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**PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY**

**Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act  
1979**

**The Office of the Inspector-General of Intelligence and Security (the Office) submits the response below to the question taken on notice in the public hearing on THURSDAY, 23 MAY 2024. In addition to its response to the question on notice, the Office offers the following clarifications to its evidence as recorded in Hansard.**

**Response to Questions on Notice**

On 23 May 2024 Mr Josh Wilson asked:

‘The Law Council of Australia has specifically raised this shift that occurred in 2020, from some form of double lock to an approval process that only involves the Attorney-General. I don’t really understand why that change would’ve been made and I’m interested in your view.’

‘... were you engaged in the policy process that you discussed, when the change in 2020 was made, to take away the requirement that there be the involvement of an independent issuing authority?’

‘... if you were involved, and if there is anything that you commented on that was provided to you that you could advise the committee on, that would be worth having.’

**The answer to Mr Wilson’s question is as follows:**

On a number of occasions between 2017 and 2020, the former Inspector-General of Intelligence and Security provided the following input on the proposal to remove the requirement that a warrant issued under Part III Division 3 of the ASIO Act be issued by an Independent Issuing Authority:

- On 16 June 2017 the former Inspector-General of Intelligence and Security (IGIS), The Hon Margaret Stone AO, in evidence to this committee on its review of the operation, effectiveness and implications of Division 3 of Part III of the ASIO Act (ASIO’s questioning and detention powers), stated that, safeguards, including the Independent Issuing Authority, ‘are very worthwhile safeguards and I think it is important. It is a matter for the government, obviously, as to whether there is a move to that model. But we would say that satisfactory—not even perfect—oversight would not be possible without those sorts of safeguards.’
- On 16 October 2017 the former Inspector-General of Intelligence and Security, The Hon Margaret Stone AO, in a submission to this committee on its review of the operation, effectiveness and implications of Division 3 of Part III of the ASIO Act, stated at page 6, ‘Removing the role of an independent issuing authority is at odds with the position in other 5-eyes countries where the trend is to increase the requirement for external authorisation for intelligence activities. As far as I am aware none of the other 5-eyes countries has legislation authorising their intelligence services to conduct compulsory questioning but the UK and New Zealand have recently introduced, and the US and Canada already had, judicial or quasi-judicial authorisation for other powers including telecommunications interception. These changes reflect concerns in these countries that there be better protection of human rights. ASIO’s ‘streamlining’ proposal does not give weight to these concerns.’

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- On 3 July 2020 the former Inspector-General of Intelligence and Security, The Hon Margaret Stone AO, in a submission to this committee on its inquiry into the Australian Security Intelligence Organisation Amendment Bill 2020 stated at pages 7-8, 'The Bill removes the role of the issuing authority, and instead provides that QWs are issued by the Attorney-General. The issue of QWs by the Attorney-General is consistent with other warrants available to ASIO under the ASIO Act and the *Telecommunications (Interception and Access) Act 1979*. However, it differs from the proposal currently before the Parliament for international production orders to be issued by a nominated member of the Security Division of the Administrative Appeals Tribunal, with the Attorney-General's consent. The removal of the role of the issuing authority also departs from the trend towards increased requirements for external authorisation in other Five Eyes jurisdictions.' Footnote 19 to this submission noted: 'For example, the United Kingdom's the *Investigatory Powers Act 2016* and New Zealand's *Intelligence and Security Act 2017* both require intrusive powers to be approved by the responsible Minister and an independent judicial commissioner.'
- On 10 July 2020 the former Inspector-General of Intelligence and Security, The Hon Margaret Stone AO, in evidence to this committee at its hearing into the Australian Security Intelligence Organisation Amendment Bill 2020, stated that: 'My position is this: clearly, the double position—minister and judicial officer—gives greater protection. Whether, as a matter of policy, that is something the government should accept is another question. But there can be no doubt that, where you have a minister and a judicial authority, there is greater protection, just as a matter of fact.'
- In November 2020 the then A/Inspector-General of Intelligence and Security, Mr Jake Blight, in a supplementary submission to this committee on its inquiry into the Australian Security Intelligence Organisation Amendment Bill 2020 stated that 'whether ASIO's questioning warrants should continue to be issued by a judicial issuing authority ... is a policy matter', the 'issuing of warrants by the Attorney-General without the approval of an external issuing authority, as proposed by the Bill, would be consistent with other existing warrants available to ASIO.' Mr Blight went on to say, 'However ... the removal of the role of an independent judicial or quasi-judicial issuing authority departs from the trend towards increased requirements for external authorisation in other Five Eyes jurisdictions. I understand that intelligence agencies in other Five Eyes jurisdictions are required to obtain external authorisation (either judicial or another form) in relation to intrusive powers available to them.' Mr Blight also noted, however, that 'no other intelligence agency in a Five Eyes jurisdiction has coercive questioning powers comparable to those in the existing *Australian Security Intelligence Organisation Act 1979* or those proposed in the Bill.'

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**Clarifications**

**Clarification 1:** On page 2 of the Hansard, Mr Brookes notes that IGIS officers also attend questioning sessions 'in the back room, so the subject of the questioning doesn't know that we're there, but we have a checklist of the requirements that ASIO and the questioning must meet from the statement of procedures and from the legislation, and we're effectively checking that off as we go. We don't intervene. We do confer with the inspector-general if necessary. It's never been necessary so far.' The Office would like to clarify that the subject of the questioning is informed that IGIS officers are observing remotely, so they may be aware that we are there, but only the Inspector-General is visible and present in the room for the proceedings.

**Clarification 2:** On page 2 of the Hansard, Dr Jessup advises the Deputy Chair that AGS Officers undertake the questioning on behalf of ASIO. The Office would like to clarify that while this is true in the vast majority of the questioning we have observed, there have been situations where an ASIO Officer has asked questions of the subject during the proceedings.

**Clarification 3:** On page 5 of the Hansard, Dr Jessup states that 'with these provisions that you're looking at at the moment, although they were legislated about 22 years ago, they weren't used for many, many years. I think I'm the first Inspector-General to have actually had the experience to sit in on one of these questioning sessions.' The Office would like to clarify that Dr Jessup is the first Inspector-General to attend compulsory questioning proceedings since the 2020 amendments, and that between 2010 and when Dr Jessup attended his first questioning session the powers were not used by ASIO. However, prior to 2010, 16 compulsory questioning warrants were issued and former Inspectors-General attended questioning proceedings in that time. As our submission to the PJCIS when the 2020 amendments were being considered notes, Inspectors-General Carnell and Blick both offered consistent feedback to the Director-General Security on the execution of the earlier questioning warrants.