

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group: 3

Program: Other Agency

Question: BE14/054

Senator Xenophon asked the following question at the hearing on 26-29 May 2014:

Senator XENOPHON: What guidance does ASIO provide to officers conducting security assessment interviews as to the circumstances in which a written or verbal confidentiality undertaking should be requested from an interviewee or their lawyer? Are there circumstances in which you do request confidentiality?

Mr Irvine: Yes, there are. There are certainly circumstances where we would request confidentiality on the part of the person being interviewed or their lawyer. Senator XENOPHON: Are there guidelines in respect of that or guidance in respect of those sorts of cases?

Mr Irvine: I would need to go back. We do have policies. I would need to go back and check what the guidelines are.

Senator XENOPHON: But there are guidelines?

Mr Irvine: Yes.

Senator XENOPHON: I would be grateful if you could outline that.

Mr Irvine: I believe that is the case.

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

ASIO does not request visa applicants sign a written confidentiality undertaking in relation to a security assessment interview. ASIO will seek a verbal undertaking of confidentiality from the visa applicant, which is subject to discussion with the applicant. This provides the applicant sufficient opportunity to understand what ASIO is seeking from them in respect of confidentiality.

Should a third party (for example, a legal representative or legal guardian) attend a visa applicant's security assessment interview, ASIO, in all instances, requests that he/she sign a written confidentiality agreement. This is the confidentiality agreement referred to by the Inspector-General of Intelligence and Security in the report, Inquiry into the attendance of legal representatives at ASIO interviews.

The Inspector-General found in her report that 'it is not unreasonable for ASIO to require an explicit undertaking from a lawyer to preserve the confidentiality of any information and to draw their attention to potentially relevant statutory provisions' (see page 13 of the report). The Inspector-General recommended that ASIO should:

- (a) provide guidance for interviewing officers on when a written or verbal confidentiality undertaking should be requested from a person;

- (b) provide the template undertaking document to attendees before the interview commences; and
- (c) provide a copy of a written undertaking to the signatory.

ASIO accepted these recommendations and is implementing them.

ASIO's policies and procedures provide guidance to interviewing officers on how to conduct interviews, including requesting confidentiality from interviewees. Interviewing officers also receive specific training for conducting security assessment interviews, which addresses the matter of confidentiality.