

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

**Question No. 16**

**Senator Barnett asked the following question at the hearing on 25 May 2011:**

**Senator BARNETT:** I want to ask you about the 'up to' 800 asylum seekers to be sent by Australia to Malaysia. What role will ASIO have in their processing, if any?

**Mr Irvine:** We have certainly not discussed that with the department of immigration and citizenship. I do not envisage us having a significant role, if any.

**Senator BARNETT:** Why is that?

**Mr Irvine:** We are not conducting security checks on people because they would not be coming into Australia. They would not have been given refugee status – the '1A met' status – which is when we start to kick in with security assessments.

...

**Senator BARNETT:** But if the Malaysian government asked the Australian government to provide that assessment then I assume you would follow through on that directive.

**Mr Irvine:** We would not have conducted an assessment to be able to provide any information.

**Senator BARNETT:** No, but if DIAC or the government asked you to, you would obviously undertake the assessment.

**Mr Irvine:** If the government instructed us to undertake an assessment, we would. But I would not anticipate, in those circumstances, that that would happen.

**Mr Fricker:** An ASIO security assessment is produced for a prescribed administrative act. In the scenario you are portraying, I am not clear as to what the prescribed administrative action would be. Passage to Malaysia I do not think would constitute a prescribed administrative act. Applying for a visa is. Whether we do a security assessment or not would be based on for what purpose? The purpose for which we would grant issue –

**Senator BARNETT:** So if it is not for a prescribed security act, that is, coming into Australia as a refugee, then you are not legally able to undertake such an assessment? Is that what you are saying?

**Mr Irvine:** I am not sure that we are not legally able to. I would have to take this answer under advice. We are also required to, on our own cognizance, conduct security inquiries, and if that person were regarded as a threat to Australia or Australians then we might in fact conduct an inquiry anyway. Can I take that on notice? The legal area here is quite tricky.

**Senator BARNETT:** Why don't you take that on notice.

**The answer to the honourable senator's question is as follows:**

ASIO will have no active role in the processing of the up to 800 IMAs being transferred to Malaysia as this transfer does not constitute a prescribed administrative action for which ASIO can provide security assessment advice. If a visa application should subsequently be submitted for any of the 800 IMAs, ASIO would conduct a security assessment as per current arrangements.

ASIO may issue a security assessment in respect of a prescribed administrative action or in anticipation of a prescribed administrative action. 'Prescribed administrative action' is defined in section 35 of the *Australian Security Intelligence Organisation Act 1979* and includes 'the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act'.