



Australian Government

Australian Security
Intelligence Organisation

Response to Question on Notice in relation to the PJCIS review of the ASIO Amendment Bill

On 11 July 2020, during and immediately after ASIO's appearance at the Parliamentary Joint Committee on Intelligence and Security (PJCIS) public hearing on the ASIO Amendment Bill, ASIO took on notice a number of questions relating to the proposed compulsory questioning power. Responses to those questions are below.

Question 1 (Senator Kenneally)

Would the threshold in the Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 setting out the circumstances in which technical assistance requests and technical assistance notices may be given orally be applicable in the context of the threshold for oral requests for questioning warrants?

Response

The relevant emergency provisions in the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* ('TOLA') require an imminent risk of serious harm to a person or substantial damage to property to exist before a request or a notice can be given orally. This is a higher threshold than the equivalent provision in the ASIO Amendment Bill, which requires only a reasonable belief that delay may be prejudicial to security. It is the belief that delay – rather than the questioning matter itself – may be prejudicial to security that engages the threshold.

The current threshold in the ASIO Amendment Bill is consistent with the threshold for the oral applications for special intelligence operations in the ASIO Act.

The threshold as set out in TOLA would be a significant additional restriction were it to be applied to oral requests for questioning warrants. The ASIO Amendment Bill proposes that questioning warrants will be able to be obtained in relation to espionage and acts of foreign interference. In those cases, delay may be prejudicial to national security without an imminent risk of serious harm to a person or substantial damage to property. This more restrictive definition of urgency would also impede ASIO's ability to conduct compulsory questioning where the collection opportunity is short but the threat is related to long-term capability development by hostile actors.

Question 2 (Senator Kenneally)

Have any other countries in the FVEY (Canada, UK, US and NZ) equipped their intelligence agencies with compulsory questioning powers akin to those you currently have and those proposed under the ASIO Amendment Bill?

- If yes, please provide detail (including countries, legislation, key provisions and examples of use in the last 5 years).
- For those countries without comparative powers, is there similar legislation that they use in circumstances where they want to compulsorily question people in relation to terrorism/political violence/espionage/foreign interference? For example, please note if law enforcement agencies have compulsory questioning powers.

Response

This question can best be answered by the Department of Home Affairs. ASIO understands that the Department have also received this question and will respond.

Question 3 (Senator Kenneally)

Are there any other countries (outside the FVEY) where comparable questioning powers have been legislated/used?

Response

This question can best be answered by the Department of Home Affairs. ASIO understands that the Department have also received this question and will respond.

Question 4 (Senator Kenneally)

How many different warrant approval mechanisms now exist for ASIO?

- Please list each type of warrant, the activities in question and the relevant approval authorities.

Response

ASIO understands that the Department of Home Affairs have also received this question and will respond.

Question 5 (Senator Kenneally)

How many ASIO warrants per year does the Attorney General currently sign off on?

- How does this compare to the previous five years? (please provide relevant figures)
- Can you please break down the warrants by type?
- On average, how long does it take the Attorney General to consider and sign off on a warrant request from ASIO? i.e. what is the average timeframe from receipt to return. If the timeframe varies for different warrant types, please provide timings for each.

Response

ASIO is unable to provide a response to this question at an unclassified level. We have submitted a separate classified response. ASIO would also be pleased to offer a classified briefing on this topic if requested.

Question 6 (Senator Kenneally)

For the 16 Questioning Warrants issued to date under the ASIO please outline the timings involved in obtaining authorisation, specifically; the time taken to write up the request within ASIO, the time taken for the Attorney General to sign off, time taken for the issuing authority to issue the warrant.

- Were there any concerns around delays in this process? Please provide specifics (causes, timing) in regard to any delays.

Response

ASIO is unable to provide a response to this question at an unclassified level. We have submitted a separate classified response. ASIO would also be pleased to offer a classified briefing on this topic if requested.