

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

Question No. 178

Senator Rhiannon asked the following question at the hearing on 24 May 2012:

When the detention power was created the AFP could only detain terrorism suspects for 12 hours without charge. Since 2005, the Federal Police have been able to detain terrorism suspects for 24 hours – and now up to eight days if they apply for an extension for ‘dead time’.

Given this, is ASIO’s detention power still necessary? Why is it necessary?

The answer to the honourable senator’s question is as follows:

The AFP and ASIO both undertake a significant and important role in the investigation of terrorist activity. While detention powers are available to the AFP, the circumstances in which they may be used are different to an ASIO questioning and detention warrant, reflecting the different roles of each agency.

In ASIO’s case, a questioning and detention warrant may be sought to question a person to obtain information that is important in relation to a terrorism offence, and to detain that person for a period of time as set out in the legislation. ASIO may only obtain such a warrant after satisfying the Attorney-General and an independent issuing authority of a number of legislative requirements. For example, the Attorney-General must be satisfied that there are reasonable grounds for believing that if the person is not taken into custody and detained the person:

- may alert a person involved in a terrorism offence that the offence is being investigated; or
- may not appear before the prescribed authority; or
- may destroy, damage or alter a record or thing the person may be requested to produce.

The relatively infrequent use of questioning warrants and the non-use of questioning and detention warrants are a clear demonstration that ASIO does not exercise these powers without significant need. However, were such an extreme situation to arise, the availability of a questioning and detention warrant could be essential to the prevention of a terrorist attack.