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Tasmanian Government Submission
Review of the Australian Security Intelligence Organisation
(ASIO) Questioning and Detention Powers

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Operation, effectiveness and implications of Australian Security Intelligence Organisation's (ASIO's) questioning and detention powers

It is difficult to assess the efficacy of ASIO's questioning and detention powers as there would appear to be no publicly available information regarding the final outcomes of the use of these powers to date (such as numbers of persons charged or investigations triggered as a result of questioning). This may be due to the fact that the outcomes of these powers may involve security sensitive information.

Section 94(1A) of the ASIO Act requires certain information relating to Questioning Warrants to be included in ASIO's Annual Report. This information focuses on such things as the numbers of warrants requested and issued and numbers of hours each person appeared for questioning under warrants. These numbers are not particularly informative for the purpose of assessing the usefulness of the questioning and detention provisions.

Impact of ASIO questioning warrants in Tasmania

To date, no warrants have been issued in Tasmania under the ASIO Act. Nevertheless, Division 3, Part III of the ASIO Act has potentially significant implications for Tasmania Police:

- Warrants issued under the Act are likely to be executed by a member of the Tasmanian police as there is minimal Australian Federal Police presence in Tasmania.
- After executing the warrant however, it would appear that Tasmanian police cannot question the detainee as questioning is to be conducted by an ASIO officer before a prescribed authority (s34D(5)(a)).
- Tasmania is the only state in Australia that does not have an ASIO office. In order for a person to be questioned, an ASIO officer would need to fly in from another state or the person that is the subject of the warrant would need to be transferred to the mainland.
- This means that a person may be in custody for some time before questioning begins. This raises the question of the admissibility in court of any statements made to Tasmanian Police officers under an ASIO warrant prior to the arrival of ASIO officers. It would be preferable for the ASIO Act to formally recognise a role for state/territory police (with suitable security clearance) in relation to questioning before a prescribed authority.
- It should be noted that Tasmania currently lacks established facilities for the purpose of keeping a person incommunicado for a period of seven days, as provided in s34F(8) of the ASIO Act. With some effort, Tasmania Police could come to an arrangement that would meet the requirements of the Act.
- Finally, officers of the Tasmanian Police may execute a terrorism-related warrant under at least three different legislative regimes: the Commonwealth *Crimes Act*, the Tasmanian *Criminal Code* and the *ASIO Act*. Both the *ASIO Act* and the Commonwealth *Crimes Act* have a fixed time period for the detention of a person under warrant. In Tasmania the provision is more flexible. Section 4 of the Tasmanian *Criminal Law (Detention and*

Interrogation Act) 1995 allows Tasmania Police to detain a person for a 'reasonable time' after being taken into custody in order to question or carry out investigations in relation to an offence. The reasonable time and specific time limit legislative options have previously been considered by police commissioners in relation to Part 1C of the Crimes Act 1914. The reasonable time model in Tasmania is preferred to time limit legislative options.