

**HOME AFFAIRS PORTFOLIO  
DEPARTMENT OF HOME AFFAIRS**

**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Joint Intelligence and Security

**23 May 2024**

**QoN Number: 1**

**Subject: Rationale of s 34BB**

**Asked by:** Andrew Wallace

**Question:**

Mr Andrew Wallace MP: Can either of you advise the Committee what the rationale was in the design of s 34BB, which is in relation to the questioning warrant for people between the age of 14 and 17, in relation to restricting it to just politically motivated violence?

Mr Nathan Smyth: I think we would have to take that on notice, Deputy Chair.

**Answer:**

The minor compulsory questioning warrant powers were introduced into Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) in 2003 under the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill. This Bill was introduced in the wake of the events of September 11 and provided intelligence collection powers intended to enhance the capacity of the Australian Security Intelligence Organisation (ASIO) to combat terrorism. These included a 'special regime for questioning young people', which enabled a warrant to be issued in relation to young people between the ages of 16 and 18, where the Attorney-General was satisfied on reasonable grounds that the person will commit, is committing, or has committed a terrorism offence.

In 2020, these powers were reframed as "compulsory questioning powers" under the Australian Security Intelligence Organisation Amendment Act 2020 (the 2020 amendment). The 2020 amendment created section 34BB as it currently stands in the ASIO Act, which provides that the Attorney-General may issue a warrant in relation to a person who is at least 14 years old if satisfied that there are reasonable grounds for believing that the person has likely engaged in activities related to politically motivated violence. The lowering of the minimum age for the subject of a questioning warrant from 16 to 14 years old was in response to the increased threat to Australia's security posed by minors.

The need for the lowered age of questioning subjects was justified in the Explanatory Memorandum with reference to the 2015 shooting of a New South Wales Police Force employee by a 15 year old, which was declared a politically motivated act of terrorism by the NSW Police Commissioner Andrew Scipione. In his 2020 Annual Threat Assessment, the Director-General noted that ASIO had identified instances of extremist organisations targeting and recruiting individuals as young as 13 and 14 years of age.

While the Bill expanded the definition of an adult questioning matter to include espionage, acts of foreign interference, and politically motivated violence (including terrorism), it maintained that minor questioning warrants could only be sought in relation to politically motivated violence. The restriction of these powers to politically motivated violence in relation to minors was on the basis that the predominant threat posed by minors at the time was from politically motivated violence. This restriction was reflective of the need to balance the ASIO's powers in respect to collecting intelligence on emerging threats with the protection of the rights, and best interests of young people.