

Attorney-General's Guidelines in relation to the performance by the Australian Security Intelligence Organisation of its function of obtaining, correlating, evaluating and communicating intelligence relevant to security (including politically motivated violence)

1 Authority for Guidelines

1.1 These guidelines are given by the Attorney-General to the Director-General of Security (the Director-General) under subsections 8A(1) and 8A(2) of the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act) and are to be observed by ASIO in the performance of its functions relating to:

- (a) the obtaining, correlating, evaluating and communicating of intelligence relevant to security; and
- (b) politically motivated violence.

2 ASIO's functions

2.1 ASIO's functions are specified in the ASIO Act (section 17). These are:

- (a) to obtain, correlate and evaluate intelligence relevant to security;
- (b) for purposes relevant to security and not otherwise, to communicate any such intelligence to such persons, and in such manner, as are appropriate to those purposes;
- (c) to advise Ministers and authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities;
- (ca) to furnish security assessments to a State or an authority of a State in accordance with paragraph 40(1)(b);
- (d) to advise Ministers, authorities of the Commonwealth and such other persons as the Minister, by notice in writing given to the Director-General, determines on matters relating to protective security; and
- (e) to obtain within Australia foreign intelligence pursuant to section 27A or 27B of the ASIO Act or section 11A, 11B or 11C of the *Telecommunications (Interception and Access) Act 1979*, and to communicate any such intelligence in accordance with the ASIO Act or the *Telecommunications (Interception and Access) Act 1979*.

2.2 "Security" is defined as:

(a) The protection of, and of the people of, the Commonwealth and the several States and Territories from:

(i) espionage;

(ii) sabotage;

(iii) politically motivated violence;

(iv) promotion of communal violence;

(v) attacks on Australia's defence system; or

(vi) acts of foreign interference; whether directed from, or committed within, Australia or not; and

(b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a).

2.3 Other important statutory provisions include section 17A and section 20 of the ASIO Act:

Section 17A:

This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent, and the exercise of that right shall not by itself, be regarded as prejudicial to security, and the functions of the Organisation shall be construed accordingly.

Section 20:

The Director-General shall take all reasonable steps to ensure that:

(a) the work of the Organisation is limited to what is necessary for the purposes of the discharge of its functions; and

(b) the Organisation is kept free from any influences or considerations not relevant to its functions and nothing is done that might lend colour to any suggestion that it is concerned to further or protect the interests of any particular section of the community, or with any matters other than the discharge of its functions.

3 Governing Principles

3.1 ASIO works to provide timely advice on threats to the security of Australia, the Australian people, and Australian interests, whether in or outside Australia.

3.2 ASIO's security functions are concerned with protection and are anticipatory in nature. ASIO therefore investigates known threats to security, and endeavours to identify persons, groups or entities that may present a risk to security that previously have not been identified.

3.3 ASIO implements measures or arrangements, as far as is reasonably possible, to ensure that the information it relies upon is reliable and accurate.

4 Interpretation

4.1 In these guidelines:

(a) "activities relevant to security" means not only physical acts of the sort specified in the definition of security, but also includes the acts of conspiring, planning, organising, counselling, advising, financing, or otherwise advocating or encouraging the doing of those things;

(b) "activities prejudicial to security" means activities that are relevant to security and which can reasonably be considered capable of causing damage or harm to Australia, the Australian people, or Australian interests, or to foreign countries to which Australia has responsibilities;

(c) "subject" means a person, group or other entity;

(d) "inquiry" means action taken to obtain information:

(i) for the purpose of identifying a subject and/or determining whether the activities of a subject could be relevant to security; or

(ii) as part of an investigation; and

(e) "investigation" means a concerted series of inquiries in relation to a subject where it has been determined that the activities of the subject could be relevant to security.

5 Security Assessments

5.1 The furnishing by ASIO of security assessments to Commonwealth agencies is governed by Part IV of the ASIO Act. Where it is necessary to conduct an investigation to obtain new information relevant to a security assessment, such an investigation shall be conducted in accordance with these guidelines.

6 Obtaining Intelligence Relevant to Security

6.1 ASIO's functions require it:

(a) to undertake inquiries to determine whether a particular subject or activity is relevant to security;

(b) to investigate subjects and activities relevant to security;

(c) to develop and maintain a broad understanding of the security environment; and

(d) to analyse and assess information obtained, and to provide intelligence and advice to relevant authorities.

6.2 In performing its functions ASIO may:

(a) collect, maintain, analyse and assess information related to inquiries and investigations;

(b) collect and maintain a comprehensive body of reference material to contextualise intelligence derived from inquiries and investigations; and

(c) maintain a broad database, based on the above, against which information obtained in relation to a specific inquiry or investigation can be checked and assessed.

6.3 The Director-General is responsible for deciding ASIO's intelligence collection, analysis and assessment priorities (subject to section 8 of the ASIO Act).

7 Investigations

7.1 The Director-General is responsible for determining ASIO's subjects for investigation (subject to section 8 of the ASIO Act).

7.2 ASIO is not required to investigate every instance of activities relevant to security. Decisions to initiate investigations shall be based on a consideration of the extent to which the activities of a subject will, or are likely to, cause harm or damage, ASIO's overall priorities, and the availability of appropriate resources.

8 Authorisation of Inquiries and Investigations

8.1 Subject to paragraph 10.4(c), the initiation and continuation of investigations shall be authorised only by the Director-General, or an officer at or above Executive Level 2 authorised by the Director-General for that purpose.

8.2 The Director-General will establish processes to ensure that all requests for information from external agencies are authorised at an appropriate level.

9 Bases for Investigations

9.1 In deciding whether to conduct an investigation, and the investigative methods to be used, ASIO shall consider:

- (a) what is already known about the subject's activities, associations and beliefs, and the extent to which those activities, associations and beliefs are, or are likely to be, relevant or prejudicial to security;
- (b) the immediacy and severity of the threat to security;
- (c) the reliability of the sources of the relevant information; and
- (d) subject to paragraph 10.4, the investigative techniques that are likely to be most effective.

10 Conduct of Inquiries and Investigations

10.1 Information obtained by ASIO is "relevant to security" where it may assist in determining whether:

- (a) there is a connection or possible connection between a subject and activities relevant to security, irrespective of when such activities have occurred or may occur;
- (b) the activities of a subject are not relevant to security; or
- (c) a person, group or entity other than the subject has a connection or possible connection to activities relevant to security.

10.2 The purpose of an ASIO inquiry or investigation should generally be to obtain information concerning the nature of any activities of a person or group which may be relevant to security, including their intentions and capabilities.

10.3 Information collected may include:

- (a) the identity and relevant activities of individuals and groups of interest, including persons associated with the group of interest and of other persons likely to be knowingly concerned in furtherance of its plans or activities; and
- (b) the finances, the geographic dimensions, and the past, present and prospective activities of the individuals or groups.

10.4 Information is to be obtained by ASIO in a lawful, timely and efficient way, and in accordance with the following:

- (a) any means used for obtaining information must be proportionate to the gravity of the threat posed and the probability of its occurrence;
- (b) inquiries and investigations into individuals and groups should be undertaken:
 - (i) using as little intrusion into individual privacy as is possible, consistent with the performance of ASIO's functions; and
 - (ii) with due regard for the cultural values, mores and sensitivities of individuals of particular cultural or racial backgrounds, consistent with the national interest;
- (c) the more intrusive the investigative technique, the higher the level of officer that should be required to approve its use;
- (d) wherever possible, the least intrusive techniques of information collection should be used before more intrusive techniques; and
- (e) where a threat is assessed as likely to develop quickly, a greater degree of intrusion may be justified.

11 Review of Investigations

11.1 Investigations are to be reviewed no less than annually.

11.2 Where an inquiry or investigation concludes that a subject's activities are not, or are no longer, relevant to security, the records of that inquiry or investigation shall be destroyed under disposal schedules agreed to between ASIO and the National Archives of Australia.

12 Advice to the Attorney-General

12.1 The Director-General shall keep the Attorney-General advised, in general terms, of ASIO's investigations and priorities through:

- (a) regular briefings to the Attorney-General on ASIO's investigations, significant developments in relation to important subjects, and the emergence of new subjects; and
- (b) other means as necessary.

Note 1: Under the ASIO Act, and the *Telecommunications (Interception and Access) Act 1979* (the T(I&A) Act), all ASIO warrants (other than questioning warrants issued under Part III, Division 3 of the ASIO Act) are issued by the Attorney-General, and ASIO is required to report to the Attorney-General on the extent to which the action taken under every warrant has assisted the

Organisation in carrying out its functions (section 34 of the ASIO Act and section 17 of the T(I&A) Act).

Note 2: Section 21 of the ASIO Act requires the Director-General to consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on matters relating to security.

13 Treatment of Personal Information

13.1 ASIO shall only collect, use, handle or disclose personal information for purposes connected with its statutory functions.

13.2 The Director-General shall take all reasonable steps to ensure that personal information shall not be collected, used, handled or disclosed by ASIO unless that collection, use, handling or disclosure is reasonably necessary for the performance of its statutory functions (or as otherwise authorised, or required, by law).

13.3 The Director-General shall ensure that all reasonable steps are taken to ensure that personal information held, used or disclosed by ASIO is accurate and not misleading.

13.4 Appropriate records shall be kept of all requests made by ASIO for access to personal information and all personal information received in response to such requests. Such records shall be open to inspection by the Inspector-General of Intelligence and Security.

13.5 Appropriate records shall be kept of all communication by ASIO of personal information for purposes relevant to security or as otherwise authorised. Such records shall be open to inspection by the Inspector-General of Intelligence and Security.

13.6 The Director-General shall ensure that all personal information collected or held by ASIO is protected by reasonable security measures against loss and unauthorised access, use or modification.

14 Politically Motivated Violence (PMV) - legislative definitions

14.1 Key legislative provisions relating to PMV are:

(a) the definition of "politically motivated violence" in section 4 of the ASIO Act; and

(b) section 17A which provides that the ASIO Act is not concerned with lawful advocacy, protest, or dissent (paragraph 2.3 above).

14.2 "Politically motivated violence" means:

(a) acts or threats of violence or unlawful harm that are intended or likely to achieve a political objective, whether in Australia or elsewhere, including acts or threats carried on for the purpose of influencing the policy or acts of a government, whether in Australia or elsewhere; or

(b) acts that:

(i) involve violence or are intended or are likely to involve or lead to violence (whether by the persons who carry on those acts or by other persons); and

(ii) are directed to overthrowing or destroying, or assisting in the overthrow or destruction of, the government or the constitutional system of government of the Commonwealth or of a State or Territory; or

(ba) acts that are terrorism offences; or

(c) acts that are offences punishable under the *Crimes (Foreign Incursions and Recruitment) Act 1978*, the *Crimes (Hostages) Act 1989* or Division 1 of Part 2, or Part 3, of the *Crimes (Ships and Fixed Platforms) Act 1992* or under Division 1 or 4 of Part 2 of the *Crimes (Aviation) Act 1991*; or

(d) acts that:

(i) are offences punishable under the *Crimes (Internationally Protected Persons) Act 1976*; or

(ii) threaten or endanger any person or class of persons specified by the Minister for the purposes of this subparagraph by notice in writing given to the Director-General.

15 Interpreting PMV

Sub-paragraph (a) of the definition of PMV

15.1 The activity comprehended by sub-paragraph (a) of the definition of PMV includes terrorism, and violent protest that has a political objective. In performing its functions in relation to sub-paragraph (a) of the definition of PMV, ASIO should give priority to persons or groups likely to be involved in:

(a) acts or threats of serious violence or unlawful harm designed to create fear or to incite or provoke violent reaction; or

(b) the use of tactics that can reasonably be assessed as likely to result in violence;

in order to achieve a political objective.

15.2 The above considerations apply whether the object of the violence or threat is the government of the Commonwealth, a State or Territory, or the government of a foreign country with which Australia has responsibilities in relation to security matters, or the people of Australia or Australian interests within Australia and overseas. Where acts or threats occur within a State or Territory and appear wholly designed to influence the policy or acts of the State or Territory government, ASIO is to inform the Attorney-General of any decision taken to investigate such acts or threats.

Sub-paragraph (b) of the definition of PMV

15.3 In performing its functions in relation to sub-paragraph (b) of the definition of PMV, ASIO is to investigate whether a person or a group actively holds to, advocates or encourages a doctrine, or pursues political objectives in which advocacy of the use of violence is accepted for the purpose of overthrowing, destroying or assisting in the overthrow or destruction of a government or the constitutional system of government of the Commonwealth, or a State or Territory.

15.4 Whether it is probable that the activity will succeed in its purpose, and whether the intent is for imminent or future activity are matters which ASIO should take into account in setting its priorities. However, these considerations of probability of success or imminence of violence are not factors which of themselves determine whether the act is PMV.

15.5 A person or group need not intend to initiate violence in the process of overthrowing constitutional government for their activities to be assessed as PMV under sub-paragraph (b). It is sufficient if the activities could lead to violence. All that is required is there is a reasonable likelihood that the activity will produce violence from others.

15.6 Advocacy of violence may come within sub-paragraph (b) of the definition of PMV even though it is not itself unlawful, or the advocacy is not public. Of their very nature, preparations directed at the overthrow of government are likely to be clandestine and their early manifestations are deceptive.

15.7 If apparently non-violent activities directed at destabilising or undermining constitutional government are associated with what purports to be no more than contemplation of the prospect of the violent overthrow of government, ASIO may investigate those activities to the extent necessary to establish (with some confidence) whether the activities involve a real risk or danger that violence will flow from those activities.

Sub-paragraphs (ba) and (c) of the definition of PMV

15.8 These sub-paragraphs refer to activities that are criminal offences. Any activity which constitutes a criminal offence under the legislation specified is an act of PMV.

Sub-paragraph (d) of the definition of PMV

15.9 Sub-paragraph (d) of the definition of PMV refers to attacks on the persons, official premises and private accommodation of certain defined persons and provides for the Attorney-General to add to those defined persons by notice in writing to the Director-General.

15.10 The categories of persons defined by sub-paragraph (d) of the definition of PMV include internationally protected persons as defined by the *Crimes (Internationally Protected Persons) Act 1976*. Any activity which constitutes a criminal offence under this legislation is an act of PMV.

15.11 Sub-paragraph (d) also provides for the Attorney-General to add other defined persons by notice in writing to the Director-General. That latter category will vary from time to time, but could include:

- (a) Ministers of the Commonwealth Government;
- (b) the Leader of the Opposition in the Commonwealth Parliament;
- (c) Members of the Commonwealth Parliament when travelling as a Parliamentary delegation; and
- (d) the Premiers or Chief Ministers of the States and Territories.

15.12 Investigations into activities that might threaten persons in the categories identified in sub-paragraph (d) of the definition of PMV may require a higher degree of intrusion into the privacy of persons suspected of involvement than would normally be appropriate when based only on information of low reliability. The period of such intrusion should be limited so far as practicable to the period of possible threat.

16 Investigations into Demonstrations and other forms of Protest

16.1 Further to clause 7 above, the following guidance relates specifically to ASIO's investigation of demonstrations and other forms of protest.

16.2 ASIO is not to undertake investigations where the only basis for the investigation is the exercise of a person's right of lawful advocacy, protest or dissent (section 17A of the ASIO Act).

16.3 ASIO is not to investigate demonstrations or other protest activity unless:

(a) there is a risk of pre-meditated use of violence against persons or property for the purposes of achieving a political objective, or pre-mediated use of tactics that can be reasonably assessed as likely to result in violence; or

(b) it suspects there is a link between the demonstration or other protest activity and conduct coming otherwise within the definition of security.

16.4 An exception to the above is demonstrations or other protest activity against internationally protected persons or other persons specified by the Attorney-General under sub-paragraph (d) of the definition of PMV.

16.5 Minor acts of violence, such as jostling or defacing or damaging property, are properly matters for investigation by a police force, as are incidental acts of violence or property damage which occur in the course of a demonstration. Where, however, such acts are or are intended to be part of a pattern, and where there is reason to believe that the acts are intended to influence the policy or acts of a government, ASIO may investigate to determine whether there is a potential for the violence to escalate or become more strongly directed at a person or group associated with the policy or acts at issue.

17 Assessment of PMV

17.1 ASIO's threat assessment function is an integral part of national arrangements for the protection of high office holders, internationally protected persons, sites of national significance and critical infrastructure. ASIO may prepare threat assessments in relation to any demonstration or protest activity on the basis of information it already has or which is passed to it by other agencies, for the purpose of advising authorities responsible for law enforcement and the protection of designated persons.

17.2 ASIO is not required to provide an assessment for every event, place, person or instance, that is actually or potentially at threat from PMV. The Director-General shall consider the potential seriousness of any matter or information, the Organisation's priorities, and the availability of appropriate resources.