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Australian Government
Australian Security
Intelligence Organisation



Response to Questions on Notice from 14 August 2019 public hearing on PJCIS inquiry into press freedoms

26 August 2019

On 14 August 2019, ASIO took on notice the following questions at the Parliamentary Joint Committee on Intelligence and Security (PJCIS) hearing into press freedoms. ASIO's responses to the questions are below.

Question 1

Senator FAWCETT asked:

- (a) How many times in the last decade has the Public Interest Disclosure scheme been used?
- (b) Were the individuals who initiated that process satisfied with the outcome that was achieved at the end of that process?

Response

- (a) Since the commencement of the *Public Interest Disclosure Act 2013* in January 2014, in relation to disclosures within ASIO:
 - Seven disclosures were investigated and reported on, or allocated for investigation by another authority.
 - A decision not to investigate was made for three disclosures.
- (b) ASIO does not seek feedback from disclosers as to whether the outcome of the various processes under the Public Interest Disclosure Act was perceived to be satisfactory.

There are several courses of action open to a discloser who is dissatisfied with the outcome of their public interest disclosure within ASIO. A dissatisfied discloser may:

- seek an informal review within ASIO of a decision by the Principal Officer not to investigate a disclosure;
- make a further public interest disclosure, either within ASIO or to the Inspector-General of Intelligence and Security (IGIS);
- make a complaint to the IGIS under the *Inspector-General of Intelligence and Security Act 1986*; or
- seek judicial review of the actions of the Principal Officer—for example, under the *Administrative Decision (Judicial Review) Act 1977*.

ASIO has no records of any of these actions being taken by a discloser.

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Question 2

Senator McALLISTER asked:

There is an existing defence for journalists in the secrecy provisions of the National Security Legislation Amendment (Espionage and Foreign Interference) Act. Thinking about your concerns about gaps in the legislation, is there a significant difference between a carve-out structured as a defence, which is what we've got at the moment, and a carve-out structured as an exemption?

Response

As this question is concerned with the operation of a carve-out structured as a defence compared to a carve-out structured as an exemption, this question would be better directed to the Attorney-General's Department as the department responsible for administering the relevant provisions in the *Criminal Code Act 1995*. The adequacy and appropriateness of Australia's legal frameworks is a matter for government.

As a more general comment, as noted in ASIO's submission to the PJCIS as part of this inquiry (as well as previous inquiries), ASIO does not support broad exemptions for particular classes of people, industries or professions. ASIO considers exemptions applied in this way could undermine the effectiveness of Australian laws by encouraging hostile actors to structure their activities to exploit any potential vulnerabilities in Australia's legislation.

Question 3

Mr DREYFUS asked:

Director-General Duncan Lewis has referred publicly more than once to the problem of spies or foreign agents masquerading as journalists or using journalistic cover. What is your view on the suggestion that, if that were the case, the exemption would not apply to them? That is, the exemption would cover legitimate journalism; it would cover public interest journalism, conducted by legitimate news organisations and legitimate journalists. In those circumstances, if there were an exemption, it would not apply to the foreign agent.

Response

ASIO would need to consider the detail of any proposal before being in a position to provide the committee with any specific comments.

However, as a general comment and in addition to the comments made above, ASIO can foresee a circumstance in which making a distinction in the application of exemptions between 'legitimate' journalism that is conducted in the public interest, and conduct by hostile actors under the guise of journalistic cover could endanger sensitive sources, methods and intelligence-sharing relationships. If an exemption were to be introduced, the prevalence of journalistic cover being used to mask activities harmful to Australia's interests by hostile actors may well increase. ASIO has also noted in its submission that this could have the unintended consequence of increasing the intelligence threat to journalists, as journalists may be targeted to access information from sensitive sources on behalf of a foreign intelligence organisation.

In its evidence to the committee, ASIO raised concern about the concept of exemptions for particular classes of people such as journalists, and of particular concern is any proposal to exempt journalism from the protections

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that exist under law for national security classified information. The consequences of unauthorised disclosures and the serious harm to Australia's national interests that may occur have been discussed in ASIO's submission.

In its evidence, ASIO also stated it would be difficult to distinguish between hostile foreign actors operating in Australia under journalistic cover on one hand, as compared to journalists who may not directly be part of the foreign government but are perhaps co-opted or are covertly working in their professional capacity on behalf of a foreign government. Australia's adversaries could seek to conduct their activities in a way that attempts to attract the protection of a journalistic exemption.

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