulating ASIO's intelligence-collection and related powers keeps pace with technological developments, particularly the use of online communications by persons of security interest. As such, the Bill will assist in managing the risk presented by Australians who are participating in, or supporting participants in, foreign conflicts (including those conflicts in which terrorist organisations are active).

### ***Targeted extensions of powers and streamlined issuing processes***

A key improvement is the establishment of a 'multiple powers warrant' scheme, which will enable ASIO to request a single warrant authorising the exercise of multiple powers in relation to a target.

A single issuing process will ensure the simultaneous availability of all powers sought under different types of warrants, while retaining the statutory thresholds for the issuing of individual types of warrants.

### ***Improved execution and administration of warrants***

The Bill further contains technical amendments to improve the execution and administration of warrants. This is largely by clarifying ambiguities in provisions concerning access to third party premises and the use of reasonable force.

### ***Maintaining strong safeguards***

ASIO's warrant-based powers will remain subject to significant safeguards. These include the high thresholds in the statutory criteria for the issuing of warrants and the exercise of powers under them. The requirements for Ministerial-level issuing decisions will continue to apply,

and the regime will remain subject to the extensive, independent oversight of the Inspector-General of Intelligence and Security.

### **(3) Strengthening ASIO's capability to conduct covert intelligence operations, with appropriate safeguards and oversight**

The third key reform is the implementation of a PJCIS recommendation to establish a dedicated statutory framework for ASIO's covert intelligence-gathering operations.

Much of the intelligence information that is relevant to the security of Australia must necessarily be collected by the Organisation on a covert basis.

However, such covert operations are not without risks. In addition to the potential risks to the safety of participants, covert operations can in some instances require participants to associate with those who may be involved in criminal activity – for instance, the commission of offences against the security of the Commonwealth.

Covert operations may, therefore, expose intelligence personnel or sources to legal liability in the course of their work. For this reason, some significant covert operations do not commence or are ceased.

To address this issue, the Bill implements the recommendation to create a limited immunity for participants in authorised, covert operations.

Just as Part IAB of the Crimes Act provides for a limited immunity for covert law enforcement operations, it is appropriate that corresponding protections are extended to participants in covert intelligence operations.

Consistent with the PJCIS's recommendation, the limited immunity is subject to rigorous safeguards.

In particular, it is limited to the conduct of a participant in a special intelligence operation that is authorised by the Director-General of Security or a Deputy Director-General. The relevant participant and the specific conduct must be authorised expressly in advance.

The limited immunity does not extend to conduct in the nature of entrapment, serious offences against the person or property, or civil wrongs involving the causation of death, or serious injury, loss or damage.

#### **(4) Clarifying and improving the statutory framework for ASIO's cooperative and information-sharing activities**

The fourth major reform is to clarify the legislative basis for certain cooperative information-sharing activities of ASIO.

The Bill will insert a provision which confirms ASIO's ability to cooperate, on a voluntary basis, with private sector entities, such as owners and operators of critical infrastructure, in performing its statutory functions.

The Bill also remedies an unintended limitation on ASIO's ability to refer certain matters to law enforcement agencies for investigation. This concerns the ability of ASIO to refer suspected breaches of the prohibition on unauthorised disclosure of an ASIO official's identity.

## **(5) Enhancing the capabilities of Intelligence Services Act agencies**

The fifth key reform will implement PJCIS recommendations to enhance the capabilities of agencies under the IS Act, principally by clarifying or strengthening their powers or functions.

Importantly, the Bill enhances the capacity of ASIS to cooperate with ASIO, by improving the statutory arrangements for the collection and sharing of certain security related intelligence.

The Bill will improve the protective security capability of ASIS, which undertakes operations in dangerous locations. These amendments will enable ASIS to provide protective security training – such as training in self-defence – to other persons who are cooperating with it in performing its statutory functions.

## **(6) Improved protection of intelligence-related information**

The sixth key reform concerns measures to modernise and strengthen the secrecy offences in the ASIO Act and the IS Act in relation to the unauthorised communication of intelligence-related information.

These reforms are complementary to the measures recommended by the PJCIS report. They are necessary to address significant gaps in the coverage of these offences in the contemporary security environment.

As recent, high-profile international events demonstrate, in the wrong hands, classified or sensitive information is capable of global dissemination at the click of a button. Unauthorised disclosures on the scale now possible in the online environment can have devastating

consequences for a country's international relationships and intelligence capabilities.

Accordingly, the Bill will address a legislative gap by creating new offences applying to unauthorised dealings with an intelligence-related record, including copying, transcription, removal and retention. Currently, no such offences exist. Each new offence will attract a maximum penalty of three years' imprisonment.

In addition, the Bill introduces new maximum penalties of 10 years' imprisonment for existing offences involving unauthorised communication of intelligence-related information, which at two years' imprisonment are disproportionately low. The higher maximum penalties better reflect the gravity of such wrongdoing by persons to whom this information is entrusted.

These changes, combined with the existing espionage offence punishable by a maximum of 25 years' imprisonment, will create a three tier structure of unauthorised dealing offences that jeopardise the security of intelligence-related information.

#### **(7) Renaming of Defence agencies to better reflect their roles**

The seventh and final key reform is to formally amend the names of DIGO and DSD to the Australian Geospatial-Intelligence Organisation and the Australian Signals Directorate respectively. While these agencies have been known by their updated names for some time, the Bill will place this on a statutory footing and better reflect the roles that they play in protecting Australia's national security.

## **Concluding remarks**

This Bill is a significant contribution towards ensuring the future capability of Australia's intelligence agencies.

More broadly, this Bill is just the first step in the Government's commitment to maintaining and, where necessary, improving Australia's already strong national security laws. The Government is undertaking a comprehensive review of these laws, which will involve responding to recent reviews and proactively addressing any gaps to ensure our agencies can respond effectively to emerging security threats. The Government's number one priority is to keep Australians safe. We are committed to working with Parliament, the private sector and international partners to protect Australians and our interests from those who would do us harm.

## **ENDS**

1981 words

*(Approx. 20 minutes at 100 wpm)*