

ACTION ALERT AA 20-2: ASIO BILL 2020

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

June 2020

This Alert draws attention to the recent legislation amending the ASIO Act, offers some analysis and comment, and gives information on where advocacy can be pursued.

Background

Since 2003, the Australian Security Intelligence Organisation (ASIO) has had a wide range of powers to detain and question those suspected of planning terrorist acts. One of these is the power, under a 'questioning warrant', to detain a suspect for 7 days for questioning. Oversight has been partly through the Joint Parliamentary Committee on Intelligence and Security. In 2018 that Committee prepared a report on these powers and concluded that:

- ASIO should retain a compulsory questioning power under the ASIO Act 1979.
- ASIO's current detention powers be repealed.
- The Government should develop legislation for a reformed ASIO questioning framework.

The Government has now introduced to the House of Representatives the ASIO Amendment Bill 2020. The first reading was on 13 May 2020, and the Bill is now subject to the Joint Committee for review.

The Legislation

The Bill amends the compulsory questioning framework in the ASIO Act by:

- enabling ASIO's continued use of questioning warrants, but removing its ability to use questioning and detention warrants;
- replacing the existing detention framework with a more limited apprehension framework;
- enabling the use of questioning warrants in relation to espionage, politically motivated violence (including terrorism) and acts of foreign interference;
- providing the power for a police officer to conduct a search of a person who is apprehended in connection with a questioning warrant;
- permitting ASIO to seek a questioning warrant in relation to minors aged 14 to 18 years old, but only where the minor is themselves the target of an ASIO investigation in relation to politically motivated violence.

Comment/Analysis

The Minister for Home Affairs Peter Dutton MP has stated that the changes would 'modernise' ASIO and bring its powers into line with the Parliamentary's committee's report. It will allow ASIO to disrupt plots involving young people as low as 14, some of whom have been found linked with terrorist groups and propaganda.

Sally Whyte (*The Canberra Times* 30 May 2020) reports that ASIO sees the threats as 'unprecedented' from foreign spies and agents operating in Australia, and from neo-Nazi groups. Minors would be questioned only if they are suspected of planning a terrorist act, and the Attorney-General would have to issue a warrant after taking account of the best interests of the child and with the provision that a parent or guardian must be present.

Jade MacMillan (*ABC News* 14 May 2020) reported that Labor backed the 2018 recommendations, and that the party affirmed that the Joint Committee will give close scrutiny to the Bill in its current form. The Greens spokesman Nick McKim said the Bill shows the need for a charter of rights.

Law Council President Pauline Wright said (*The Guardian*, 14 May 2020) that our anti-terrorism laws must strike the appropriate balance between community safety and protecting individual freedoms. The removal of detention powers by the amended Bill is welcome in this regard. However, the provisions to lower the minimum age for questioning from 16 to 14 raise concerns about the adequate protection of children. She also queried the proposal to allow ASIO to authorize use of 'non-intrusive' tracking devices (e.g. an open handbag) without the approval of the Attorney-General.

The Joint Parliamentary Committee on Intelligence and Security is holding a review of the legislation and invites submissions by 26 June to pjicis@aph.gov.au

Members of the Joint Parliamentary Committee

Andrew Hastie MP (Liberal) Canning WA - chair

Anthony Byrne MP (Labor) Holt Vic – deputy chair

Senator Eric Abetz (Liberal) Tasmania

Mark Dreyfus MP (Labor) Isaacs Vic

Senator David Fawcett (Liberal) SA

Senator Kristina Keneally (Labor) NSW

Julian Leeser MP (Liberal) Berowra NSW

Senator Jenny McAllister (Labor) NSW

Senator Amanda Stoker (Liberal) Qld

Tim Wilson MP (Liberal) Goldstein Vic

Action

Friends are encouraged to consider making their views known through a submission to the Committee, or to individual MPs or Senators in their area.

Canberra

June 2020