



Australian Government

Australian Security Intelligence Organisation



# PJCIS Review of Division 3 of Part III of the Australian Security Intelligence Act 1979 - ASIO's response to Questions on Notice

## Question 1

**CHAIR:** Has the intelligence been used in a derivative sense for other potential offences, and have any charges resulted from or been the outcome of that, separate to the questioning of that particular individual?

**Mr Burgess:** It has been very effective in intelligence-led disruptions, but our purpose is security intelligence. As to whether it has been provided as a trigger point that has resulted in a prosecution, I will take that question on notice, but I don't believe that it has been.

## Response

As at 23 May 2024 no charges have resulted from intelligence derived from a compulsory questioning warrant.

## Question 2

**Mr Burgess:** I have a view, but it would not be authoritative in terms of whether I was there when this first came in. If you look at the origins of all of this, the nature of the CT threat around there was very much focused on politically motivated violence. Today, we do have warrants on foot and we're looking at individuals who want to promote communal violence because they're white supremacists. I think that kind of justifies why the circumstance is different now from what it was on the original dates when these powers were put in place.

**Mr WALLACE:** What about religiously motivated violence?

**Mr Burgess:** That's a good question. Do we have warrants at this stage? I don't believe we do. Again, I'm happy to take that on notice. All the ones that I'm currently familiar with would be where it's a politically motivated violence cause.

## Response

As at 23 May 2024, there are no warrants in force in respect of persons engaged in, or likely to engaged in, the promotion of communal violence (PCV) arising from religiously motivated violent extremism. Since the ASIO Act Amendments commenced in December 2020, all warrants arising

from religiously motivated violent extremism have been issued in respect of persons engaged in, or likely to engage in, politically motivated violence (PMV).

### Question 3

**Mr WALLACE:** Just on that point—and I'm happy for you to go to the acting commissioner or any of your lawyers, who, no doubt, are sitting behind you—there does not appear, to me, to be a material distinction between section 34BB(1)(b) and the equivalent provision for adults, save for the provision in relation to minors being entirely restricted to politically motivated violence. There have to be reasonable grounds for believing that 'the person has likely engaged in, is likely engaged in, or is likely to engage in activities prejudicial to the protection of, and of the people of, the Commonwealth and the several states and territories from politically motivated violence'. I'm happy to be corrected, but I just don't see the distinction that you're referring to.

**Mr Burgess:** I think that supports my argument as well because, again, we believe that there is a higher test. I will take that question on notice and provide you with a written response on our thinking here so that the committee can have the benefit of it.

### Response

The material distinction is that, in addition to the requirements for an adult questioning warrant, a minor questioning warrant requires the Attorney-General to be satisfied that the minor has likely engaged in, is likely engaged in, or is likely to engage in politically motivated violence (PMV) (s 34BB(1)(b) of the ASIO Act). The Attorney-General must also consider the best interests of the child as the primary consideration. There are no such requirements for issuing an adult questioning warrant.

#### Adult vs minor questioning warrants

An adult questioning warrant, which is issued under s 34BA of the ASIO Act, requires the Attorney-General to be satisfied that:

- the person is at least 18 years old;
- there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to an adult questioning matter (ie espionage, politically motivated violence or acts of foreign interference);
- having regard to other methods of collecting intelligence, it is reasonable in all the circumstances for the warrant to be issued; and
- there is in force under s 34AF a written statement of procedures to be followed in the exercise of authority under the questioning warrant.

There are additional requirements if the questioning warrant is post-charge or post-confiscation.

The complete test for a minor questioning warrant, which is issued under s 34BB of the ASIO Act, requires the Attorney-General to be satisfied that:

- the person is at least 14 years old, and
- there are reasonable grounds to believe that the minor has likely engaged in, is likely engaged in, or is likely to engage in PMV;
- there are reasonable grounds for believing the warrant will substantially assist the collection of intelligence that is important in relation to PMV
- having regard to all other methods of collecting the intelligence, it is reasonable in all the circumstances for the warrant to be issued; and
- there is in force under s 34AF a written statement of procedures to be followed in the exercise of authority under the questioning warrant.

There are additional requirements if the questioning warrant is post-charge or post-confiscation.

When deciding whether to issue a minor questioning warrant, there is also an overarching requirement for the Attorney-General to consider the best interests of the child as a primary consideration. The legislation sets out specific matters the Attorney-General must take into account in considering the best interests of the child.

