

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

Group 3

Question No. 54

Senator Singh asked the following question at the hearing on 24 February 2014:

Senator SINGH: I will start by asking you about the Inspector-General of Intelligence and Security report from January this year into the inquiry into the attendance of legal representatives at ASIO interviews and related matters. That inquiry found that ASIO was denying asylum seekers legal representation during their interviews for security clearances. Is that correct? If so, have the recommendations listed in that report been taken up by ASIO?

Mr Irvine: Strictly speaking, there is no legal requirement for lawyers to be present during ASIO security assessment interviews. But it has been our policy over a number of years to permit, unless there are significant operational reasons, lawyers to be present at security assessment interviews for visa applicants. We conduct hundreds of those interviews, and the inquiry was concerned with the nonattendance of lawyers at just four of those interviews. As to whether we accept those recommendations, we have generally accepted those recommendations.

Senator SINGH: What would be the criteria for not permitting a lawyer to be present at an asylum seeker interview?

Mr Irvine: There would be no specific criteria. It would really depend on the view of the assessment officer as to whether it would assist or, alternatively, impede the interview. It is at the interviewee's discretion to request a lawyer, and the person would know that they have that right. But I do not think there are specific criteria that I could give you that are written down where we would deny it.

Senator SINGH: So it is up to them to ask for a lawyer?

Mr Irvine: Yes. But the recommendation is, of course, that we specifically ask them when they want a legal representative to attend—and we have accepted that recommendation.

Senator SINGH: Is it the case that some refugees have been given confidentiality agreements at the time of their interview without the opportunity to understand their obligations and what they are signing?

Mr Irvine: I am not sure to what you are referring. I will have to take the question on notice.

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 an undertaking of confidentiality from the applicant and, in turn, provide an undertaking of confidentiality on ASIO's behalf. This is a verbal agreement and subject to discussion with the refugee – this provides the refugee 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 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.