

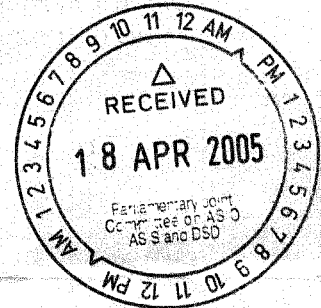


CHIEF MINISTER

PARLIAMENT HOUSE
DARWIN NT 0800
TELEPHONE: (08) 8901 4000

GPO BOX 3146
DARWIN NT 0801
FACSIMILE: (08) 8901 4099
chiefminister.nt@nt.gov.au

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The Hon David Jull MP
Presiding Member
Parliamentary Joint Committee on ASIO, ASIS and DSD
Parliament House
CANBERRA ACT 2600

Dear Mr Jull

Thank you for the opportunity to contribute to the Parliamentary Joint Committee review of Division 3, Part III of the *Australian Security Intelligence Organisation Act 1979*. My comments relate exclusively to policing issues associated with those provisions of the Act.

To date, no warrants have been issued in the Northern Territory and none of the associated powers conferred upon Police in this jurisdiction under the ASIO Act have been utilised. Nevertheless, Division 3, Part III of the Act could potentially have implications for Northern Territory Police in that Warrants under the Act may be issued by a Northern Territory judge (s.34B(2)) and, due to potentially limited availability of Australian Federal Police (AFP) throughout the Northern Territory, may be required to be executed by a member of Northern Territory Police.

I note that Northern Territory Police as "police officers" under Section 34A(b) of the Act, are empowered to take certain action under a number of provisions within the Act.

I also note that any information obtained under these provisions is not admissible evidence in any subsequent proceedings against a person in respect to any offences, and that it may be used by Police for intelligence purposes only.

The only apparent potential issue of concern would relate to the time (delay) it would take for ASIO to obtain a Warrant under urgent circumstances from an issuing authority for the apprehension of a person who is about to leave the jurisdiction, either interstate or overseas. Because the person has not committed nor is suspected of having committed an offence, Northern Territory Police would not be empowered to take the person into custody until the Questioning/Detention Warrant has been signed. This would more than likely result in the person being able to leave the country/State and possibly never be able to be located again for questioning.

Northern Territory Police are currently discussing possible amendments to our *Terrorism (Emergency Powers) Act*, or the *Police Administration Act*, with the NT Department of Justice, to give Police powers in this jurisdiction to take a person into custody for questioning where reasonable grounds exist that he/she may have knowledge of terrorism.

This would assist ASIO who would then have sufficient time to apply for a Questioning/Detention Warrant under their own provisions in respect to that person, if they wished to question him/her.

It is acknowledged that there may be obstacles from a civil liberties' perspective in attaining these additional powers, as it would involve the arrest and detention of a person who has not committed any offence, nor is not suspected of committing any offence (but only may have knowledge of Terrorism).

As an addition or alternative, it may be appropriate to suggest that ASIO seek an amendment to their own Act to give their Director-General the power to detain a person in cases of urgency. It would not give the Director-General the power to question, but merely the time to request a warrant.

Suggested wording for such a provision could be as follows:

"Nothing in Section 34C prevents the Director-General from taking action to detain a person if the Director-General believes on reasonable grounds the detention was necessary as a matter of urgency pending the request for the issue of a warrant".

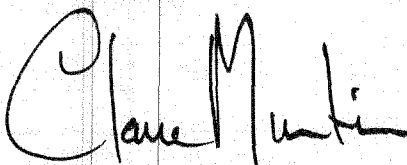
A further provision should place an obligation on the Director-General to request a warrant as soon as practicable.

Finally, in respect to Section 34F(8) of the *ASIO Act* (keeping a person detained under the warrant incommunicado for up to 168 hours), it should be noted that the Northern Territory does not have dedicated facilities for this purpose, and those persons would need to be detained either in a Police Holding facility (Watch House) or transferred to one of Her Majesty's Gaols in either Darwin or Alice Springs.

As indicated, these provisions/powers have never been used within the Northern Territory and their effectiveness can not be judged. Theoretically, there does not appear to be any aspect of these provisions which would be impractical or unworkable.

I hope these comments will provide some meaningful input to your review process.

Yours sincerely

A handwritten signature in black ink that reads "Clare Martin". The signature is written in a cursive style with a large initial 'C' and 'M'.

CLARE MARTIN

3.4.05