

THE AUSTRALIAN PRIVACY CHARTER COUNCIL

Hosted by the School of Law, University of New South Wales

Convenor : Nigel Waters
Secretary : Tim Dixon

Please reply to N Waters
12A Kelvin Grove,
Nelson Bay, NSW 2315
02 4981 0828, 0407 230342
email: nigelwaters@primus.com.au

Bronwen Jagers,
Committee Secretariat
Parliamentary Joint Committee on ASIO
Parliament House
CANBERRA ACT 2600

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Dear Ms Jagers

INQUIRY INTO ASIO's PUBLIC REPORTING

I hope that the Committee will accept this late submission on behalf of the on behalf of the Australian Privacy Charter Council. ASIO's public accountability is a very important issue which we would normally have made an earlier and fuller submission. You will appreciate however that this is a busy period in the privacy area, with Commonwealth and Victorian Bills in the respective Parliaments, and several high profile breaches of privacy such as the Tax Office's sale of ABN registration information, the misuse of the electoral roll for party political mailings, the Crimenet web site and the imminent introduction of DNA testing.

In contrast to these highly public privacy issues, the activities of ASIO are necessarily largely secret. As we pointed out in our submission on last year's *Review of the Australian Security Intelligence Organization Legislation Amendment Bill 1999*, public interest groups such as ours are handicapped in participating in public debate about ASIO's activities because we do not have the level of background information that is available in other areas of public policy.

ASIO has quite extraordinary and exceptional powers, which the community reluctantly accepts as necessary to combat a range of different threats. These powers include the ability to probe very intrusively into the personal affairs of individuals, without those individuals necessarily having committed, or being suspected of, criminal offences. It is presumably in the nature of intelligence gathering and 'preventive' national security strategies that subjective judgements about individuals are constantly being made. These judgments will only rarely be tested in court proceedings.

Without casting any aspersions on the motivation of current ASIO operatives, it is undeniable that the history of intelligence agencies around the world includes all too many instances of unacceptable abuse of their powers. These can arise either through a well-intentioned but misguided zeal, or through corruption, crime and self-interest. To ensure that the extraordinary powers are not abused, it is necessary for there to be correspondingly extraordinary accountability safeguards.

We understand that ASIO currently reports to the Australian public through its censored annual report, tabled in Parliament, and through a number of public information brochures available from government bookshops. Some information on ASIO is also disclosed to Parliament through the annual report of the Inspector-General of Security and Intelligence (IGIS), and through portfolio budget statements and the Senate Estimates process.

While these mechanisms are all valuable, their effectiveness in ensuring adequate accountability depends crucially on the amount and quality of information disclosed. In general, we believe that a much greater level of detail about the different types of activity and their scale could and be provided without compromising those activities or endangering ASIO personnel.

We repeat the suggestion made in our 1999 submission:

“Unfortunately, the most significant information most relevant to ASIO's intrusions into individuals' personal affairs remains secret. We fail to see how the publication of some general details of intelligence collection (edited out of the unclassified Report - see page 53) and of statistics on the number and types of warrants approved by the Attorney General (see page 22) could prejudice ASIO's operations. Regrettably, the community is still asked to rely on assurances that the accountability of ASIO to the Minister, monitored by the Inspector-General of Intelligence and Security is sufficient. It is not. We submit that the introduction of new forms of warrant, covering new intelligence gathering and surveillance techniques, provides an opportunity to improve the accountability mechanisms. Specifically, ASIO should be required to report annually on the number and type of warrants applied for, and the number of approvals or refusals, to give some idea of the scale of intrusion involved, and of the trends over time.

We also argued, in the context of then proposed amendments to the Financial Transaction Reports Act and Taxation Administration Act that both ASIO and the Inspector-General, as well as AUSTRAC and the Tax Commissioner, should be required to report *publicly* on the volume of requests for information from those two sources. These amendments were passed and we repeat this recommendation for strengthened accountability.

In last year's submission, we drew particular attention to the provisions in the Telecommunications Act, and the absence of any requirement on the carriers and carriage service providers to keep a record of the disclosures to ASIO. We said:

“The Council is concerned that there is no effective safeguard against abuse of this power by ASIO, or against impersonation of an ASIO officer by third parties. When Telecommunications was a state monopoly, specialised Telstra staff could be relied on to know ASIO contacts personally, providing some, albeit informal, safeguard. Now that there are many hundreds of organisations covered by the Telecommunications Act, it is unrealistic to expect them to do anything but take the ASIO officer's word for the 'need', and take the bona fides of the officer at face value. At least a record keeping requirement, subject to inspection by a statutory officer, would provide some small check on potential abuse”.

This sector specific problem is about to become more widespread if the Privacy (Private Sector) Amendment Bill 2000 is enacted unchanged. Like the Telecommunications Act, the Bill fails to provide for a record to be kept by organisations of disclosures to ASIO- similar to the requirement applying to law enforcement exceptions (see NPP 2(2)). The absence of any record, reviewable by an independent officer such as the Privacy Commissioner or Ombudsman (or perhaps the Inspector General of Intelligence and Security) is an open invitation for abuse. We have pointed out in our submission on the Privacy Bill that while the intelligence agencies themselves may be accountable (through the Inspector-General) for their use of the exception, what is to stop other organisations (such as private investigators, or police forces) from purporting to be an intelligence agency in order to obtain personal information to which they would not otherwise be entitled?

While it would clearly be appropriate for records of actual disclosures under these provisions to be kept secure and confidential, we again argue that it would be desirable for ASIO or IGIS to publicly report on the scale of disclosures. The community is entitled to know whether the extraordinary powers it has granted to ASIO are being used only occasionally, or on hundreds or perhaps thousands of times a year.

Please let me know if we can be of further assistance to the Committee.

Yours sincerely

Nigel Waters
Convenor