



ASIO's Legislative Framework

ASIO's legislative framework is provided by the following key documents:

- *Australian Security Intelligence Organisation Act 1979 (ASIO Act)*;
- *Telecommunications (Interception and Access) Act 1979 (TIA Act)*;
- *Intelligence Services Act 2001 (IS Act)*;
- *Inspector-General of Intelligence and Security Act 1986*; and
- Attorney-General's Guidelines to ASIO regarding obtaining, correlating, evaluating and communicating intelligence relevant to security (including politically motivated violence) (the Guidelines).

ASIO's functions are provided by section 17 of the ASIO Act:

- obtain, correlate and evaluate intelligence relevant to security;
- communicate that intelligence when it is relevant to security;
- advise Ministers and Commonwealth authorities about matters relating to security, and protective security;
- furnish security assessments; and
- obtain foreign intelligence within Australia (under warrant).

Through Section 20, the ASIO Act places a special responsibility on the Director-General to keep the organisation free from any influences or considerations, including political, not relevant to its functions. The Director-General of Security is a statutory office, and he or she is required to consult regularly with the Leader of the Opposition on the Organisation's work. The ASIO Act emphasises the Director-General's responsibility to provide impartial advice. Section 17 of the Act prevents



ASIO from any activity that would limit the right to engage in lawful advocacy, protest or dissent.

To carry out its statutory functions, Parliament has granted ASIO a number of special (warrant) powers for the collection of security intelligence and foreign intelligence:

- enter and search premises;
- access computers;
- intercept communications;
- use listening and tracking devices;
- inspect postal and delivery service articles;
- questioning and detention warrants for terrorism offences; and
- foreign intelligence

With the exception of questioning and detention warrants, the exercise of these powers requires the issue of a warrant by the Attorney-General. Questioning warrants and questioning and detention warrants are issued by an Issuing Authority (a Federal Magistrate or a Federal Judge).

In the performance of its function of obtaining intelligence relevant to security and its functions relating to politically motivated violence, ASIO is required to comply with the Guidelines issued by the Attorney-General under section 8A of the ASIO Act.

ASIO is subject to an extensive oversight and accountability framework, that includes:

- The Inspector-General of Intelligence and Security (IGIS). The IGIS may access all of ASIO's records and staff and may enter ASIO's premises at any time. The IGIS has the power to inquire into public



complaints, conduct inquiries referred by Government, and initiate inquiries. The IGIS scrutinises ASIO more closely than the other intelligence agencies because ASIO has statutory responsibilities for collecting intelligence on Australians and in Australia.

- Reporting to Government including the National Security Committee of Cabinet and the Parliamentary Joint Committee on Intelligence and Security.
- *The Independent National Security Legislation Monitor Act 2010*. This Act provides the Monitor with jurisdiction to review the effectiveness of, and appropriate safeguards relating to, Australia's counter-terrorism and national security legislation. With respect to ASIO's work, this relates to Division 3 of Part III of the ASIO Act dealing with special powers relating to terrorism offences (questioning and questioning and detention powers). The Prime Minister and/or the Parliamentary Joint Committee on Intelligence and Security may also refer matters relating to counter-terrorism or national security to the Monitor.
- ASIO briefs the Attorney-General on all issues pertaining to ASIO's functions. The Attorney-General is also informed of ASIO's operations through consideration of warrant requests.
- ASIO publishes a classified and unclassified Annual Report; the latter of which is tabled in Parliament.
- Section 21 of the ASIO Act requires the Director-General of Security to brief the Leader of the Opposition for the purpose of keeping him or her informed on matters relating to security.