

Thursday, 20 August 2020

ASIO Guidelines: room for further improvement

All comments to be attributed to Law Council President, Pauline Wright.

While the revised ASIO Guidelines contain several valuable improvements from the previous iteration, in the Law Council's view, there are two key concerns that must be addressed.

The first of these concerns is that essential matters, such as guidance on the collection, use, disclosure, storage, destruction or retention of particularly sensitive information, is not covered in the Guidelines.

An example would include information subject to client legal privilege or relating to journalists and/or their sources or health information.

There is no specific guidance on bulk personal data, lawyers' attendance at interviews, or how ASIO officers should interpret 'acts of foreign interference' as set out in legislation.

The second key concern is that there is inadequate guidance on proportionality and how an ASIO officer would assess and compare the level of intrusiveness when it comes to surveillance.

Proportionality has never been more important. This is particularly the case given recent major expansions to ASIO's powers, including encryption legislation passed in 2018 and proposed amendments before Parliament to broaden ASIO's compulsory questioning and surveillance devices and data access powers.

These Guidelines fail to give the public a clear understanding of how any degree of intrusion will be assessed by ASIO.

It also means that the Guidelines do not provide a clear benchmark to promote consistency of decision-making by ASIO and oversight by the Inspector-General of Intelligence and Security.

These Guidelines provide a blueprint for the administrative processes within ASIO, and it is imperative that they instil public confidence in the activities of the organisation.

ENDS

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