



Refugee Council of Australia

Submission to the Parliamentary Joint Committee on Intelligence and Security – Review of Administration and Expenditure no. 9 (2009-10) – Australian Intelligence Agencies

Introduction

The Refugee Council of Australia (RCOA) is the national umbrella body for organisations involved in supporting and representing refugees and asylum seekers, with a membership of 150 organisations and more than 500 individuals. RCOA promotes the adoption of flexible, humane and constructive policies by government and communities in Australia and internationally towards refugees, asylum seekers and other displaced persons. RCOA consults regularly with its members and refugee community leaders and our submission is informed by their views.

RCOA welcomes the opportunity to provide this submission to the Parliamentary Joint Committee on Intelligence and Security. In particular our submission will address the issue of asylum seekers and refugees affected by Australian Security Intelligence Organisation (ASIO) processes relating to security assessments. Our submission will respond to issues one and three of the six areas outlined as being the aims of this review.

It must be stated that RCOA acknowledges the need for robust security assessments and for consideration of risk to the community. When an asylum seeker enters Australian territory without a visa, we accept that the person should be detained while his or her identity is established, a health check is conducted and a risk assessment is completed. However, immigration detention should not be prolonged or indefinite and should be subject to independent review.

The key concerns we wish to raise in this submission relate to:

- The length of time taken to complete ASIO assessments for people seeking refugee protection.
- The impact on individuals of adverse findings and the absence of any independent review mechanism or capacity to respond to a negative assessment.

The impact of ASIO delays and the decisions made regarding case prioritisation have a dramatic impact on the lives of asylum seekers and refugees. The current practices of the Department of Immigration and Citizenship (DIAC) see people detained for the entire period of their refugee determination process, including the security assessment. As at 4 February 2011, 3592 (54%) of the 6659 people in immigration detention had been detained for greater than six months.¹ DIAC recently acknowledged that around 900 asylum seekers recognised as refugees were waiting in immigration detention for their security assessments to be completed.²

Delays and process

In 2009-10, ASIO completed 21,446 fewer security assessments than in the previous year.³ The ASIO submission to this Committee acknowledges that intended recruitment rates for this period were not

¹ Immigration Detention Statistics Summary, *Community and Detention Services Division, DIAC - As at 4 February 2011*
<http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20110204.pdf>

² Evidence given by Garry Fleming of DIAC at Senate Estimates hearing, Legal and Constitutional Affairs Committee, 21 February 2011, p. 92

³ ASIO Submission to Parliamentary Joint Committee on Intelligence and Security, Review of Administration and Expenditure No.9 – 2009-10, p. 16 <http://www.aph.gov.au/house/committee/pjcis/adminexp9/subs/Sub%204%20ASIO%20UNCLASS.pdf>

reached but that new recruitment did occur. It is a matter of concern that, despite ASIO handling fewer assessments with more funding and more staff, asylum seekers and refugees continued to remain in detention for extended periods waiting for the completion of their security assessments.

The ASIO submission acknowledges that the decision to prioritise assessments of people in detention resulted in further delays for asylum seekers living in the community. RCOA certainly welcomes any measure that enables people to be moved out of detention more promptly. We support the notion that those whose liberty is being denied should be given the highest priority. However, we are concerned that the often pressing needs of asylum seekers who are living in the community are too easily overlooked. People in this situation who are waiting for their security assessments to be completed have been found by the Australian Government to be in need of protection from persecution. Many are in dire financial circumstances, some of them facing homelessness and some in very poor health. Prolonging their insecurity by failing to resolve their status is unacceptable.

We understand some cases are complex and situations such as statelessness present unique challenges. ASIO's submission to this Committee states that "Security Assessments can include a simple check of personal details against ASIO's intelligence holdings..."⁴. We urge ASIO to work towards expediting assessments of people deemed to be of low risk, to enable them to be moved promptly out of detention into the community.

The great majority of the 4.1 million temporary visitors to Australia each year are not subject to a full security assessments before they are issued visas and able to walk Australia's streets. Temporary visitors are, however, routinely subject to Movement Alert List (MAL) checks by DIAC. Those who seek refugee protection after entering Australia on a temporary visa are typically granted Bridging Visas and allowed to live in the community while their refugee status is determined. If a person is found to be a refugee, a full security assessment is completed prior to the granting of a Protection Visa. While waiting for these processes to be completed, they are allowed to live in the community temporarily because they have passed a MAL check. There is no obvious reason why this same process cannot be applied to asylum seekers who are now subject to indefinite mandatory detention – that conditional release be allowed once a person is identified, a MAL check is completed and health checks concluded.

The submission to this Committee from the Inspector General of Intelligence and Security (IGIS) notes that it has received a "significantly increased" number of complaints relating to delays in ASIO security assessments for visa applicants.⁵ The IGIS remit does not allow the agency to direct ASIO to prioritise any particular case. IGIS can assess whether ASIO is acting "unreasonably or has made a processing error" and can look at whether there are systemic problems within the agency. Unfortunately the IGIS submission does not provide a detailed assessment of the situation and simply states that, in relation to people in immigration detention, there is "no evidence that ASIO had acted in anything other than a proper and legal manner". RCOA questions what then is "reasonable" and, with ASIO subject to limited oversight, we cannot be sure that the present delays are justified and necessary. We would welcome clarity of what is "reasonable" in relation to ASIO timeframes and the lengthy periods of detention which result from ASIO processes.

Recommendations

RCOA recommends that:

- 1. Additional resources be allocated to the processing of all security assessments relating to refugee protection claims, for those in detention facilities, in community detention and those living in the community.*
- 2. DIAC and ASIO work together to develop procedures for release from detention of asylum seekers who have completed identity, health and Movement Alert List checks.*
- 3. ASIO be required, by legislation, to complete security assessments for asylum seekers within a maximum time period. When this time period is exceeded, the security assessment should be*

⁴ *ibid*, p. 39

⁵ IGIS Submission to Parliamentary Joint Committee on Intelligence and Security, Review of Administration and Expenditure No.9 – 2009-10, p. 2 - <http://www.aph.gov.au/house/committee/pjicis/adminexp9/subs/Sub%201%20IGIS.pdf>

subject to a process of independent oversight and an explanation for the delay provided immediately to the affected individual.

National interest

With regard to the first aim of this review, relating to “national interest”, RCOA believes that it is in Australia’s national interest to have a humane and internationally responsible approach to asylum and refugee issues. Forced migration and asylum flows are a feature of our region, requiring appropriate responses from all governments. Australia’s role in promoting refugee protection in the Asia-Pacific region is undermined by its use of prolonged, mandatory, non-reviewable detention for asylum seekers. We believe that this approach is against the national interest, particularly at a time when Australia is attempting to encourage neighbouring countries to pay greater attention to the protection needs of people on the move within the region. Australia’s position is further undermined by the unacceptable delays in completing security assessments for immigration detainees determined to be refugees.

ASIO and the Department of Immigration and Citizenship

In relation to the third aim of this review regarding working relationships, RCOA believes that there are improvements that could be made to the working relationship between DIAC and ASIO. Under current arrangements, DIAC staff often have little choice but to point the finger at ASIO when asked to explain why asylum seekers and refugees continue to face indefinite periods of detention due to incomplete security assessments. Clear and transparent direction and procedures from both organisations, coupled with strong leadership from Government, should result in definitive guidelines that mean detainees, advocates, lawyers and DIAC case officers are all more aware of what is happening with a security assessment. Once a person’s status as a refugee is recognised, typically the person has no further contact with his or her lawyer. This means that there is often no-one advocating for the person’s case to be finalised and for release from detention to be arranged. With DIAC case officers apparently not aware of where ASIO procedures are up to in any given case, and community representatives unable to gain any information from ASIO, the individual refugee in detention is left with no information. This lack of information exacerbates the adverse mental health impacts of prolonged detention.

Transparency and accountability

ASIO’s submission states that, of the 39,527 security assessments made in 2009-10 relating to visa applications (including Protection Visa applications), only 19 adverse findings were made across all visa categories.⁶ Understandably, every case is assessed on its individual merits; however, from these numbers we can see that the risks are very low. In spite of the very damaging nature of indefinite detention, there is no practice of balancing risk with humane treatment. RCOA believes a risk management process – which also considers the risks of psychological damage associated with indefinite detention – should underpin detention policy. ASIO could greatly assist in achieving this.

ASIO states in its submission to this Committee that it works closely with DIAC to determine cases requiring priority attention.⁷ How is it possible then that 900 people already found to be refugees are still in detention awaiting their security assessments? With no transparency about any aspect of the agency’s work, including how decisions of priority are made, RCOA cannot fathom how or why such a large number of recognised refugees continue to be detained.

RCOA understands that the ASIO Act itself does not provide a requirement for continued detention of individuals awaiting security assessment. This detention occurs in practice because there is a great deal of public fear and misinformation about asylum seekers who arrive by boat and an associated reluctance by successive governments to combat this by making decisions that could be presented negatively by political opponents.

An adverse finding for an asylum seeker or refugee results in:

- a) indefinite detention in Australia;

⁶ ASIO submission, p. 12

⁷ *ibid*, p. 42

- b) the likelihood that no third country will offer resettlement;
- c) if returning home, the possibility of torture or inhumane treatment based on presumptions about what ASIO or Australian authorities may have learned.

Despite the dire consequences for the people involved, Protection Visa applicants have no opportunity to seek an independent merits review of a negative security assessment. While the Administrative Appeals Tribunal (AAT) has the power to review negative ASIO assessments, access to the AAT is denied to people who are not citizens or permanent residents. This concern has been raised twice in IGIS annual reports. On both occasions, IGIS recommended that legislation be changed to allow for AAT review of negative security assessments of Protection Visa applicants.⁸

For many asylum seekers who have arrived by boat, their ASIO interview often takes place very soon after arrival and sometimes immediately before or after an Australian Federal Police interview. It is not uncommon for asylum seekers to report, after many months in detention, that they do not recall if or when they had an ASIO interview. It is also quite common for case information and particulars to be provided over time as a person feels more trusting of the officials and advocates around them, rather than all at once to an ASIO officer. Again, due to lack of transparency, RCOA is concerned that in circumstances where information provided to ASIO differs from that provided in protection applications later, this could influence decisions to give an applicant an adverse assessment.

RCOA also refers the Committee to our submission to the Inquiry into the *Anti-People Smuggling and Other Measures Bill 2010*⁹. This legislation became law in June 2010 and some aspects of it fall within the remit of this Committee's review. One particular issue to be addressed is whether there have been changes to training provided to ASIO staff. The passage of the Bill resulted in an extension of ASIO's mandate to monitor people sending material support to vulnerable persons overseas, now that ASIO staff have greater frontline interaction with asylum seekers. In line with this, RCOA recommended that ASIO officers and related staff receive training and support in working with vulnerable people (including survivors of torture and trauma), as well as training about the refugee determination process. It is unclear whether such measures have been adopted and if they are standard practice for relevant staff.

Recommendations

RCOA recommends that

4. *Pending implementation of recommendation 3, ASIO provide DIAC with case updates to pass on to asylum seekers and refugees about progress with their security assessment and some indication of when the assessment will be completed.*
5. *In line with the suggestion of the Inspector General of Intelligence and Security, legislation be altered to allow the Administrative Appeals Tribunal to hear appeals relating to negative ASIO security assessments for Protection Visa applicants.*
6. *The training and support of ASIO staff be reviewed to ensure that they are adequately equipped to work with vulnerable people undergoing the refugee determination process.*

Conclusion

Natural justice should apply to all those protection visa applicants affected by ASIO delays and adverse findings. Without accountability and transparency, the system leaves vulnerable asylum seekers exposed to additional harm, government officials in difficult situations and advocates with no information to assist individuals. Increased resources, clarity about timeframes, procedures aimed at reducing time in immigration detention, independent review of negative decisions and adequate training and support of ASIO would all contribute to fairer and more humane treatment of people seeking refugee protection in Australia.

⁸ See IGIS annual reports 1998-99 (p. 17) and 2006-07 (p. 12) – www.igis.gov.au/annual_report/index.cfm

⁹ See RCOA submission to the Inquiry into the Anti-People Smuggling and Other Measures Bill 2010 - http://www.refugeecouncil.org.au/docs/resources/submissions/1004_Anti-People_Smuggling_Bill.pdf