

**ASIO Submission to the Committee conducting the Council of Australian Governments' (COAG) Review of Counter-Terrorism (CT) Legislation**

**ASIO**

1. The Australian Security Intelligence Organisation (ASIO) is Australia's national security intelligence agency. ASIO's functions are set out in the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) and include the collection of intelligence relevant to security, and the provision of advice to the Commonwealth in respect of matters relating to security and protective security. Security is defined in section 4 of the ASIO Act and includes the protection of Australia and its people from politically motivated violence such as terrorist activities.

**Introduction**

2. Over the last decade Australian governments have undertaken reviews of the Australian counter-terrorism framework so as to ensure that the relevant authorities are properly placed to deal with the risk of terrorist activities being conducted against Australians. In 2005 Australian governments identified that the introduction of a range of counter-terrorism laws was required to better deter, prevent, detect and prosecute acts of terrorism. It is timely, in 2012, for a review of the counter-terrorism legislation enacted in that period.

3. This submission provides a broad overview of the current terrorism threat environment in Australia and sets out the Organisation's views in relation to the legislative provisions subject to review. I would be happy to elaborate on any aspect of this Submission or answer any queries the Committee may have in relation to the domestic terrorism environment should the Committee consider that to be useful.

**Overview of Current Threat Environment**

4. The threat to Australia – domestically and offshore – from those committed to terrorist activity endures. Terrorist planning and activities have occurred in Australia, and terrorists have attacked Australians and Australian interests overseas. Over 100 Australians have been killed in terrorist attacks in Bali, Jakarta, Mumbai, Riyadh, Istanbul, London and New York.

5. Threats of terrorism can come from extremist groups or from an individual - the so - called lone-wolf terrorist. In particular, individuals committed to a violent jihad ideology continue to regard Australia and Australian interests abroad as legitimate targets. The threat posed by this form of extremism is ongoing, pervasive and persistent.

## UNCLASSIFIED

---

6. There have been a number of successes against terrorism and terrorist organisations around the world. Military intervention in Afghanistan and the campaign against al-Qa'ida has significantly disrupted the ability of al-Qa'ida central command to plan and carry out terrorist attacks. In Indonesia and Southeast Asia the local authorities are having significant successes in managing the threat from Islamic terrorism. Australia-based extremists have plotted attacks which have been disrupted and a number of those involved have been charged with and convicted of terrorism offences. In Australia, four potentially very serious attacks intended to produce mass casualties have been prevented since 2001 and other investigations have disrupted the activities of individuals with the intent of committing terrorist acts. However those successes have not eliminated the problem. Australia remains a target for a range of individuals and groups who would promote their belief systems and seek to destroy our democratic way of life in a violent and irreversible way.
7. ASIO currently is conducting over 200 counter-terrorism investigations and is, on an ongoing basis, responding to a large number of counter-terrorism leads. We are seeing at the moment less importation of foreign terrorists, but of concern a rise in efforts by Australians who wish to support acts in Australia or travel overseas to obtain training or undertake their own particular form of jihad. This is not an abstract or offshore threat; it is real and it is amongst the community.
8. The Internet continues to help extremist groups and individuals with their mission. It is a propaganda and recruitment tool, providing terrorists with a means to support operational activity, to project their ideology onto the international stage and to recruit suicide attackers. This dissemination of violent extremist ideology through the Internet poses the very real danger of drawing 'stand alone' violent jihadists. There is great difficulty in identifying and neutralising the terrorist 'loner' - the person who operates outside or on the periphery of terrorist networks.
9. Counter-terrorism laws, including the control order provisions, police powers and other legislative provisions the subject of the current review, have undoubtedly contributed to the protection of Australia and Australians from terrorist activity. The counter-terrorism framework which was established and developed over the last decade, including the important safeguards and accountability arrangements incorporated within that framework, continues to be as vital today as it was in 2005.
10. It is significant that the threats to date on Australian soil have been identified and disrupted at a very early stage, due to the dedicated work of intelligence and law enforcement agencies and enabled by many of the laws subject to review. Without this important legislative framework government, law enforcement and security intelligence agencies would be significantly hampered in their efforts to protect Australia from the ongoing terrorist threat.

### **The Need for Strong Counter-Terrorism Legislation**

11. The methodology of terrorism is generally to assert an extreme ideology by violent, catastrophic means. Terrorist activity may be aimed at inflicting mass casualties for maximum impact, disrupting the conduct of national life, creating economic havoc or destroying trust in our society. It is because of this potential for pre-meditated mass-casualty attacks aimed at disrupting our way of life that strong and comprehensive counter-terrorism laws are required. Without these legislative powers the ability of law enforcement and national security agencies to fulfil their role in protecting Australians from terrorist threats would be significantly eroded.

12. Strong counter-terrorism powers should be balanced by equally strong accountability requirements and safeguards pertaining to their use to provide assurance to the community that such powers are not being used frivolously or without protection for the subject of the action. It is the Organisation's view that the safeguards and accountability mechanisms currently contained within the legislation provide proper protection against the misuse of powers and appropriate levels of accountability. They have been demonstrated to be effective and need no further addition. In particular, agencies have been proportionate and responsible in their use of the powers granted and have only resorted to the most intrusive powers where there has been a need to do so.

### **Control Orders**

13. ASIO acknowledges that control orders represent a specific tool in Australia's counter-terrorism framework aimed at mitigating the risk of terrorist activity posed by individuals with significant terrorist capability, even where their intent or level of motivation to undertake such activity is uncertain.

14. Control orders can materially contribute to the security of Australia. While these powers have been used sparingly to date, should appropriate circumstances arise the availability of a control order may be a critical element in further ensuring Australia's security.

15. Jack Thomas and David Hicks were both subject to control orders on the basis of assessments that, at the relevant time, they met the criteria set out under the Criminal Code. ASIO is of the view that the control orders obtained by police directly contributed to the security of Australians, for example by providing relevant authorities with a degree of confidence in being able to detect warnings and indicators of an escalation of the threat posed. The fact that control orders have not been used since then does not mean that they are no longer necessary. Control orders can be used for effective and ongoing monitoring of the activities of individuals. Restrictions placed on individuals can also place some limit on their ability to pass on terrorist skills and knowledge to other individuals who may possess an established terrorist intent.

### **Preventative Detention Orders**

16. The ability of law enforcement agencies to take a person into custody and detain him or her for a period in order to prevent an imminent terrorist attack from occurring, or to preserve evidence of, or relating to, a recent terrorist attack remains an important counter-terrorism tool. The extensive protections included within the legislation ensure it is not used without proper cause.

17. The fact that Australia has to date – through the ongoing efforts of intelligence and law enforcement agencies – been fortunate to avoid the sort of terrorism emergency that might require use of preventative detention orders does not mean that the threats that prompted this regime to be included as an element of the counter-terrorism framework no longer exist.

### **Police powers**

18. Police powers in relation to terrorist acts and terrorism offences form a significant component of the counter-terrorism framework. The threat to Australia from terrorism has not abated, and for this reason appropriate police powers in relation to terrorist activity continue to be necessary. Specific comment on the effectiveness of the specific provisions applicable to each jurisdiction is most appropriately provided by the relevant agencies within those jurisdictions.

### **Other Legislation**

#### **Criminal Code Provisions**

19. The provisions of the Criminal Code being reviewed provide for a range of offences connected with terrorist training, the financing of terrorism or terrorist organisations, associating with terrorist organisations, possessing things connected with terrorist acts, collecting or making documents likely to facilitate terrorist acts and other acts in preparation for terrorist acts.

20. These laws have an important role in deterring terrorism and terrorist acts and, importantly, in allowing authorities to disrupt them at the earliest possible time, with the lowest risk to the community. They are also an important component of Australia's compliance with its international counter-terrorism obligations. As discussed in the threat assessment, the risks to the safety of Australians from persons and organisations with an intent to undertake terrorist activities endures. The early prevention of terrorist acts is of particular importance given the impact such attacks would have on the Australian community.

## UNCLASSIFIED

---

21. Since 2001, 27 Australians have been convicted of terrorism offences in Australia. For example on 23 December 2010, Wissam Fattal, Saney Aweys and Nayef El Sayed were found guilty by the Victorian Supreme Court of conspiracy to do acts in planning or preparation for a terrorist act (s. 101.6 of the Criminal Code), being a planned attack on the Holsworthy Army Barracks. The ability to disrupt that group's activities was critical to protecting Australia and its citizens from a significant terrorist threat.

22. The potential exists for new threats – emanating from local extremists, those based overseas or a combination of the two – to emerge quickly with little or no warning. The Criminal Code provisions contained within Part 5.3 of the Criminal Code remain necessary and relevant to the protection of Australians from such threats.

### **Definition of a Terrorist Organisation**

23. The definition of terrorist organisation contained within s.102.1 of the Criminal Code covers organisations that are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, and also organisations specified in the regulations. In ASIO's view the breadth of the definition of terrorist organisation is appropriate, and necessary in order for Division 102 to be effective.

24. The ability to specify terrorist organisations in the regulations continues to be an important component of the counter-terrorism framework by clearly identifying for the public those organisations. Before a regulation specifying a terrorist organisation may be made, the Minister must be satisfied on reasonable grounds that the organisation meets the criteria above, or advocates the doing of a terrorist act. ASIO continues to support the ability to specify by way of regulation organisations that advocate the doing of a terrorist act. This recognises that advocacy of terrorist acts is inherently dangerous because it can inspire persons to harm the community.

25. Regulations for the purposes of specifying terrorist organisations cease to have effect on the third anniversary of the day on which they take effect. While a new regulation can be made continuing the proscription of the same organisation, given the long term nature of terrorist activity and the nature of terrorist organisations ASIO believes that consideration should be given to further extending the time period before a review is required to at least five years. Subsection 102.1(4) would still continue to operate to oblige the Minister to cease the effect of regulations where the Minister ceases to be satisfied of the relevant threshold.

26. Furthermore, in ASIO's experience there is potential for organisations of significant security concern to fall outside the ambit of organisations which may be specified in regulations as terrorist organisations. This can occur when an organisation with a history of terrorist activity goes to ground for a period of time, and as a consequence cannot be shown, through either open source or classified reporting, to

have undertaken terrorist activity for two or three years, but nonetheless has the potential to engage in terrorist activity in the future.

### **Crimes (Foreign Incursions and Recruitment) Act**

27. The *Crimes (Foreign Incursions and Recruitment) Act* makes it unlawful to engage in hostile activity in a foreign state, or to enter a State with intention to engage in such activity. A prohibition along these lines has been in existence for a significant period of time.

28. There continue to be Australians who are prepared to travel to and train and fight overseas, predominantly in traditional jihad theatres including northern Lebanon, Yemen, Somalia, Afghanistan, Pakistan and Syria. ASIO notes that a number of people have been charged with committing an offence under section 6 of the Act. In this context, an offence provision criminalising such activity continues to be necessary and appropriate.

29. Such persons may engage in hostile activity against the Australian Defence Force, and for this reason ASIO continues to support the modification to the Act in 2004 that the defence for serving with the armed forces of a foreign state does not apply to those fighting while in or with a terrorist organisation.

### **Suspect Transactions Reports**

30. It has been ASIO's experience that suspect transaction reports in relation to the financing of terrorism under s.16 of the *Financial Transactions Reports Act 1988* (FTR Act) have largely been superseded by the reporting obligations of reporting entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF). However, in circumstances where a cash dealer is not a reporting entity under the AML/CTF legislation the cash dealer will still have an obligation under the FTR Act.

31. Suspicious matter reports under both the AML/CTF and FTR Act provide a valuable source of lead information to ASIO in respect of its counter-terrorism investigations. In circumstances where a cash dealer is not a reporting entity, the reports provided under the FTR remain a valuable source of intelligence. An obligation to provide such reports, whether under the AML/CTF legislation or the FTR Act, should continue.