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Australian Security
Intelligence Organisation

ASIO submission to the Parliamentary Joint Committee on Intelligence and Security

Review of the Defence Amendment (Safeguarding Australia's
Military Secrets) Bill 2023

November 2023



PCS 2023-09

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The Australian Security Intelligence Organisation (ASIO) welcomes the opportunity to make this submission to the Parliamentary Joint Committee on Intelligence and Security for its Review of the Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023 (the Bill).

Hostile foreign states and their intelligence services are aggressively seeking secrets about Australia's defence capabilities, government decision-making, political parties, foreign policy, critical infrastructure, space technologies, academic and think tank research, medical advances, key export industries and personal information.

The need to protect Australia's secrets, sensitive information and technologies cannot be overstated, as it is critical to keeping Australians safe, preserving our democratic values, maintaining strategic advantage and retaining the trust of our key allies.

ASIO is aware that the Bill was developed in response to the government directing Defence to examine the adequacy of the policies and procedures for preventing former defence personnel from transferring sensitive defence information and expertise to foreign militaries or governments with interests inimical to Australia's. In this regard, ASIO supports Defence's observation that many former defence staff members would have distinct and highly valuable specialist skills, and knowledge of Defence secrets, particularly in relation to sensitive Defence capability, technology, personnel and operations. We note and agree with Defence's observation that permitting former members to perform work for, or on behalf of, foreign military organisations or foreign government bodies, without any oversight or restriction has the potential to significantly undermine the interests of Australia and Australia's allies, and cause immeasurable and irreparable damage to Australia's security, defence and international relations. This is particularly important at a time when Australia has committed to enhancing our security standards to safeguard sensitive technology and information, particularly as we embark on work through our AUKUS partnership with the United States and the United Kingdom.

In that regard, we note that the intent of the Bill, which ASIO supports, is to prevent individuals with knowledge of sensitive defence information from training or working for certain foreign militaries or governments where that activity would put Australia's national security at risk.

However, as reflected by the Deputy Prime Minister in his second reading speech, the Bill does not represent the entirety of our legislative ambition for enhancing Australia's security standards to safeguard sensitive technology and information. Although Australia has a range of legislative measures and policies in place to deter, detect and respond to the risk of foreign interference and espionage, more can be done to ensure that legislative measures protecting Australia's secrets, sensitive information and technologies keeps pace with the complex, challenging and changing threat environment.

In particular, ASIO notes that the Bill prevents former Defence personnel from doing paid or unpaid work for foreign governments and military organisations without prior authorisation. It is important to note that the employees of a much wider range of government agencies and departments have access to secrets and expertise that are of great interest to Australia's adversaries. No equivalent offence exists for former members of the national intelligence community, including former ASIO employees or affiliates. Although components of work performed by former ASIO employees or affiliates for foreign militaries or governments may fall within the scope of other narrower offences, such as those under the *Criminal Code Act 1995* (Cth) and the *Australian Security Intelligence Organisation Act 1979* (Cth), detecting and then prosecuting such offences presents some unique difficulties. For example, Australian authorities may not have visibility of the precise information a former ASIO employee or affiliate might be disclosing as part of their work for a foreign military or governments offshore, and the ability to obtain relevant evidence may be hindered by the jurisdictional limits of Australia's law enforcement agencies. There are also differences in maximum penalties associated with the offences, which may result in differentials in their deterrence potential.

It is important that the effect of the difference in legislative protections is acknowledged.

ASIO is aware that foreign intelligence services deliberately identify vulnerabilities in the essential systems and processes of other countries, including their legal systems, to exploit and leverage to their own advantage. Identifying vulnerabilities in legislation is one of the checks that foreign intelligence services will do before they start targeting Australian officials or those who may have access to classified or sensitive information. For example, officials who face lower penalties for unauthorised disclosure of classified or sensitive information may be more susceptible to approaches by foreign intelligence services. Similarly, former government clearance holders are seen by foreign intelligence services as highly valued targets who may be more vulnerable to approach than current clearance holders as they no longer have the same security support or reporting obligations. While the overwhelming majority of former clearance holders are honest and unlikely to be responsive to approaches from foreign intelligence services, there will be individuals who are willing to disclose Australia's secrets, sensitive information and technologies to foreign governments. In circumstances where a number of Australia's adversaries are highly sophisticated, the transfer of seemingly innocuous information to a foreign military or government could easily be used to close capability gaps, and be used against us or our allies in the future.

We note that some of these risks have been addressed by the recent amendments made by the *Australian Security Intelligence Organisation Amendment Act 2023* (Cth) to uplift and harden Australia's highest level of security clearances in response to the espionage and foreign interference threat. However, further work can be done to harden secrecy provisions for national intelligence community personnel, and beyond, in line with measures in the Bill given the unprecedented threat currently facing Australia.