

***Women's International League for Peace and Freedom***  
*Ligue internationale des femmes pour la paix et la liberté*  
*Liga Internacional de Mujeres por la Paz y la Libertad*  
*Internationale Frauenliga für Frieden und Freiheit*

**Consultative Status with United Nations ECOSOC, UNCTAD and  
UNESCO**

**Special Consultative Relations with FAO, ILO and UNICEF**

International Headquarters Geneva Switzerland  
Australian Section Office Adelaide  
PO Box 345 Rundle Mall, Adelaide 5001  
(08) 8232 6334



21 March 2005

**Dear Chairperson,**

The enclosed submission is made on behalf of the Australian Section of Women's International League for Peace and Freedom (WILPF).

WILPF welcomes the opportunity to make this submission to the Committee's Inquiry. This submission covers the following main points:

- Checks and Balances;
- Questioning of Suspected Persons;
- Detention of Suspected Persons;
- Issuing of a Warrant ;
- Onus of Proof; and
- Sunset Clause.

In our submission, we outline a number of recommendations that we consider worthy of consideration by your Joint Committee.

We thank you and Committee members for your kind attention and look forward to reading your Committee's report.

Yours sincerely,

Ruth Russell  
National Coordinator

***Women's International League for Peace and Freedom***

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**SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE  
ON ASIO, ASIS AND DSD.**

**REVIEW OF DIVISION 3 OF PART 111 OF THE AUSTRALIAN  
SECURITY INTELLIGENCE ORGANISATION ACT 1979.**

**Preamble**

This submission is made on behalf of the Australian Section of the Women's International League for Peace and Freedom. The Women's International League for Peace and Freedom (henceforth referred to as WILPF) was established in Europe in 1915. WILPF is an international NGO in consultative status with United Nations' ECOSOC and UNESCO. WILPF also has special consultative relations with the FAO, ILO and UNICEF. WILPF works for social and racial justice, human rights and an end to war as a means of dealing with human conflict.

We write on behalf of the Australian Section of our organisation concerning the Review of **Division 3 of Part 111 of the Australian Security Intelligence Organisation Act 1979** and in particular the "broader issues relating to the use of questioning and detention powers."

**Introduction**

Over the last few years we have seen additional anti-terrorist legislation introduced in Australia giving ASIO greater powers, including laws which criminalise association with members of proscribed organisations and the financing of proscribed organisations. We have also seen unilateral and unprecedented powers delivered to the Attorney-General to proscribe any organisation. We consider these powers to be far beyond those necessary for our western democracy as they easily lead to potential abuse of power without redress.

## Checks and Balances

Under the existing law it is now possible to proscribe activist organisations that are legitimately supporting overseas self-determination movements (such as the Acehese independence movement and the West Papuan independence movement). Existing laws could be used to suppress activist support thus denying dissenting voices their legitimate right to present their views. It could easily lead to intimidation and detention of political activists which is a violation of civil liberties.

Unaccountable power can easily lead to abuse of power. There is the risk that a government could use this and other anti-terrorist legislation for political purposes as the ASIO legislation places far too much power in the hands of the Executive without the usual checks and balances to ensure proper accountability. It is therefore imperative that adequate safeguards are in place to ensure this cannot occur.

The proscription of organisations by Executive power was criticised when first proposed. Senator Faulkner of the Labour Party said *“We will not accept a regime of secret proscriptions, of decisions in closed rooms, of such significant and potentially destructive power in the hands of one person and one person alone... it is not acceptable in a democratic society and it should never be allowed on the statute books.”* (Commonwealth Parliamentary Debates, Senate 16 June 2003 11432-3).

**WILPF recommends that proscription of any organisation only occur through due legal process in a court of law, rather than through a decision of the Attorney-General alone. We recommend that the power of the Attorney-General to proscribe organisations be revoked.**

## Questioning of Suspected Persons

The secrecy that the new ASIO legislation allows, makes it a criminal offence to reveal any details of ASIO detention and questioning for two years after the event. This prohibits reasonable scrutiny of a system that should be as open and accountable as all other Police actions. ASIO does not need these additional powers in order to efficiently perform its function. Questioning of any person can be conducted through the usual Police process which has regulatory safeguards in place to uphold the human rights of people in custody.

Sufficient power exists in the Criminal Code to counter terrorist acts and conspiracy. We believe that there are sufficient specific areas of law to deal adequately with any terrorism offences.

There are insufficient safeguards in place to ensure the human rights of any detainee subject to ASIO questioning.

**Our recommendation is therefore that power given to ASIO to detain and question individuals be revoked.**

Should this recommendation not be accepted then the following recommendations are made.

A protocol has been established under which ASIO is to undertake questioning. However this is not legally enforceable. The Inspector General of Intelligence and Security has no power to stop the questioning process, only statutory powers to take any concerns to the Attorney-General who can make any final decision on process.

**It is recommended that the Inspector General of Intelligence and Security be given the authority to stop questioning of any subject at any time and order the detainee's release if the protocol is violated.**

The protocol safeguards relate to a "prescribed authority" which is exclusively appointed by the Attorney-General. This comprises the independence and accountability of the protocol by placing far too much power in one person.

**It is recommended that the "prescribed authority" be appointed by an independent committee which includes lawyers, human rights representatives and the Inspector General of Intelligence and Security.**

The protocol states that "A subject must not be questioned continuously for more than four hours without being offered a break." This length of time is considered tantamount to psychological torture by placing unreasonable stress on the detainee, possibly resulting in inaccurate information being elicited.

**WILPF recommends that the maximum period of continuous questioning be set at one hour with breaks of thirty minutes duration regulated.**

The protocol also allows the "prescribed authority" to overrule on the use of sleep-deprivation: *"Except where otherwise directed by the prescribed authority, a subject must be accorded the opportunity for a minimum continuous, undisturbed period of 8 hours sleep during any 24 hour period of detention."*

**It is recommended that sleep deprivation be prohibited and that this part of the protocol be amended by deleting the exception "*Except where otherwise directed by the prescribed authority....*"**

### **Detention of Suspected Persons**

Currently, the Act allows detention to take place without a warrant if ordered by the prescribed authority with no requirement that the detainee be permitted to consult a lawyer.

**It is recommended that the right to contact and consult with a lawyer of choice should be available to both a person detained for questioning, as well as a person subject to a warrant for questioning without detention.**

**It is recommended that the right of a person being questioned to consult privately with a lawyer of their choice and without monitoring by ASIO be regulated.**

A further safeguard is recommended to ensure that human rights violations do not occur.

**It is recommended that an independent human rights observer or independent psychiatrist should have access to a detainee to monitor their situation. Such an observer should be able to report to an independent committee (or the Inspector-General of Intelligence and Security) which has the power to order a detainee's release if they consider the detainee's human rights are being violated.**

### **Issuing of a Warrant**

A further concern is that under the existing legislation, the justification for the issue of a warrant is in the hands of the Director-General of Security and the Attorney-General. This closed system is patently open to abuse.

**It is recommended that an independent Committee be established to consider whether the issue of a warrant is justified on the evidence before it. The Committee must have the power to order the immediate release of a detainee and revoke any warrant already granted. The committee should include lawyers, human rights advocates and the Inspector-General of Intelligence and Security.**

### **Onus of Proof**

There is a further violation of the basic principles of justice in the reversal of the onus of proof on the person under questioning.

**It is recommended that the onus of proof be on ASIO or the Police to prove that a subject possesses information or has engaged in some criminal activity, rather than the subject proving that they did not. The principle of "Innocent until proven guilty" must still apply regardless of the circumstances as this is the basic principle of justice.**

### **Sunset Clause**

WILPF is also concerned that the sunset clause in relation to this legislation be thoroughly debated in both Houses of Parliament next year. It is not appropriate that the decision on whether to continue or discontinue the legislation should be an Executive decision.

## **Conclusion**

In essence we consider the powers given to ASIO under this legislation are unnecessary, dangerous and fraught with the potential for abuse. We consider that there is already existing adequate provision for questioning of persons suspected of terrorist activities through the present criminal justice system which has accountable safeguards in place.

*Submission written for WILPF (Australian Section)  
by Ruth Russell,  
National Co-ordinator  
21 March 2005*