

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Additional Estimates Hearing February 2017

Prime Minister and Cabinet Portfolio

Department/Agency:	Office of the Inspector-General of Intelligence and Security
Outcome/Program:	Outcome 1
Topic:	ASIS Operations
Senator:	Xenophon
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Question:	How do you distinguish between ASIS operations conducted for the economic wellbeing of Australia versus the wellbeing of any particular corporate entity?

It is not necessary to make the distinction postulated in the question.

The functions of ASIS are set out in s 6 of the *Intelligence Services Act 2001* (the Act); see further observations below. Limits on the performance of those functions are set out in s 11 of the Act which requires that ASIS' functions be performed' only in the interests of Australia's national security; Australia's foreign relations or Australia's national economic well-being and only to the extent that those matters are affected by the capabilities, intentions or activities of people or organisations outside Australia'.

Australia's national security, Australia's foreign relations and Australia's national economic well-being are overlapping categories. For example, responding to global terrorism threats will relate both to national security and Australia's foreign relations. Similarly, a matter pertaining to international trade may fall within both foreign relations and national economic well-being. It is not

necessary to decide whether one category dominates or which description fits best; it is sufficient that the activity is for at least one of the proper purposes.

The limitation in section 11 of the Act has to be read in context. This includes the fact that all of ASIS' activities must be for the purpose of an ASIS function or authorised by another law; s12. For intelligence collection and communication the relevant functions are set out in ss 6(1)(a) and (b) of the Act. These provisions specify that the collection and communication of intelligence must be 'in accordance with government requirements'.

The Government requirements for intelligence are set by the National Security Committee of Cabinet and are called the 'national intelligence priorities'. Each of the topics listed in the national intelligence priorities is translated by the national intelligence collection management committee into more detailed collection requirements which guide collection by ASIS and the other Australian intelligence agencies.

Requests for ASIS to gather intelligence come from Government and are prioritised in accordance with the national intelligence priorities. The Act does not permit ASIS to collect intelligence in response to a request from a private company. ASIS may only collect intelligence in accordance with the Government's requirements.

It is theoretically possible that the government's intelligence requirements could cover a matter that could not be described as being in the interests of Australia's national security; Australia's foreign relations or Australia's national economic well-being (together the s 11 categories). If that was the case then ASIS, ASD and AGO could not collect intelligence on that matter. However, the reality is that all of the matters articulated in the national intelligence priorities and the collection requirements articulated under them pertain to one or more of the s 11 categories.

The regular IGIS inspections of ASIS' intelligence collection and communication of intelligence examine a range of matters including whether the collection and subsequent communication of intelligence was consistent with the Government's requirements as articulated in the national intelligence priorities. Where an ASIS intelligence collection activity clearly falls within at least one of the national intelligence priorities the requirements of s 6(1)(a) of the Act will be satisfied. Furthermore because the national intelligence priorities and the requirements under them all fall within one or more of the s 11 categories s 11 of the Act will also be satisfied. It is not within the jurisdiction of the IGIS to examine the process by which the national intelligence priorities are set by Cabinet.