Permanent ASIO Questioning Powers, Permanent Risks to Democratic Freedom

An analysis of the Australian Security Intelligence Organisation Amendment Bill (No 2) 2025

April 2026

Muslim Votes Matter

Muslim Votes Matter (MVM) is a non-partisan, national, grassroots initiative established to strengthen political participation, representation, and advocacy within Australia's Muslim communities. MVM operates at the intersection of community mobilisation, political strategy, and advocacy. It engages with diverse Muslim communities across ethnic, sectarian, generational, and linguistic lines, and works collaboratively with other civil society and grassroots organisations. It also supports emerging Muslim leaders and advocates to engage with the political process, build civic literacy, and challenge the marginalisation of their communities.

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1. Executive Summary

This bill would make ASIO's compulsory questioning powers permanent and expand the range of situations in which they can be used. It would also make a number of procedural changes to how the regime operates, including new reporting requirements and an added safeguard for post-charge questioning. But at its heart, this bill is about something much bigger than process. It is about whether extraordinary coercive powers, powers that were introduced as exceptional and temporary, should now become a permanent part of Australian law.

These are not ordinary powers. Under the existing framework, a person can be compelled to appear, answer questions and hand over material. Failure to comply can lead to criminal penalties, including up to five years' imprisonment. A person can be required to appear immediately, apprehended and searched to ensure compliance, questioned for extended periods, restricted from leaving Australia, and prevented from speaking openly about the warrant for years. The regime can also apply beyond the ordinary criminal process, including to non-suspect third parties, and the current framework still allows the compulsory questioning of minors aged 14 to 17.

That is why the proposal to make these powers permanent is so significant. The bill does not simply preserve the current framework. It removes the sunset clause, broadens the definition of "adult questioning matter", and leaves the minor questioning regime in place. Legal and civil liberties bodies have raised serious concerns about this direction. The Law Council of Australia has said the sunset clause should remain, that the expansion into broader and more open-ended categories requires much stronger justification, and that the minor questioning regime should be repealed or at least allowed to sunset. It has also argued that the procedural safeguards added by the bill do not resolve the deeper problems with the framework.

Those concerns are even more serious in the current political environment. This bill is being considered at a time when governments across Australia have been introducing, expanding or debating laws dealing with national security, extremism, hate, protest, public order and politically contested speech. In that setting, proposals to make exceptional powers permanent, and to broaden their reach, should be approached with particular care. Powers of this kind do not operate in a vacuum. They operate in a real-world climate in which some communities are more likely than others to be scrutinised through the language of security, extremism, border risk or communal tension.

The central question for Parliament is therefore not whether ASIO should have powers to protect the community. Of course it should. The real question is whether powers of this severity, backed by prison terms, apprehension and search, movement restrictions, secrecy obligations and reduced ordinary legal protections,

should now be made permanent and expanded at all. On the material currently available, the case for doing so has not been convincingly made.

Parliament should retain the sunset clause, reject or significantly narrow the proposed expansion into broader areas of security, repeal or sunset the minor questioning regime, and strengthen the safeguards before even considering permanence. At the very least, it should not entrench powers of this kind without a clear, compelling and publicly defensible case.

If you are concerned about this bill, contact your federal member of Parliament. Ask them why powers this extraordinary should now be made permanent and urge them to oppose the bill unless these issues are properly addressed.

2. The Broader Political and Legislative Context

This bill is being considered in a legal and political environment that has become more charged over the past year. Across Australia, governments and parliaments have been introducing, expanding or debating laws dealing with national security, extremism, hate, protest, public order and politically contested speech.

That wider setting is important because this bill is not dealing with an ordinary administrative power. It concerns ASIO's compulsory questioning regime, a framework that has long been treated as exceptional in nature. These powers are extraordinary, and regular public review is critical where powers of this kind affect fundamental rights and freedoms.

For that reason, this bill should be read against a broader pattern in which stronger legal powers are increasingly being proposed or used in response to conflict, fear, polarisation and public pressure. That does not decide the merits of this bill by itself. But it does mean that proposals to make exceptional powers permanent, and to broaden their reach, should be approached with particular care.

It is also important to recognise that laws in this area are rarely experienced evenly across the community. In practice, communities already exposed to greater public suspicion or political scrutiny are often more alert to the possible reach of national security and public order powers. That wider social reality forms part of the background against which this bill will be understood and assessed.

Against that backdrop, the central question for Parliament is not simply whether these powers may be useful in some circumstances. It is whether this is the right time, and the right context, to make them permanent and expand their operation.

The sections that follow turn to what the bill would actually change, and why those changes deserve close attention.

3. What This Bill Would Change

At its core, this bill would do two major things. First, it would make ASIO's compulsory questioning powers permanent. Second, it would expand the range of situations in which those powers can be used. Alongside that, it would make a number of procedural changes to how the questioning regime operates.

3.1 Remove the expiry date for these powers

At the moment, ASIO's compulsory questioning regime is subject to a sunset clause. That means it is meant to expire unless Parliament decides to extend it. This bill would remove that sunset clause altogether. In practical terms, that would make the regime a permanent part of Australian law, rather than a power that must keep coming back to Parliament for renewal.

The bill also amends the Intelligence Services Act so that the Parliamentary Joint Committee on Intelligence and Security can review the framework again three years after these amendments commence. That is presented as an additional review mechanism, but it is different from keeping an actual expiry date in the law.

3.2 Expand the situations in which these powers can be used

This is one of the most significant parts of the bill.

At present, adult questioning warrants are available in relation to a more limited group of security matters. The bill would replace the current definition of an "adult questioning matter" with a broader one. Under the new definition, compulsory questioning could be used in relation to:

- espionage
- sabotage
- politically motivated violence
- promotion of communal violence
- attacks on Australia's defence system
- acts of foreign interference
- serious threats to Australia's territorial and border integrity

In simple terms, this means the bill would widen the range of security issues for which ASIO can seek a compulsory questioning warrant against an adult.

3.3 Broaden the list of people who cannot supervise questioning

Questioning under this regime takes place before a “prescribed authority”, an independent person appointed to oversee the process. The bill would expand the list of people who are not allowed to hold that role. The new exclusions include members of the Defence Force, APS employees and agency heads, parliamentarians, parliamentary staff, Directors of Public Prosecutions, Solicitors-General, and certain other officeholders.

The practical effect of this change is to place more limits on who can be appointed to supervise questioning.

3.4 Change the rules for removing a prescribed authority

The bill also rewrites the rules about when the Attorney-General may, or must, terminate the appointment of a prescribed authority. It keeps a discretionary power to terminate for misbehaviour or incapacity, and makes termination mandatory in some other situations, including bankruptcy, conflicts of interest, loss of eligibility, or failure to comply with disclosure requirements.

This is a governance change rather than an expansion of questioning power itself, but it forms part of the overall framework the bill is reshaping.

3.5 Require more reporting to the Attorney-General

The bill would add new reporting requirements after a questioning warrant has been carried out. In particular, ASIO’s report to the Attorney-General would have to include details of any action taken under the warrant that did not comply with ministerial guidelines, ASIO’s written procedures, the warrant itself, any condition or restriction in the warrant, or any direction given by the prescribed authority.

In practical terms, this is designed to give the Attorney-General more visibility over problems or irregularities in how a warrant was executed.

3.6 Add a safeguard for post-charge questioning

It proposes changes to the rules for cases where the person has already been charged with a related offence, where a related charge is still unresolved, or where such a charge is imminent. In those situations, questioning and requests to produce records or things could only occur before a prescribed authority of a particular kind, namely one appointed under paragraph 34AD(1)(a). The committee material explains that this means a former superior court judge.

This is presented as an additional safeguard in cases where criminal proceedings are already underway or about to begin.

3.7 Leave some important parts of the current regime in place

An important part of this bill is what it leaves untouched.

ASIO's minor questioning warrant framework remains in place. That means the power to compulsorily question minors remains on the books, even though the bill itself focuses mainly on adult questioning matters and related procedural changes. The Law Council has specifically highlighted this as one of the major gaps in the bill.

4. Why These Powers Are So Serious

The powers dealt with in this bill are not ordinary powers of information gathering. They sit at the hard edge of the state's coercive authority. If ASIO obtains a questioning warrant, a person can be compelled to appear before a prescribed authority, answer questions, and produce records or other things relevant to intelligence on specified security matters. It should be noted that once such a warrant is issued, the person is required to appear and comply.

What gives these powers their real weight is not simply that questioning can be compelled, but that the entire regime is backed by serious legal consequences. Failure to appear before the prescribed authority, or failure to give information or produce a record or thing as required, is **punishable by up to five years' imprisonment**. Giving false or misleading information is also punishable by up to five years' imprisonment. Also, a questioning warrant may require the subject to appear immediately and may authorise the person to be apprehended and searched in order to ensure compliance. A person may then be questioned for up to 24 hours, or up to 40 hours where an interpreter is used, and the warrant itself may remain in force for up to 28 days. This is a coercive legal regime backed by prison, physical enforcement, and an extended period of control.

The reach of the regime extends beyond the questioning room itself. A person subject to a questioning warrant may be prevented from travelling outside Australia during the life of the warrant without written permission from the Director-General and may be required to surrender their travel documents. Additionally, a person is not excused from answering questions or producing material on the ground that doing so may incriminate them. While there is some protection against the direct use of what is said or produced, that protection does not fully extend to information derived from the questioning. A person may also be prohibited for two years from disclosing information about the warrant, including the fact that it was issued and operational information connected to it.

Taken together, this means a person can be:

- compelled into a secretive intelligence process,
- exposed to criminal penalty if they refuse to cooperate,
- restricted in their freedom of movement, and
- still denied the ordinary protection of silence in the way most people would assume applies when the state demands answers.

Nor are these powers confined neatly to the ordinary criminal process. They can be used against non-suspect third parties, not only against people who have already been charged or convicted, and they can also operate where criminal charges are imminent or already underway.

That is one of the reasons these powers blur the line between ASIO's intelligence-gathering role, and the powers more commonly associated with law enforcement. Even legal representation operates in a constrained way. Further, the role of lawyers is restricted, and the Law Council argues that these limitations can prevent a lawyer from properly protecting a client's interests in a process that already places the individual under intense coercive pressure.

Perhaps most strikingly of all, the current framework still extends to children aged 14 to 17. These are powers that would allow the state to compel a child into a prolonged and secretive intelligence process backed by prison, search, travel restrictions and weakened ordinary legal protections. That fact alone should make clear that this is not a routine administrative framework. It is an extraordinary power, and it should be treated as such.

5. The Main Problems with Making These Powers Permanent

If powers of this kind were being proposed for the first time, Parliament would be expected to approach them with great caution. But that is not the question here. The real question is whether powers already recognised as extraordinary should now be made permanent, broadened in scope, and embedded more deeply into Australian law at a time when governments are already reaching more readily for stronger coercive tools in response to political tension, social conflict and public fear.

The first problem is one of principle. These powers were introduced as exceptional and temporary. The sunset clause reflected the understanding that they were not meant to become an ordinary, settled feature of Australian law. Regular opportunities for Parliament and the public to test whether such powers remain necessary and proportionate are a democratic safeguard. Once the sunset clause is removed, that discipline is lost. The regime no longer has to return to Parliament in the same way to justify its continued existence. It becomes part of the permanent legal framework.

That matters even more because the bill does not simply preserve the current regime. It widens it. The definition of “adult questioning matter” would be expanded so that compulsory questioning could be used across a broader set of security contexts, including sabotage, promotion of communal violence, attacks on Australia’s defence system, and serious threats to territorial and border integrity. The Law Council warns that this continues the drift of these powers away from their original anti-terrorism rationale and towards a position where they are available across most of ASIO’s broader security remit. In other words, an already exceptional power would become both permanent and more wide-ranging.

There is also a problem with the breadth of some of the new categories. Terms such as promotion of communal violence and serious threats to territorial and border integrity are not narrow or self-explanatory concepts. The Parliamentary Joint Committee on Human Rights has already expressed concern that the broadened definition of adult questioning matter does not appear to be sufficiently circumscribed. The Law Council makes a similar point, arguing that if these additional heads remain, they should at the very least be defined more clearly so their scope is more certain. That concern should not be dismissed as technical. Where powers are this coercive, vague or expandable categories matter.

That concern is sharper in the current environment. In a calmer political climate, government might argue that broad powers will be interpreted carefully and used sparingly. But this bill is being considered at a time when the legal and political boundaries around protest, contested speech, public order, extremism and social cohesion are already under pressure. In that context, broad categories do not operate in the abstract. They operate in the real world, where governments, agencies, media narratives and public fears all shape how risk is understood. That is one reason the proposal to make these powers permanent cannot be separated from the broader direction of recent law and policy.

One of the clearest examples of this problem is border integrity. The proposed extension into that area appears to reverse earlier positions taken by the agencies closest to the framework. The Law Council notes that ASIO had previously stated that it did not consider the use of questioning warrants in relation to border security activities to be necessary or reasonable, and that the Department of Home Affairs had also taken the view that border integrity should not be brought within the scope of Division 3. If the agencies themselves had recently indicated that this extension was neither necessary nor reasonable, Parliament is entitled to ask why it is now being asked to accept the opposite conclusion.

The same problem arises, even more clearly, in relation to minors. The bill leaves the minor questioning regime in place. Yet the Law Council records that ASIO told the

Parliamentary Joint Committee on Intelligence and Security in 2024 that it had never used, nor requested, a minor questioning warrant, and no longer saw a strong case for continuing the power to question minors under warrant. It also records the Department of Home Affairs' view that, if compulsory questioning of minors is necessary at all, it is better handled by law enforcement or other partner agencies. That is a striking body of evidence. It suggests that one of the most intrusive elements of the existing regime has not only never been used but is no longer strongly defended by those closest to it. Yet the bill leaves it intact.

The bill's additional safeguards do not answer these deeper problems. It is true that it makes some procedural improvements. It broadens the list of people who cannot serve as prescribed authorities, tightens some termination rules, adds reporting obligations to the Attorney-General, and requires a former superior court judge for post-charge questioning. Those are not meaningless changes. But they do not alter the core nature of the regime. They do not remove the coercive questioning power itself. They do not preserve the sunset clause. They do not repeal minor questioning warrants. They do not introduce judicial authorisation of warrants. And they do not resolve the broader concerns about the right to silence, derivative use, or meaningful legal representation. Even while acknowledging some of the additional safeguards, the Law Council says they fall well short of what would be needed to address the longstanding intrusions into fundamental rights and liberties posed by the compulsory questioning framework.

What makes this bill especially troubling, then, is not simply the mechanics of the changes it proposes, but the direction in which those changes point. The bill asks Parliament to normalise powers that were meant to remain exceptional, to broaden their reach into more open-ended areas, and to do so in a climate where governments are already showing a growing willingness to respond to conflict, fear and political pressure with stronger coercive powers. That is not a small legislative adjustment. It is a significant shift in the balance between democratic restraint and state power.

For communities already living with heightened suspicion, that shift will not be experienced in the abstract. Powers of this kind do not land evenly across society. They operate in a wider political culture, one in which some communities are more likely to be scrutinised through the language of security, extremism, border risk or communal tension. That is one reason this bill cannot be assessed only as a technical amendment to the ASIO Act. It must also be assessed in light of the real-world environment in which these powers will exist and be used.

That is why the central question for Parliament is not whether ASIO should have powers to protect the community. Of course it should. The real question is whether

powers of this severity, powers backed by prison terms, apprehension and search, movement restrictions, secrecy obligations and reduced ordinary legal protections, should now be made permanent and expanded at all. On the material currently available, the case for doing so has not been convincingly made.

In the end, that is the problem with this bill. It does not merely preserve an existing framework. It entrenches it. It does not merely tidy up procedure. It extends the reach of extraordinary powers while leaving their deepest problems unresolved. And it does so at exactly the kind of moment when Parliament should be most cautious about allowing exceptional powers to harden into permanent features of Australian law.

6. What Parliament Should Do

Parliament should not treat this bill as a routine update to an existing framework. If powers of this kind are to remain on the books at all, they should remain subject to strong democratic oversight, clear limits and a continuing obligation on government to justify why they are needed.

The first and most important step is to retain the sunset clause. Powers this severe should not become a permanent fixture of Australian law without the discipline of periodic parliamentary renewal and public justification. The Law Council has said the sunset clause should remain as a critical oversight measure, and that regular opportunities to test the necessity and proportionality of these powers are an essential safeguard, not an inconvenience.

Parliament should also reject, or at the very least significantly narrow, the proposed expansion of adult questioning warrants into broader and more open-ended areas of security. If the government wishes to extend these powers beyond their current scope, it should have to explain clearly why existing powers are insufficient, why the new categories are necessary, and why powers of this seriousness should be available in those additional contexts. That is especially important in relation to border integrity, where the Law Council notes that the bill appears to reverse earlier positions taken by ASIO and the Department of Home Affairs.

Parliament should repeal the minor questioning regime, or at the very least allow it to sunset rather than leaving it standing indefinitely in the background. If ASIO has never used nor requested a minor questioning warrant, and if both ASIO and Home Affairs have indicated that questioning minors is either unnecessary or better handled by other agencies, then there is no principled basis for keeping that power quietly available as part of a permanent framework.

Parliament should also strengthen the safeguards before even considering permanence. The bill makes some procedural improvements, but it does not resolve the deeper problems with the framework. More meaningful independent oversight is still needed. The Law Council has argued for stronger judicial involvement in the issuing of warrants, as well as better protection for legal representation and access to information. Those proposals deserve serious consideration if powers of this kind are to continue at all.

Above all, Parliament should assess this bill in its full democratic context. The question is not simply whether ASIO may find such powers useful. The question is whether powers this extraordinary should be made permanent and expanded at a time when the legal space for dissent, protest and politically contentious speech is already under pressure. If Parliament is to entrench powers of this severity, it should do so only on the basis of a clear, compelling and publicly defensible case. On the material currently available, that case has not been made.

7. What You Can Do Now

This bill is before the federal Parliament, and members of Parliament still have a choice about whether to support it, oppose it, or push for changes. If you are concerned about making these powers permanent, expanding them into broader areas, or leaving powers over minors in place, the most important thing you can do now is contact your federal member of Parliament and ask them to raise those concerns.

You do not need to be a lawyer or policy expert to do that. What matters is that MPs hear clearly from constituents that this bill is not being seen as a minor technical amendment. It is being seen as a significant decision about whether extraordinary coercive powers should become a permanent part of Australian law.

A simple message to your MP could say that you are concerned about:

- the removal of the sunset clause and the move to make these powers permanent;
- the proposed expansion of compulsory questioning into broader and more loosely defined areas; and
- the decision to leave the minor questioning regime in place despite the weak case for its retention.

You can also ask your MP to support stronger safeguards, including more meaningful independent oversight and stronger protection for legal representation.

If you want to keep it even simpler, you can ask one basic question:

> ***Why should powers this extraordinary, powers backed by prison, apprehension and search, travel restrictions and secrecy obligations, now be made permanent?***

You can contact your federal MP by email, phone or through their electorate office. A short message is enough. What matters is that it is clear, respectful and direct. Parliamentary decisions are often shaped not only by formal submissions and media debate, but by whether elected representatives hear that ordinary members of the public are paying attention.

This is one of those moments. If Parliament is being asked to entrench powers of this kind, then Parliament should also hear clearly that many Australians expect a far stronger case, far stronger safeguards, and a much more cautious approach before that happens.