

**Submission to Parliamentary Joint Committee on the Australian Security Intelligence Organization (ASIO)
From the Australian Civil Liberties Union**

There has been something of a “function creep” in the role of ASIO since the end of the cold war with ASIO taking on some of the activities usually undertaken by State and Federal police forces.

The ASIO Legislation Amendment Bill greatly extends the powers and scope of activities of ASIO, with the Olympic Games and the threat of disruption of the games used in part as the reason for the extensions.

The nature of the extensions was set out in submission by the ACLU in May, 1999 to the Committee of Inquiry. The submission which was headed: “The Olympics, ASIO, Privacy, and Freedom of Speech” was set out in *Your Rights 1999*, (pages 97-99) and is also on the ACLU website

The arguments for these unprecedented extension of powers has been nebulous or non existent, and the arguments have not been subjected to informed public debate. The proposed extensions represent a threat to privacy, freedom of speech and civil liberties.

ASIO already has powers to open peoples’ mail, intercept communications, place listening devices in peoples’ homes and offices, and tap phones. Under the Bill, ASIO is given powers to obtain emergency warrants, plant tracking devices on people, and hack into computers. For the first time ASIO will have access to taxation files, will have authority to collect foreign intelligence, and will be able to intercept articles delivered by private couriers as well as articles handled by Australia Post.

ASIO will be authorised to crack and modify password control systems and encryption programs in computers, opening the way

for the sabotage of web sites, email facilities, and internal communication systems.

No one's banking and tax records will anymore be free from political monitoring and ASIO will be able to request and use individual and business taxation and financial transactions data from the Tax Office and the Australian Transaction Reports and Analysis Centre.

For the very nature of its activities ASIO is subject to less public scrutiny and is less accountable than other publicly funded agencies. Some information on ASIO is disclosed through the Senate Estimates process, and through the annual report to parliament of the Inspector General of Security and Intelligence (IGIS). ASIO also reports to Parliament through an annual report and through information brochures available through Govern- ment bookshops.

The ACLU believes that ASIO could be made more accountable if the Director General of ASIO and the IGIS made themselves available for interview on television and radio, and published articles in newspapers and in back to back brochures available at places accessed by the public such as Legal Aid and CentreLink offices. Publications such as "ASIO now", "ASIO Corporate Plan, 1998-2002" and "Report to Parliament 1998-99" although available in Government bookshops, are not as likely to be accessed as articles in newspapers and the brief brochures mentioned above.

Search warrants, authorisations for phone tapping and computer hacking should be subject to the requirement that authorisation be obtained from a Federal Court judge. Where emergency action is taken authorised by the Director General of ASIO, this authorisation should be vetted by a judge, especially in view of the unprecedented quantum leap in the powers and functions of ASIO.

Although as pointed out in the 26th edition of the ACLU publication, *Your Rights*, Australia is one of the freest countries in the world, and although there is little evidence of any significant abuse of power by ASIO in the recent past, the mechanisms for placing ASIO itself under greater scrutiny and surveillance should be strengthened.

The ACLU agrees with the submission by Electronic Frontiers Australia that ASIO should not have the power to alter or add to data on a computer, and that the use of tracking devices should be limited to 7 days as is currently the case with search warrants. The EFA submission that warrants should require the signature of 3 Ministers, one of whom should be the Attorney General, should be considered, and if adopted would make ASIO more accountable. The ACLU agrees with EFA that the extremely broad nature of this legislation appears to open taxation records to a whole new class of people. At present AUSTRAC information can be released only to taxation, federal police, the National Crime Authority and Customs officers.

ASIO's responsibilities are defined so broadly, and its activities can be carried out so covertly that this gives ASIO virtually carte blanche access to tax information.

EFA is concerned that Parliament may have been asked to take "on trust" that ASIO and its Director General will not abuse these new, sweeping powers over private computers. While a trust in the agencies of a democracy is appropriate, history and the experience of other countries have established that rogue intelligence-gathering agencies are uniquely placed to fabricate evidence, blackmail officials and engage in individual espionage. Only an extra-agency review of these powers can provide safeguards against the possibility of ASIO abusing the powers for the Government of the day, for the agency or an agent's personal purposes.

A representative of the ACLU could be made available to make a verbal submission to the committee.

**John Bennett,
President, Australian Civil Liberties Union, PO Box 1137,
Carlton, Vic. 3053 phone (03)93478671; fax (03)93478617;email
johntusonbennett@hotmail.com**