

**JOINT SELECT COMMITTEE ON AUSTRALIA'S IMMIGRATION
DETENTION NETWORK
ASIO SUBMISSION**

Summary

1. The Department of Immigration and Citizenship (DIAC) is responsible for determining entry of non-citizens to Australia. Any person applying for a visa to travel to, or remain in, Australia may have their visa application referred by DIAC to the Australia Security Intelligence Organisation (ASIO) for security assessment. A security assessment is an assessment of the threat the person's presence in Australia on a specific visa would pose to security (as defined in the *Australian Security Intelligence Organisation Act 1979*).

ASIO's Role

2. ASIO is Australia's security service. Its roles and responsibilities are mandated by the ASIO Act. The ASIO Act specifies ASIO's remit as 'security', which it defines as the protection: of Australia and Australians from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence systems, and foreign interference; and of Australia's territorial and border integrity from serious threats.

3. The ASIO Act mandates that ASIO's responsibility for security extends geographically beyond Australia, and includes Australia's security obligations to other countries. ASIO is also responsible for collecting foreign intelligence under warrant within Australia at the request of the Minister for Foreign Affairs or the Minister for Defence and in collaboration with the Australian Secret Intelligence Service and Defence Signals Directorate.

4. In fulfilling its obligations to protect Australia, its people and its interests, ASIO:
- (a) collects intelligence through a wide range of means, including human sources and technical operations, using the least intrusive means possible in accordance with the Attorney-General's guidelines;
 - (b) assesses intelligence and provides advice to government on security matters;
 - (c) investigates and responds to threats to security;
 - (d) maintains a national counter-terrorist capability;
 - (e) provides protective security advice; and
 - (f) provides security assessments, including for visa entry checks, access to classified material and designated security controlled areas.

ASIO's Security Assessments

5. ASIO's security assessments are an important component of Australia's national security defences. They provide a mechanism for security to be considered in certain regular government decision-making processes; for example, in the issuing of passports, granting of visas, granting of access to sensitive government information (security clearances), and access to restricted areas such as ports and airports and sensitive goods such as ammonium nitrate.

6. Security assessments are not, however, an end in themselves. Consistent with ASIO's role as an intelligence agency, they are a means by which ASIO provides advice. And they only consider factors related to security, which in practice covers terrorism, other forms of politically motivated violence, espionage and foreign interference, and threats to Australia's territorial and border integrity.

7. Security assessments are not character checks and character factors such as criminal history, dishonesty or deceit are only relevant if they have a bearing on security considerations. Character is not itself sufficient grounds for ASIO to make an adverse security finding. Assessments of character not relevant to security are required to be made by DIAC.

8. Most ASIO security assessments are made at the request of another department or agency, though ASIO can – and particularly in relation to passports does – issue assessments as a consequence of an ASIO intelligence investigation. Security assessments can range from a simple check of personal details against ASIO's intelligence holdings, to an in-depth intelligence investigation to determine the nature and extent of an identified potential threat to Australia's national security. Each security assessment is handled on a case-by-case basis. Where matters of possible security concern are identified during the security assessment process it is ASIO's responsibility to investigate and this can take time.

9. Upon making an assessment ASIO may provide a:

- (a) non-prejudicial finding, which means there are no security concerns that ASIO wishes to advise;
- (b) a qualified assessment, which means that ASIO has identified information relevant to security, but is not making a recommendation in relation to the prescribed administrative action; or
- (c) an adverse assessment in which ASIO recommends that a prescribed administrative action be taken (cancellation of a passport, for example), or not taken (not issuing access to a security controlled area, for example).

10. The consequence of an ASIO security assessment depends on the purpose for which it is made, and the relevant legislation, regulation or policy. In most visa categories, a visa may not be issued (or be cancelled) where ASIO determines the applicant to be

directly or indirectly a risk to security. The enabling legislation in this instance is the *Migration Act 1958*, specifically the *Migration Regulations 1994* and public interest criterion 4002. ASIO itself is not permitted by the ASIO Act to take any administrative action.

11. Between 11 December 2009 and 16 August 2011, ASIO issued 43 adverse and 15 qualified assessments. The total IMA security assessments completed during this time was 6182.

Appeal mechanisms

12. Qualified or adverse ASIO security assessments may be appealed to the Administrative Appeals Tribunal (AAT) if the applicant is an Australian citizen or permanent resident, or holds a special category visa or special purpose visa. Non-Australian citizens who are applying for a visa are entitled to file an application in the Federal Court or High Court and seek judicial review in respect of an adverse security assessment. Such review involves a court's determining the legality of administrative decisions and does not extend to the merits.

13. The Inspector-General of Intelligence and Security (IGIS) also maintains a close interest in ASIO's security assessments. It is not a function of the IGIS to review the merits of adverse assessments (that is the role of the AAT) but the IGIS may under the Act review the legality and propriety of associated ASIO practices and procedures.

14. Numerous questions about ASIO's role in the IMA visa process have arisen in recent years. A number of these questions are addressed in **Attachment A**.

Streamlining the IMA Security Assessments Process

15. Up to late 2010, DIAC referred all IMAs to ASIO for security assessment, regardless of whether or not they were eventually assessed to be genuine refugees. Under this policy, ASIO's resources were expended providing assessments for a large number of individuals who did not require security assessment because they were not ultimately assessed to be genuine refugees.

16. Processing priorities for security assessments and the order in which they were progressed were also directed by DIAC. For example, prior to May 2010 DIAC directed complex, long-term IMA detention cases be afforded lower priority for security assessment, in order to clear less-complex cases to address serious accommodation limitations on Christmas Island.

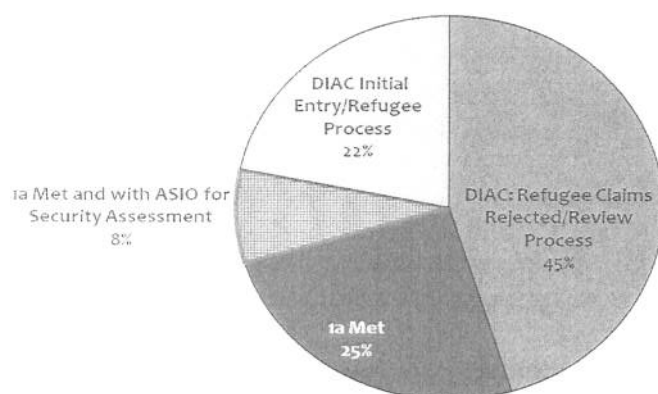
17. In early 2010, ASIO undertook a review of its internal assessment processes, with a view to streamlining and improving through-put. As a result, processing times were sped up and additional resources assigned to the security assessments function. These measures were, however, overtaken by the rapid increase in IMA arrivals throughout the year.

18. In late 2010, ASIO initiated changes to the security assessment process for IMAs to ensure an intelligence-led and risk-managed approach to security assessments and security assessment referral. As part of these changes, the Government agreed in December 2010 that only those IMAs who were assessed to be genuine refugees (known as '1a met') would be referred to ASIO for security assessment.

19. Further, in January 2011 ASIO developed a new referral framework to ensure the Organisation was able to focus on IMA cases requiring extensive intelligence investigation, and on longstanding IMA cases. With DIAC agreement, the framework commenced operation in March 2011. ASIO maintains overall responsibility for managing the security process and the criteria for security assessments within the framework.

20. The intelligence-led and risk-managed referral framework developed by ASIO enables the Organisation to focus investigative effort on the groups and individuals of security concern in the IMA stream requiring extensive security assessment. The framework incorporates a mechanism allowing DIAC to escalate the priority of particular cases where necessary, for example on compassionate grounds.

21. The impact of these measures has been a significant reduction in the number of IMAs in detention solely awaiting security assessment. At 12 August 2011, there were around 5232 IMAs in immigration detention. Of these, 448 IMAs were undergoing security assessment to inform DIAC's visa consideration. This represents eight per cent of all IMAs currently in detention.



22. The current processing time for security assessment of IMAs is 86 days with 75 per cent of assessments now provided within two days. This compares with a total overall IMA processing time (from arrival to issue of visa) of around 228 days.

Community Detention

23. At DIAC's request, ASIO provides security assessment of adult IMAs for community detention purposes. At 12 August 2011, DIAC had referred 1805 IMAs for

community detention security assessment. ASIO has responded to all requests received for community detention release, usually within 24 hours.

24. The location and dispersal of detention centres creates logistical issues for ASIO, particularly in relation to access to IMAs and appropriately qualified interpreters and the availability of interview rooms. ASIO and DIAC are discussing ways to address these issues, including through greater coordination and clarity on appropriate points of responsibility within DIAC.

Disturbances in Immigration Detention Centres

25. Reporting that ASIO security assessments are to be blamed for delays in IMA processing and detention timeframes is misleading. DIAC figures provided to ASIO indicate around 70 per cent of all IMAs in detention remain in detention awaiting refugee determination or appealing their refugee determination. As noted previously, only eight per cent of IMAs in detention are awaiting a security assessment as part of the visa process.

26. ASIO and the Australian Federal Police hold no information to indicate the motivation for the March 2011 Christmas Island riots was based on delays in security assessments.

Assessment of Non-IMAs in Detention

27. Individuals who arrive in Australia undocumented or on fraudulent documents and request asylum are usually held in detention by DIAC. Security assessments for onshore protection visa applicants in detention are prioritised by ASIO in accordance with DIAC's escalation policy. However, due to the highly complex nature of these cases, the length of time it takes ASIO to investigate can vary depending on individual circumstances and background. Delays in the ASIO security assessment process typically arise from poor or missing data in referrals (which ASIO must then seek from DIAC) as well as issues associated with gaining access to applicants in detention for ASIO interviews.

28. At 11 August 2011 there were ten onshore protection visa applicants in detention who have been referred to ASIO for security assessments. Of these nine have been awaiting assessments from ASIO for periods greater than 90 days, including one who was referred to ASIO over twelve months ago. The Office of the IGIS routinely inspects ASIO's onshore protection visa caseload, including those in detention, with a particular focus on cases over twelve months old.

29. As with arrangements for IMAs, the location and dispersal of detention centres creates logistical issues for ASIO in relation to onshore protection visa applicants. These logistical issues can also contribute to delays in ASIO being able to finalise security assessments. ASIO and DIAC are also in discussion on these matters.

QUESTIONS ABOUT ASIO'S ROLE IN VISA SECURITY ASSESSMENTS

ASIO is responsible for all delays in the processing of irregular maritime arrivals (IMAs).

An ASIO security assessment forms part of the Department of Immigration and Citizenship's (DIAC) overall consideration of whether to issue a permanent Australian visa. DIAC also checks an individual's identity and health prior to making a decision.

At 12 August 2011, there were around 5,232 irregular maritime arrivals in immigration detention, of which 448 had been found to be refugees and were awaiting security assessment — this represented eight per cent of those in detention at that time.

ASIO is doing fewer assessments under the new referral framework. This means ASIO is being less thorough in assessing whether IMAs pose a threat to national security.

In 2011, ASIO implemented changes to the security assessment process to ensure an intelligence-led and risk-managed approach to security assessments, and to ensure ASIO resources are most appropriately utilised. Under the security referral framework, all IMAs continue to be the subject of intelligence-led and risk-managed security checking. The framework allows ASIO and DIAC to work together to ensure only IMAs who have been found to be refugees are subject to a security assessment as part of considering their eligibility for a visa. As a result, ASIO has avoided much of the duplication experienced in the previous year, when it was required to assess all IMAs regardless of their eligibility for refugee status.

The framework, which enabled ASIO to focus on more complex cases during 2010–11, also resulted in some efficiency gains, including a decrease in the number of security assessments requiring the most extensive investigative processes. However, ASIO has not compromised on Australia's national security, and its security assessments continue to be thorough.

ASIO has failed to return identification documents provided by IMAs.

ASIO does not request, take possession of, or retain documents belonging to IMAs. On occasion, IMAs offer ASIO photocopies of documentation to assist with the security assessment process.

ASIO seeks information from an IMA's country of origin to make its security assessment.

ASIO is mindful of obligations on the Commonwealth under international human rights and refugee law and works to ensure that its activities concerning irregular maritime arrivals are conducted in accordance with those obligations. During his appearance at the public hearing by the Parliamentary Joint Committee on Intelligence and Security into visa Security Assessments on 16 June 2011, the Director-General of Security stated:

"I can give you a categorical assurance that ASIO's policy, in accordance with government policy and with Australia's international obligations, does not refer the names of individuals who have sought asylum in Australia to the host government. We just do not do it. So our decisions are not, therefore, made on the basis of information provided about an individual from the host government."