



Attorney-General for Australia
Minister for the Arts
Senator the Hon George Brandis QC

Ministerial Statement - Execution of ASIO Search Warrants

4 December 2013

Yesterday, search warrants were executed at premises in Canberra by officers of the Australian Security Intelligence Organisation (ASIO) and, in the course of the execution of those warrants, documents and electronic data was taken into possession. The premises were those of Mr Bernard Collaery and a former ASIS officer. The names of ASIS officers – whether serving or past – may not be disclosed.

The warrants were issued by me, at the request of ASIO, on the grounds that the documents and electronic data in question contained intelligence relating to security matters.

By section 39 of the Intelligence Services Act 2001, it is a criminal offence for a current or former officer of ASIS to communicate “any information or matter that was prepared by or on behalf of ASIS in connection with its functions or relates to the performance by ASIS of its functions”, where the information has come into his possession by reason of his being or having been an officer of ASIS.

As Honourable Senators are aware, it has been the practice of successive Australian Governments not to comment on security matters. I intend to observe that convention. However, in view of the publicity which has surrounded the matter since yesterday, I consider that it would be appropriate for me to make a short statement about the matter which does not trespass beyond the convention, and which will also provide an opportunity to correct some misleading statements that have been made in the Chamber this morning, and by others.

I listened to the debate in the Senate earlier in the day on Senator Milne’s procedural motion. I listened, in particular, with great respect to Senator Faulkner’s contribution. I agree with what Senator Faulkner had to say and – if I may say so – consider it to be an accurate and judicious statement of the applicable principles. While a national security Minister should never be compelled by the Parliament to make a statement concerning intelligence matters, it may, as Senator Faulkner rightly said, be appropriate on particular occasions for him to prevail upon the courtesy of the Parliament to do so.

Warrants of the kind executed yesterday are issued under section 25 of the Australian Security Intelligence Organisation Act 1979 (the Act). They are only issued by the Attorney-General at the request of the Director-General of ASIO, and only if the Attorney-General is satisfied as to certain matters. It is important to make that point, since it was asserted by Senator Ludlam, in apparent ignorance of the Act, that I had “set ASIO onto” these individuals. The Attorney-General never initiates a search warrant; the request must come from ASIO itself.

When the Director-General makes such a request, a search warrant may only be issued by the Attorney-General if the conditions set out in section 25(2) are fulfilled. That provision requires that the Attorney be satisfied that there are reasonable grounds for believing that access by ASIO to records or other things on the subject premises will substantially assist the collection of intelligence in accordance with the Act in respect to a matter that is important in relation to security. Security is defined by section 4 to mean the protection of the Commonwealth and its people from espionage, sabotage, politically motivated violence, attacks on Australia’s defence system, or acts of foreign interference; and the protection of Australia’s territorial and border integrity from serious threats.

On the basis of the intelligence put before me by ASIO, I was satisfied that the documents and electronic media identified did satisfy the statutory tests, and therefore I issued the warrants. Of course, honourable Senators would not expect me to disclose the specific nature of the security matter concerned.

I am, of course, aware that Australia is currently in dispute with Timor Leste over matters relating to the Timor Sea. That dispute is the subject of arbitration proceedings in The Hague, which are due to commence tomorrow. The case is being heard by an Arbitral Tribunal established under Article 23 of the Timor Sea Treaty. In those proceedings, Timor Leste makes certain allegations against Australia. The Australian Government is defending the proceedings and contesting the jurisdiction of the Tribunal. I am aware that Mr Collaery is one of Timor Leste’s counsel in the proceedings.

Australia, of course, respects the proceedings and respects the Arbitral Tribunal. We will be represented by the Solicitor-General, Mr Gleeson SC, and by Professor James Crawford AC SC, who is the Whewell Professor of Public International Law at the University of Cambridge.

Last night, rather wild and injudicious claims were made by Mr Collaery and, disappointingly, Father Frank Brennan, that the purpose for which the search warrants were issued was to somehow impede or subvert the arbitration. Those claims are wrong. The search warrants were issued, on the advice and at the request of ASIO, to protect Australia’s national security.

I do not know what particular material was identified from the documents and electronic media taken into possession in the execution of the warrants. That will be a matter for ASIO to analyse in coming days. However, given Mr Collaery’s role in the arbitration, and in order to protect Australia from groundless allegations of the kind to which I have referred, I have given an instruction to ASIO that the material taken into possession in execution of the warrants is not under any circumstances to be communicated to those conducting the proceedings on behalf of Australia.

Might I finally make the observation that, merely because Mr Collaery is a lawyer, that fact alone does not excuse him from the ordinary law of the land. In particular, no lawyer can invoke the principles of lawyer-client privilege to excuse participation, whether as principal or accessory, in offences against the Commonwealth.

I understand that the Opposition was briefed by ASIO on this matter earlier today.