



Statement given to witnesses concerning the giving of evidence to the Review of Division 3 Part III of the *ASIO Act 1979*

Submissions made to or evidence given before the Joint Parliamentary Committee on ASIO, ASIS and DSD in respect of its statutory review of Division 3 Part III of the *ASIO Act 1979* are protected by the provisions of the *Parliamentary Privileges Act 1987* relating to the protection of witnesses, namely subsections 12(1) and (2) and 16 (3) and (4)¹. Furthermore, anybody threatening such a prosecution may be committing an offence.

The Committee advises persons who intend to give evidence or make submissions to the review of Division 3 Part III of the ASIO Act that it has received legal advice that the provisions of sec 34VAA of the ASIO Act do not apply, subject to restrictions placed on the Committee by section 29(3) and Schedule 1 clauses 2, 3 and 4 of the *Intelligence Services Act 2001*². That is, within the bounds of those restrictions, it would not be an offence for persons to provide evidence or documents to the inquiry. Potential witnesses must note, however, that the Committee is not entitled to examine and is not interested in examining the intelligence or the subject matter(s) discussed under a questioning warrant. It wishes to pursue only those procedures used in the operation of the questioning and detention powers under the ASIO Act.

The Committee will take such evidence in-camera and witnesses are reminded that any unauthorised disclosure of evidence taken in-camera by a

¹ See Attachment A

² See Attachment B

witness or other person could be proceeded against as a contempt of Parliament and prosecuted as an offence under section 13 of the *Parliamentary Privileges Act 1987*.³

A copy of the legal opinion relating to this matter is available on the Committee's website at:

http://www.aph.gov.au/house/committee/pjcaad/asio_ques_detention/index.htm

Margaret Swieringa

Secretary

³ See Attachment C

ATTACHMENT A

Parliamentary Privileges Act 1987

12 Protection of witnesses

(1) A person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence.

Penalty:

(a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or

(b) in the case of a corporation, \$25,000.

(2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:

(a) the giving or proposed giving of any evidence; or

(b) any evidence given or to be given before a House or a committee.

Penalty:

(a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or

(b) in the case of a corporation, \$25,000.

16 Parliamentary privilege in court proceedings

(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;

(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

(4) A court or tribunal shall not:

(a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or

(b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence; unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.

ATTACHEMENT B

Intelligence Services Act 2001

Section 29

3. *The functions of the Committee do not include:*

- (a) reviewing the intelligence gathering priorities of ASIO, ASIS or DSD; or*
- (b) reviewing the sources of information, other operational assistance or operational methods available to ASIO, ASIS or DSD; or*
- (c) reviewing particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS or DSD; or*
- (d) reviewing information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information; or*
- (e) reviewing an aspect of the activities of ASIO, ASIS or DSD that does not affect an Australian person; or*
- (f) reviewing the rules made under section 15 of this Act; or*
- (g) conducting inquiries into individual complaints about the activities of ASIO, ASIS or DSD.*

And

Schedule 1

2 Power to obtain information and documents

- (1) The Chair or another member authorised by the Committee may give a person written notice requiring the person to appear before the Committee to give evidence or to produce documents to the Committee.*
- (2) The notice must specify the day on which, and the time and place at which, the person is required to appear or to produce documents. The day must not be less than 5 days after the day on which the notice is given to the person.*
- (3) The notice must also specify the nature of the evidence or documents to be provided to the Committee, and in the case of documents, the form in which they are to be provided.*
- (4) A requirement under this clause must not be made of:*
 - (a) an agency head; or*
 - (b) a staff member or agent of an agency; or*
 - (c) the Inspector-General of Intelligence and Security; or*
 - (d) a member of the staff of the Inspector-General of Intelligence and Security.*

- (5) *A requirement under this clause may only be made of a person if the Committee has reasonable grounds for believing that the person is capable of giving evidence or producing documents relevant to a matter that the Committee is reviewing or that has been referred to the Committee.*
- (7) *The Commonwealth must pay a person who has been given a notice requiring the person to appear before the Committee such allowances for the person's travelling and other expenses as are prescribed.*

3 Provision of information to Committee by ASIO, ASIS and DSD

- (1) *The Chair or another member authorised by the Committee may give a written notice to an agency head requiring him or her to appear before the Committee to give evidence or to produce documents to the Committee.*
- (2) *The notice must specify the day on which, and the time and place at which, the agency head is required to appear or to produce documents. The day must not be less than 5 days after the day on which the notice is given to the agency head.*
- (3) *The notice must also specify the nature of the evidence or documents to be provided to the Committee, and in the case of documents, the form in which they are to be provided.*
- (4) *A requirement under this clause may only be made of the agency head if the Committee has reasonable grounds for believing that the agency head is capable of giving evidence or producing documents relevant to a matter that has been referred to the Committee.*

The evidence is to be given by:

- (a) *if the agency head nominates a staff member to give the evidence – the staff member or both the staff member and the agency head; or*
- (b) *in any other case – the agency head.*

4 Certificates by Minister

- (1) *If:*
 - (a) *a person is about to give or is giving evidence to the Committee or is about to produce a document to the Committee (whether or not required to do so under clause 2 or 3); and*
 - (b) *a Minister responsible for an agency is of the opinion that, to prevent the disclosure of operationally sensitive information:*
 - (i) *the person (not being an agency head) should not give evidence before the Committee; or*
 - (ii) *the person should not give evidence before the Committee relating to a particular matter; or*

(iii) in a case where a person has commenced to give evidence before the Committee:

*(A) the person should not continue to give evidence before the Committee; or
(B) the person should not give, or continue to give, evidence relating to a particular matter before the Committee; or*

*(iv) the person should not produce documents to the Committee; or
(v) the person should not produce documents of a particular kind to the Committee;*

the Minister may give to the presiding member of the Committee a certificate in relation to the matter stating the Minister's opinion.

(2) The Minister's certificate must also specify:

*(a) in a case to which subparagraph (1)(b)(ii) or (v) applies – the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence, or specifying the kind of documents that the Minister is satisfied the person should not produce, as the case requires; and
(b) in a case to which sub-subparagraph (1)(b)(iii)(B) applies – the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence.*

(3) The Minister must give a copy of a certificate under subclause (1) to the President of the Senate, to the Speaker of the House of Representatives and to the person required to give evidence or produce documents.

(4) A decision of the Minister under subclause(1) must not be questioned in any court or tribunal.

(5) Where the Minister gives a certificate under subclause(1) in relation to a person:

(a) if the certificate states that the person should not give, or continue to give, evidence before the Committee – the Committee must not receive, or continue to receive, as the case may be, evidence from the person; or

(b) if the certificate states that the person should not give, or continue to give, evidence before the Committee relating to a particular matter – the Committee must not receive, or continue to receive, as the case may be, evidence from the person relating to that matter; or

(c) if the certificate states that the person should not produce documents, or documents of a particular kind, to the Committee – the

Committee must not receive documents, or documents of that kind, as the case may be, from the person.

ATTACHMENT C

Parliamentary Privileges Act 1987

13 Unauthorised disclosure of evidence

A person shall not, without the authority of a House or a committee, publish or disclose:

(a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; or

(b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence; unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.

Penalty:

(a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or

(b) in the case of a corporation, \$25,000.