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Director-General's Statement to the Joint Standing Committee  
on Migration, Inquiry into Immigration Detention

BY: MIG

Wednesday, 15 October 2008 (1pm)

**Introduction**

- I would like to thank the Committee for this opportunity to provide an unclassified briefing on ASIO's role in carrying out security checks of persons detained by the Department of Immigration and Citizenship (DIAC).
- Whilst acknowledging that the Committee is concerned specifically with persons in immigration detention, it is important to note that ASIO's security checking responsibilities in the area of border security are holistic.
  - That is to say, they extend to persons seeking authorised entry into the country by way of visa, as well as those who arrive here unannounced, and without authorisation.
- So my comments today will address both these areas of the visa system, the principal reason being that some of the pressures placed on ASIO in managing caseloads and timeframes arise from sustained, significant work flows across all categories of referral.
- I will also preface my comments by making some broader observations about the security environment Australia faces.
- This will provide important context, particularly as the heightened security environment places significant demands on this important aspect of ASIO's responsibilities.

**The security context**

- The security environment Australia faces continues to be complex and fluid; and events and trends taking place offshore continue to impact on Australia's global interests and domestic security.

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- Members of the Committee will be aware that trans-national terrorist groups have targeted Australia, Australians and Australian interests, and continue to identify Australia as a target for their violent endeavours.
- Individuals with significant connections to terrorist groups have attempted to travel to Australia, and, in some cases – Willie Brigitte, for example – have succeeded in coming to Australia and immersing themselves within domestic extremist networks.
- Given the trans-national character of terrorism, border security is an essential component of our larger efforts to prevent an attack from occurring on Australian soil.
- Terrorism is not the only threat we confront, however.
- Australia also faces the threat of being targeted by foreign intelligence services for the purposes of espionage or foreign interference; and
  - by other issue motivated groups and networks, affiliates of which may seek to enter Australia to promote or engage in politically motivated violence –
    - whether to disrupt specific events of international significance (such as the G8 meeting in Melbourne, or last year's APEC leaders' meeting in Sydney); or
    - to train and enliven like-minded domestic groups and networks who support violent protest activity.

#### **ASIO's role in Australia's border security**

- The Minister for Immigration and Citizenship, Senator the Honourable Chris Evans, recently said,

*'Control and management of our borders is integral to the nation's security.'*

- In the context of globalisation, increased cross-border movements, and the post September 11 heightened global and domestic security environment, protecting the integrity of Australia's borders is a significant, ongoing challenge.
  - This responsibility involves strong and effective cooperative work between various Government agencies.
- ASIO works closely with DIAC in particular to manage the risks to security associated with people seeking to enter the country on a valid visa, or arriving in Australia unannounced, without authorisation.
- ASIO is not responsible for the enforcement of any Commonwealth laws, however.
- ASIO has no power to detain a person who has breached the terms of their visa, or has entered the country without authorisation.
- Rather, as a security intelligence organisation, ASIO's role is to:
  - obtain, correlate and evaluate intelligence related to security;
  - communicate intelligence; furnish security assessments; and
  - advise Ministers, and other authorities, on matters relating to security.
- All of the Organisation's responsibilities and activities, in fact, are focused through the lens of 'security' as defined by the ASIO Act –
  - in which 'security' means protecting Australia from espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on our defence system, and acts of foreign interference.
    - It will be important to keep this definition of security in mind when I come to discussing the grounds on which we assess whether a person constitutes a risk to security.

- As such, ASIO is a key source of *advice* for DIAC on border security matters.
- Our role in this area principally involves conducting and furnishing security assessments of individuals referred to ASIO by the DIAC.

### How it works

- Under the current arrangements, ASIO conducts security assessments on *selected* visa applicants and unauthorised arrivals referred to us by DIAC with regard to Public interest criterion 4002 of the *Migration Regulations*.

- This criterion stipulates that,

*'The applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security'.*

- The principal function of a security assessment is to determine whether an individual's presence in Australia would pose a risk – whether directly or indirectly – to security.
- Before indicating, in broad terms, how we conduct these assessments, I should highlight the fact that DIAC *doesn't refer all* visa applications or unauthorised arrivals to ASIO for security checking.
- Rather, the existing arrangements are based upon a risk management model.
- This means that DIAC will only refer those cases to ASIO that match agreed, established criteria.
- These criteria are classified, and so the Committee will understand that I can't go into them in any further detail.
  - I will make the observation, though, that an important reason for classifying these criteria is that groups such as al-Qa'ida and others put significant effort

into observing and trying to defeat the security arrangements of targeted countries, including their visa and border control arrangements.

- So any public ventilation of these criteria would greatly assist these efforts, and therefore undermine the integrity of our border security regime.
- In conducting a security assessment, ASIO draws on classified and unclassified information to:
  - verify the referred person's identity, and
  - identify and evaluate their activities, associates, attitudes, background, and character *as they are relevant to security*.
- In so doing, ASIO takes into account and makes a professional judgement about the credibility and reliability of the available information.
- If our investigations reveal inconsistencies; or if we are unable to resolve residual doubts; we will usually interview the person in question so as to clarify, or examine further, a particular aspect of their case.
- With regard to security assessments of persons held in mandatory immigration detention, in most cases this involves individuals who have arrived here without a valid visa (whether by boat or aircraft).
  - While DIAC also refers cases of individuals detained for overstaying or breaching the conditions of their visa, this occurs less frequently.
- As part of the security assessment process, ASIO regularly conducts interviews of unauthorised arrivals in immigration detention.

### What happens once we've finalised our security assessment

- Where, through the security assessment process, ASIO assesses that the presence of a visa applicant, or person who has arrived without authorisation in Australia, would pose a direct or indirect risk to security,
  - this person is considered, under the *Migration Act*, not to have met the Public Interest Criterion (4002) set out in the Migration Regulations, and (generally) will not be granted a visa by DIAC.
- In such a circumstance, ASIO would furnish its advice to DIAC in the form of a security assessment.
- Administrative action arising from this advice is then a matter for DIAC.

#### Assessment timeframes

- ASIO also works closely with DIAC in setting priorities for visa security assessment cases.
- As the Committee is aware, the *Migration Act* requires the Minister to make a decision on protection visa applications within 90 days.
- For this reason, detention cases are generally given the highest priority, and ASIO devotes specialist resources, and actively manages each individual case, to assist DIAC in meeting this timeframe.
- In terms of the 90 day timeframe, it is important to note that this refers to the period DIAC has to complete the entire visa application process, not to the period ASIO has to complete the security assessment.
- The 90 day period begins *before* ASIO receives the referral from DIAC.
  - So in reality, ASIO always has less than 90 days to conduct and finalise a security assessment.

- In fact, on average, we receive referrals 27 days into the 90 day timeframe.
- This is because DIAC carries out its own administrative and checking processes before referring cases to us.
- In 2007–08, we completed **62%** of protection visa applications referred to us within the 90 day timeframe,
  - which was up from **52%** in 2006–07.
- Those cases outside the 90 days are complex and the timeframes vary based on the complexity of the case.
- This improved result reflects positive steps taken by ASIO and DIAC to develop a more efficient security checking regime, including the phased introduction of the Next Generation Border Security initiative.
  - The Next Generation Border Security initiative, which has enabled direct electronic connectivity for the transmission of visa applications from DIAC to ASIO,
    - is designed to improve the effectiveness and efficiency of the security checking process for Australian visa applicants.
- The result also reflects the improved capacity within ASIO resulting from the Government's allocation of increased funding, which has allowed us to undertake a process of phased growth until 2010-11.
- That said, the time it takes to finalise individual security assessments continues to be affected by such things as:
  - the total caseload we are dealing with at any given time;

- the volume and quality of intelligence we need to sort through, and make sense of, to form a judgement; and
- the priorities of other, external agencies to which some of our requests for additional checking may be directed.
- And some cases, as I adverted to, are particularly complex, depending on variables like:
  - the country of origin of the person;
  - the consistency of the information they provide to us during an interview; or
  - other features of the case, like whether the person has destroyed his or her identity papers, or is attempting to disguise something about his or her true identity.
- In resolving such cases, ASIO is strongly committed to meeting prescribed timeframes, although security must remain foremost in our considerations.
- Overall, our assessment timeframes improved significantly in 2007/8, despite significant increases in referrals from the previous financial year.
  - In 2007–08, we completed **1,311 assessments for protection visa applicants**,
    - which represented an **increase of 14%** from 2006–07.
- Of these 1,311 protection visa cases, 74 related to individuals held in detention.
  - ASIO completed assessments for 68 (or 92%) of these 74 cases within the 90 day period,
    - Finalising 59 of these in less than one month (the majority, in fact, were finalised within one week)
  - 6 of the more complex cases took slightly more than the 90 day timeframe, with most being completed within one month of the 90 day date.



- This, of course, represents only one slice of our border protection work with DIAC.
- In the same period, we also completed a total of **72,688 visa assessments** (including the above protection visa assessments),
  - which represented an **increase of 36%** from 2006-07.

### **Challenges in light of the move to risk-based detention**

- Turning now to providing the Committee with insight into the challenges faced by ASIO in implementing these checks, in light of the Minister's directive for risk-based detention.
- My fundamental message to the Committee is that ASIO remains committed to strong border security, and will continue to assess whether people arriving in, or seeking to travel to, Australia pose a risk to security.
- As the Committee is aware, the changes outlined in the Government's seven key immigration values include mandatory detention for:
  - all unauthorised arrivals for management of health, identity and security risk to the community;
  - unlawful non-citizens who present unacceptable risks to the community; and
  - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
- I understand from Minister Evans' statement that unauthorised arrivals will be held in mandatory immigration detention until the required health, identity and security checks are complete.

- We are working closely with DIAC at senior levels in relation to how any changes associated with the Department's implementation of the Government's policy might affect ASIO.
- Given the Minister's directive for the Department to implement a risk-based immigration detention framework, ASIO and DIAC will continue to prioritise detention cases.
- And ASIO will continue to assess cases of individuals held in immigration detention as quickly as possible.
- Looking at the matter purely in terms of fulfilling our responsibility to carry out security assessment of cases referred to us by DIAC, we do not foresee any significant new challenges arising from the risk-based detention policy framework.
- Rather, as I noted earlier, the key challenges ASIO faces in helping DIAC meet the 90 day timeframe stem from:
  - the heightened security environment;
  - the total number of cases on our books at any given time; and
  - the complexities of particular cases that require resolution for the purposes of finalising the security assessment process.
- As such, ASIO will continue to actively manage all cases referred to us – an approach which has seen, in context of significant and challenging workloads, improvements in the number of referrals resolved within the 90 day timeframe.
- I thank the Committee for your time, and would be happy to answer your questions, noting that I will not be able to answer questions touching on classified matters.

END