

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

Question No. 113

Senator Hanson-Young asked the following question at the hearing on 14 February 2012:

Regarding the length of detention of people who have failed ASIO Assessments:

1. What is the government doing to find genuine solutions for the people to whom have been recognised as being owed protection obligations?
2. Are there people who are not applying for asylum who have been given a negative security assessment?
 - a. Are they all immediately placed into immigration detention or another form of incarceration?
 - b. If not, why are there different approaches?
3. Has there been a change in policy regarding the security assessments of Tamils since 2009?
 - a. Do the numbers demonstrate a change since 2009?
4. How is ASIO applying their new powers to issue negative assessments under section 4(aa) of the ASIO Act?
5. How does a person challenge their negative assessment in the courts without having access to the statement of reasons for the adverse ASIO decision?

The answers to the honourable senator's questions are as follows:

1. Questions on government policy should be directed to the appropriate Minister.
2. In the financial year 2010-11, ASIO issued 45 adverse visa security assessments. Thirty-five of these assessments related to irregular maritime arrivals (IMAs), with ten relating to individuals seeking other classes of visa.
 - a. Questions regarding immigration detention should be directed to the Department of Immigration and Citizenship.
 - b. As per 2a.
3. ASIO conducts all security assessments on a case by case basis. It would not be appropriate to answer questions regarding ASIO's policies and procedures.
 - a. As per 3.
4. Since the addition of 'the protection of Australia's territorial and border integrity from serious threats' as a head of security in the ASIO Act, ASIO has issued to the Department of Immigration and Citizenship seven adverse visa security assessments in relation to this head of security.

5. ASIO's security assessment is advice to DIAC to inform visa suitability consideration. ASIO does not provide visa applicants with the details underpinning those adverse assessments as doing this may compromise national security.

Anyone subject to an adverse or qualified ASIO security assessment can seek judicial review of the assessment in the Federal Court or High Court. Both courts have the power to set aside a security assessment and compel ASIO to re-do the security assessment. The courts also have the power to prevent other Commonwealth agencies from taking action based upon the assessment.

For Australian citizens and permanent residents, or holders of special category/purpose visas, merits review is available through the Security Appeals Division of the Administrative Appeals Tribunal (AAT).