

What to do if ASIO visit

If you or your group become aware that you are under surveillance by ASIO, Australian Federal Police or another organisation:

- Immediately tell other people, your organisation, network and civil rights groups. It is not an offence to tell people that you have been approached or informally questioned unless ASIO have a questioning or detention warrant relating to terrorism offences – see “If you are approached by ASIO” below.
- Consult a lawyer and always carry their numbers.
- Warn your friends, neighbors, parents, children and anyone else who might be contacted - make sure people know what to do and who to call for help.
- Form an emergency support network in case you or others are detained.
- Keep careful records of any contact, harassment or intimidation.

ASIO do not have the power to arrest or question you unless they have a special warrant. The Australian Federal Police can arrest you and often accompany ASIO.

If you are approached by ASIO

If ASIO officers approach you, immediately ask if they have a warrant. If the answer is NO:

- You do not have to agree to meet with them
- You do not have to answer any questions
- You do not have to let them into your home or office

ASIO can intimidate or obtain much damaging information during unofficial questioning. ASIO officers are highly skilled at collecting information. Do not try to trick them. The best advice is to say nothing to them unless they have a warrant.

If the answer is YES and ASIO have a warrant:

- Ask to see the warrant.
- Identify whether the warrant requires you to simply attend at a time and place for questioning, or whether it also allows for your detention.

- Immediately request that you contact a lawyer and any other person the warrant stipulates that you can contact, or contact a lawyer if it is simply a warrant to appear.
- Ask for an interpreter if you have any difficulty understanding English.
- Check that it is signed by an “Issuing Authority”.
- Take note of how long the warrant authorises you to be held.

If you are allowed to contact anyone (including a lawyer), it is extremely important that you remember the secrecy provisions and penalties which apply while the warrant is in force and after it has expired:

- If you tell anyone who is not specified in the warrant about the existence of the warrant, the way questioning is conducted, or the information discussed under questioning, any time within 28 days from the issue of the warrant, it is an offence with a maximum penalty of 5 years imprisonment
- If you tell anyone the way the questioning was conducted or the information given during questioning any time within 2 years of the warrant being issued, it is an offence with a maximum penalty of 5 years imprisonment.
- While the warrant is actually in force, it is an offence to reveal that there is a warrant to anyone.
- If a person is informally questioned by ASIO then they can tell people about it, but it is an offence to specifically name the ASIO officers or employees.
- These secrecy provisions do not apply to communications made for the purpose of making a complaint to the Inspector-General of Intelligence Services (IGIS) or the Ombudsman.

Detention and questioning

If the warrant is for detention and questioning, an Australian Federal Police officer or state police will detain you immediately and bring you before a “Prescribed Authority”, who is usually a retired judge.

A warrant for questioning will require that you attend at a specified time before the Prescribed Authority.

Once before the Prescribed Authority, you do not have the right to silence. It is an offence to refuse to answer questions or to knowingly provide misleading information. The maximum penalty is 5 years imprisonment.

You must be informed of the following:

- what the warrant authorises ASIO to do;
- the period for which the warrant is in force.

It unclear whether you have the right to contact a lawyer if the warrant does not so specify. Once before the Prescribed Authority, ASIO can object to the lawyer which you have chosen, and the Prescribed Authority can hear reasons why and make a decision, in your absence, as to whether that lawyer is to be excluded. Once a lawyer is present and not objected to, they are able to remain throughout the questioning.

You have the right to consult your lawyer during breaks in questioning. Your lawyer cannot intervene in the questioning except to clarify ambiguous questions. Questioning can start before any lawyer gets there.

You have the right to make a complaint orally or in writing to the Inspector-General of Intelligence and Security or to the Federal Ombudsman. It may be worth making this complaint.

You also have the right to seek a remedy from a federal court (this information must be relayed to you at least once in every 24 hour period).

You also have the right to an interpreter and questioning cannot start until one is present.

ASIO can question you for a total of 24 hours without an interpreter or 40 hours with an interpreter within a maximum of 7 days.

A protocol outlining basic standards of treatment for people detained and questioned by ASIO is contained in the Inspector-General of Intelligence Services' 2003-2004 Annual Report: <http://www.igis.gov.au/annuals/03-04/annex2.cfm>

New anti-terror laws

In September 2005, the Commonwealth Government announced its intention to introduce a raft of new 'anti-terror' legislation which will significantly increase the powers of ASIO. The proposals also included 'control orders' and 'preventative detention orders' which will be sought and administered by the Australian Federal Police.

These orders would overlap with the questioning and detention regime administered by ASIO, in that a person may be subjected to ASIO questioning while under a

control or preventative detention order. It is likely that information obtained during ASIO questioning will be used by the AFP to apply for these new, restrictive orders.

See also:

► *ASIO, the Police and You* is an on-line handbook of special relevance to the Muslim community published by The Australian Muslim Civil Rights Advocacy Network (AMCRAN). To download, visit <http://www.amcran.org>

► The University of Technology, Sydney Community Law Centre has produced a detailed information kit, *Be Informed: ASIO and Anti-Terrorism Laws*. To download, visit <http://lexsun.law.uts.edu.au/~utsclc/>

Warning: *At the time of writing, currently available editions of the AMCRAN and UTS guides are no longer up to date. AMCRAN and UTS Sydney Community Law Centre are producing new editions which will incorporate the latest developments.*