

What ASIO Needs: Better Resources, Not More Powers

by Christopher Michaelsen *

The tragic events of 11 September 2001 in the United States and of 12 October 2002 in Bali have not changed the world, but they have led to a dramatic change in the perception of international terrorism. The unthinkable turned into reality and it became clear that the so-called 'war on terrorism' was to be one of the defining conflicts of the early 21st century. Governments around the world enacted new legislation as part of their campaign to combat international terrorism. Canberra has been no exception. In an attempt to strengthen Australian law, the House of Representatives and the Senate passed a first anti-terrorism package containing five bills in early 2002. The second cornerstone of Australia's new anti-terrorism laws was meant to be the ASIO Bill.¹ First introduced into Parliament on 21 March 2002, the Bill was rejected by the Senate on 13 December 2002. It was reintroduced into Parliament on 20 March 2003 subject to some minor amendments. Fearing that another refusal to pass the legislation would trigger a double dissolution election, Labor abandoned its resistance in the Senate, and a slightly modified ASIO Bill was finally enacted on 26 June 2003.

Under the new legislation ASIO has been given unprecedented powers that allow it to gather intelligence on possible terrorist threats to Australia. In particular, the Act authorises ASIO to seek a warrant to detain and question people for up to seven days. Persons detained do not need to be suspected of any offence and can be taken into custody without charges being laid or even the possibility that they might be laid at a later stage. It is sufficient that an 'issuing authority' has 'reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence'. An 'issuing authority' is defined as a person, appointed by the Minister, who is either a federal magistrate or a judge. While detained and questioned, people are compelled by law to 'give the information, record or thing requested in accordance with the warrant.' Failure to do so is punishable with up to five years imprisonment.

These and other provisions make the ASIO Act one of the toughest anti-terrorism legislations in the Western world and provide ASIO with sweeping powers that even comparable overseas agencies like the American FBI or British MI5 neither have nor seek. Furthermore, several passages of the new legislation are inconsistent with Australia's obligations under international law.² As a consequence, rather than increasing security, the ASIO Act may in fact achieve adverse effects. Perceived as repressive and discriminatory, it might lead to an inflamed sense of grievance and injustice, particularly among the Muslim community.³ This in turn could further alienate and isolate even so-called moderates, foster sympathy and support for fundamental religious fanatics and,

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thus, eventually destabilize Australia's liberal democratic society itself. It remains therefore to be seen whether the new laws provide any protection against future terrorist attacks or, in the long term, rather damage the democratic way of life one is actually trying to defend.

In early November 2003, only four months after the ASIO Act had been enacted, ASIO's new detention and investigation powers were already found to be insufficient. Although not even attempting to apply the new laws in the 'Willie Brigitte affair,'⁴ Attorney-General Philip Ruddock argued that the arrest and deportation of the French terrorist suspect had highlighted flaws in the current system. Claiming that ASIO's powers were 'clearly inadequate' and Australia's legislation only 'third and fourth best', the Attorney-General subsequently called for further amendments of the ASIO Act.⁵ Calls for even more stringent legislation make little sense. What is more, they divert attention from the fact that it may not be the legislation that is 'third and fourth best' but ASIO itself.

Australia's key domestic intelligence agency has been seriously degraded over the past 15 years. From 1988 to 1998, its numbers were slashed by a third from about 800 to 535. It now has only 587 full-time staff to monitor a country of 20 million.⁶ With a staff-population ratio of 1: 34 071, ASIO remains significantly smaller than its US counterpart (ratio of 1: 10 094).⁷ It is also smaller than comparable domestic security agencies in Canada (ratio of 1: 15 212) and New Zealand (ratio of 1: 27 857).⁸ Although ASIO predicts that staff numbers will increase to 830 over the next two years, the length of the recruitment process remains a major problem.⁹ Under-staffing might lead to intelligence officers being overworked. This in turn may be one of the causes for ASIO's relatively high separation rate that ran at about 10.4 percent in 2002, 2.4 percent higher than the present Public Service-wide rate.¹⁰ The *ASIO Report to Parliament 2001-2002* revealed that major reasons for current staff contemplating leaving the agency were prospects of better promotion opportunities, increased remuneration, greater job satisfaction, better training and development opportunities and greater rewards and recognition to be found elsewhere.¹¹ However, part of a successful long-term strategy against international terrorism lies in retaining staff with relevant experience. An ongoing loss of experience and corporate memory would be certainly catastrophic, particularly in the light of claims that ASIO is already lacking intelligence experience in senior ranks.¹²

Maybe even more alarming, ASIO staff is hopelessly lacking language and cultural skills. Although most of the agency's operational work now involves investigating Australians with links to al-Qaeda, Jemaah Islamiyah and other Islamic extremists groups, only two to three per cent of ASIO officers speak any Arabic. As ASIO Director-General Richardson revealed, one can count the number of Arabic speakers inside ASIO on three hands.¹³ Some Arabic dialects are not spoken at all. Even so, the numbers of Australian recruits with Muslim or Middle Eastern backgrounds are very low. None of the ASIO graduates of November 2002 came from a non-English speaking background.¹⁴ There were no Muslims and only one of the graduates spoke any other language – a woman fluent in Indonesian. Among the new recruits about to graduate in late 2003, only one has a Muslim background.¹⁵ It is striking that the term 'language skills' is not mentioned even once in the 126 pages of ASIO's latest Report to Parliament.

In order to respond effectively to the threat from international terrorism, Australia does not need further laws, nor does ASIO need more powers. But what ASIO does need are better resources. Rather than trying to turn 'terrorism laws' and 'national security' into an election-winning issue for 2004, the Government should focus on enhancing the quality of Australia's key domestic intelligence agency. To better protect Australia from possible terrorist attacks, it is essential to improve ASIO's staffing situation. Emphasis should be put on developing staff experience, building corporate memory and recruiting ethnic officers, men and woman with relevant language and cultural backgrounds. After all, what is the point of further expanding the agency's powers when currently ASIO officers are not even able to understand Willie Brigitte or one of his friends making phone calls to Islamic extremist associates in Australia or overseas?

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¹ *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* (Cth).

² Christopher Michaelsen, 'International Human Rights on Trial – the UK's and Australia's Legal Response to 9/11' *Sydney Law Review* vol. 25, no.3, September 2003: pp275–303. Several provisions of the ASIO Act violate essential and non-derogable provisions of the *UN International Covenant on Civil and Political Rights* and the *UN Convention on the Rights of the Child*.

³ See e.g. Les Kennedy, 'Targets of ASIO raids consider legal action' *Sydney Morning Herald*, 30 October 2003.

⁴ Willie Brigitte, a French national and suspected member of the radical Pakistani group Laskar-e-Taiba, was arrested in Sydney on 9 October 2003 for breaking immigration laws and deported to France 9 days later. Although Brigitte arrived in Australia in May 2003 on a tourist visa, it was not until late September that French authorities alerted ASIO about his presence and possible connections to Islamic extremists.

⁵ Cynthia Banham, 'ASIO law inferior insists Ruddock' *Sydney Morning Herald*, 4 November 2003. Indeed, a new bill amending the ASIO Act and further extending the agency's powers passed the Senate on 4 December 2003.

⁶ ASIO 'Report to Parliament 2002-2003', p115.

⁷ Even if one includes ASIO's additional part-time and casual staff (81) (ratio of 1: 29 940), the agency remains still smaller than its US, Canadian and New Zealand counterparts.

⁸ Nigel Brew, 'Dollars and Sense: Trends in ASIO Resourcing', Research Note No. 44, 23 June 2003, Department of the Parliamentary Library.

⁹ ASIO 'Report to Parliament 2002-2003', pp63-4.

¹⁰ ASIO 'Report to Parliament 2001-2002', p51; However, according to the 'Report to Parliament 2002-2003' ASIO's attrition rate has apparently dropped to seven percent in 2003.

¹¹ ASIO 'Report to Parliament 2001-2002', p51.

¹² John Lyons, 'Welcome to his nightmare' *The Bulletin*, 30 April 2003.

¹³ *Ibid.*

¹⁴ 'Why it's "really cool" to be a spy' *The Age*, 22 October 2002.

¹⁵ *Ibid.*