

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

Question No. 100

Senator Ludlam asked the following question at the hearing on 20 October 2008:

In addition to the use of its formal powers of questioning under the Act in order to gain intelligence relating to terrorist offences, ASIO undertakes many informal interviews.

- a) How are these budgeted for and on what basis are priorities set in this area?
- b) How does ASIO determine that a person is “of interest” in relation to anti-terrorism intelligence?
- c) What steps are taken to make sure that activity in this area respects the rights that individuals would have in the formal process, especially in the post ul-Haque environment?

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

- (a) The Australian Security Intelligence Organisation’s (ASIO) budget is set by the Government, and ASIO’s financial statements are subject to audit by the Australian National Audit Office (ANAO). ASIO makes public the ANAO *Independent Auditor’s Report* each year, in ASIO’s *Report to Parliament*.

ASIO’s priorities are set in accordance with the Organisation’s functions listed in section 17 of the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act). ASIO’s functions include the collection, analysis and communication of intelligence relevant to security, and the provision of advice in respect of matters relating to security, including the furnishing of security assessments. The ASIO Act defines ‘security’ as the protection of Australia, its people and interests against: espionage; sabotage; politically motivated violence; the promotion of communal violence; attacks on Australia’s defence system; or acts of foreign interference. Terrorism is a form of politically motivated violence.

- (b) A person is of interest to ASIO if their actions or activities are relevant to ‘security’ as defined in the ASIO Act. As set out in the Attorney-General’s Guidelines (which are to be observed by ASIO in the performance of its functions), ASIO’s functions require it to undertake inquiries to determine whether a particular subject or activity is relevant to security. In 1982 in *Church of Scientology v Woodward*, the High Court found that under the ASIO Act, ASIO is able to investigate to determine an individual’s relevance to security.
- (c) ASIO operates under a particularly stringent oversight and accountability framework. The foundation of this framework is the ASIO Act, which has been crafted to ensure there is an appropriate balance between individual rights and the public’s collective right to security. The Inspector-General of Intelligence and Security – an independent statutory authority – and the Parliamentary Joint Committee on Intelligence and Security play particularly important roles in ASIO’s oversight.

ASIO also receives guidelines from the Attorney-General which are observed by ASIO in the performance of its functions and which are reflected in ASIO's policies and procedures. For example, clause 10 of the Attorney-General's Guidelines deals with the Conduct of Inquiries and Investigations and sets out how information is to be obtained by ASIO. The Attorney-General's Guidelines are available on the ASIO website.