



Chief Executive Officer

33 Lincoln Square South
Carlton Vic 3053

savethechildren.org.au

25 January 2024

Mr Peter Khalil MP
Chair, Parliamentary Joint Committee on Intelligence and Security
pjcis@aph.gov.au

Dear Chair,

Save the Children's submission – Review of Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979 (ASIO Act)

Save the Children provides this brief submission to the Committee's review of Division 3 of Part III of the ASIO Act, in our capacity as Australia's leading child rights organisation. Our submission focuses on the Division's implications for children's rights, particularly the extraordinary powers that it confers upon ASIO to compulsorily question children as young as 14.

When the current compulsory questioning regime was enacted in 2020, Save the Children and others raised significant concerns, including about lowering the age at which children could be compulsorily questioned from 16 to 14. We recognised that decisions relating to counter-terrorism must often be based in part on information that is not publicly available, but highlighted that it did not appear the case was adequately made for such significant infringements of children's rights.¹

In now reviewing Division 3 of Part III, we recommend that the Committee give significant weight to the following considerations:

1. By allowing ASIO to compulsorily question children as young as 14, including the power to obtain a warrant for police to immediately apprehend and search children, using force if necessary, Division 3 of Part III effectively creates an extraordinary power to detain children. While the Division contains some safeguards, they are not comprehensive.
2. Division 3 of Part III directly infringes children's fundamental rights, as enshrined in the United Nations Convention on the Rights of the Child (CRC) and other binding international human rights instruments. These include:
 - a. The right to liberty and security of person
 - b. The right to freedom from arbitrary arrest, detention or imprisonment
 - c. The right to a fair trial, along with other basic rights in the child justice system

¹ Available from inquiry website:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ASIOAmendmentBill2020/Submissions. Direct link: <https://www.savethechildren.org.au/getmedia/d40a1303-7519-4d0f-b523-8e222d6e888c/save-the-children-submission-australian-security-intelligence-organisation-amendment-bill-2020.pdf.aspx>.

- d. The right to privacy
 - e. The right to not be discriminated against for any reason
 - f. The right of children to their best interests being a primary consideration in all matters concerning them.
3. The Australian Government has ratified the CRC and other relevant human rights treaties including the International Covenant on Civil and Political Rights. It has legally agreed to comply with them.
 4. The application of counter-terrorism legislation to children is, in itself, out of step with international standards. The United Nations recommends that children should be excluded from counter-terrorism and security legislation and instead handled exclusively within child justice systems, including the full suite of procedural and other safeguards that ordinarily apply to children in the justice system.²
 5. In some circumstances, rights can, in principle, be subject to reasonable limitations, but even where permissible, this should not occur except in extraordinary circumstances and with highly stringent safeguards in place. This is particularly important for children's rights.
 6. This Committee and its predecessors, and Independent National Security Legislation Monitors, have consistently raised concerns about the application of ASIO's compulsory questioning powers to children, at least as far back as 2002.³
 7. The Committee should consider whether ASIO's compulsory questioning powers have in fact been exercised in relation to children, including those below 16. If they have not been, this strongly suggests that the powers are not reasonable, necessary and proportionate.⁴

This review is an opportunity to restore important and fundamental rights of children that have been eroded over recent years. In this domain, human rights standards and requirements are particularly relevant, and should not be departed from without exceptionally compelling reason. We encourage the Committee to give these considerations significant weight and we hope that the Committee will recommend new arrangements to replace the current Division 3 that are more rights-compliant and better benefit Australia's long-stated commitment to human rights.

Please do not hesitate to contact [REDACTED], Australian Policy and Advocacy Lead, at [REDACTED] for further information.

Yours sincerely,

[REDACTED]

Mat Tinkler
Chief Executive Officer

² M Nowak, 2019, *The United Nations Global Study on Children Deprived of Liberty*, ch 14, available at <https://omnibook.com/Global-Study-2019>.

³ *An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*, Parliamentary Joint Committee on ASIO, ASIS and DSD, tabled 5 June 2002, [3.82]-[3.84].

⁴ ASIO's Annual Report 2022-23 indicates that across 2020-21, 2021-22 and 2022-23, four questioning warrants were issued. The Annual Report does not state whether any of these were minor questioning warrants applying to children.