

14 June 2011

Ms Julie Dennett
Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
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Parliament House
CANBERRA ACT 2600

By Email: LegCon.Sen@aph.gov.au

Dear Ms Dennett

**SUPPLEMENTARY SUBMISSION - INTELLIGENCE SERVICES LEGISLATION
AMENDMENT BILL 2011**

On 3 May 2011, the Law Council made a written submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Intelligence Services Legislation Amendment Bill 2011*.

The Attorney-General's Department has since made two written submission to the inquiry which, in part, purport to address the concerns raised the Law Council in its earlier submission.

I would like to briefly respond to the submissions of the Attorney-General's Department.

The Law Council has expressed concerns about the provisions of the Bill which would broaden the definition of "foreign intelligence" in the ASIO Act and lower the threshold test that must be satisfied before the Attorney-General may issue a warrant to ASIO to gather foreign intelligence.

The Department's response to these concerns is essentially twofold.

1. *The amendments are needed to ensure that "foreign intelligence" is defined consistently across Acts.*

The need for consistency in Commonwealth legislation is important but, without more, it can't be used to justify an expansion of ASIO's mandate. The question for consideration is - in what circumstances should Australia's domestic intelligence agency be able to gather information in Australia about the activities and communications of groups or individuals abroad? That question can't be answered or avoided simply by cutting and pasting from another Act.

2. *The amendments are needed to take account of the changed nature of the national security threats which Australia faces, and in particular threats from non-state actors. It is noted that terrorism, transnational crime, weapons proliferation and*

people smuggling are increasingly not sponsored by states, but rather by individuals or non-state sponsored organisations.

The Law Council takes issue with this response for three reasons.

First, it misrepresents the actual scope of the current definition of “foreign intelligence” which includes intelligence relating to the capabilities, intentions or activities of foreign political organisations, even if they are not connected to or sponsored by any state. It is assumed, for example, that this would capture most terrorist organisations.

Second, it does not take account of the fact that, irrespective of the scope of its powers to gather *foreign intelligence* in Australia, ASIO is already generally empowered to obtain, correlate and evaluate intelligence relevant to ‘security’ and may obtain warrants for this purpose. Security is defined in section 4 of the ASIO Act as:

“(a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:

- (i) espionage;*
- (ii) sabotage;*
- (iii) politically motivated violence;*
- (iv) promotion of communal violence;*
- (v) attacks on Australia's defence system; or*
- (vi) acts of foreign interference;*

whether directed from, or committed within, Australia or not; and

(aa) the protection of Australia's territorial and border integrity from serious threats; and

(b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).

This definition covers relevant threats to Australia (and by virtue of subparagraph (b) other countries), regardless of whether they are posed by individuals, groups or state-sponsored organisations.

Finally, while it is accepted that in recent years the concept of national security has come to encompass a much broader range of threats, including those posed by serious and organised crime, cybercrime, money laundering, resource shortages and environmental disasters, it does not necessarily follow from this that ASIO's role should be expanded exponentially to cover all these matters. Rather, the implication of this expanded understanding of the factors which may impact on Australia's national interest, is simply that the work of other agencies may be come to be regarded as relevant to national security, where previously it was not.

I hope these additional comments are of assistance to the Committee in its deliberations.

Yours sincerely,

Bill Grant
Secretary-General