



ASIO's Security Assessment Function

The Security Assessment Function

ASIO's Security Assessment function is an important component of Australia's national security defences. It provides a mechanism for 'security' (as defined in *the Australian Security Intelligence Organisation Act 1979* (the ASIO Act) to be considered in certain regular government decision-making processes (defined as 'prescribed administrative actions' in the ASIO Act). For example, in the issuing of passports, granting of visas, granting of access to sensitive government information (security clearances), and access to restricted areas such as ports and airports and sensitive goods such as ammonium nitrate.

Security Assessments are not, however, an end in themselves. Consistent with ASIO's role as an intelligence agency, they are a means by which ASIO provides advice. And they only consider factors related to 'security', which in practice is usually terrorism; other forms of politically motivated violence; espionage and foreign interference; and threats to Australia's territorial and border integrity.

Security Assessments are not character checks and character factors such as criminal history, dishonesty or deceit are only relevant to ASIO's advice if they have a bearing on security considerations. Character is not itself sufficient grounds for ASIO to make an adverse security finding.



Most ASIO Security Assessments are made at the request of another department or agency, though ASIO can – and particularly in relation to passports does – issue assessments as a consequence of an ASIO intelligence investigation. Security Assessments can range from a simple check of personal details against ASIO's intelligence holdings, to an in-depth intelligence investigation to determine the nature and extent of an identified threat to Australia's national security. Each Security Assessment is handled on a case-by-case basis.

Upon making an assessment ASIO may provide:

- **non-prejudicial** advice, which means that ASIO has no security related concerns about the proposed 'prescribed administrative action';
- a **qualified** assessment, which generally means that ASIO has identified information relevant to security, but is not making a recommendation in relation to the 'prescribed administrative action'; or
- an **adverse** assessment in which ASIO recommends that a prescribed administrative action be taken (cancellation of a passport, for example), or not taken (declining access to a security controlled area, for example).

The consequence of an ASIO Security Assessment depends on the purpose for which it is made and the associated legislation, regulation or policy. In some cases decision-makers are obliged to take (or are prevented from taking) actions because of an ASIO Security Assessment – such as granting visas to travel to or remain in Australia. In other cases the assessment is only a single component to be considered among a range of other factors – for granting access to national security



information, for example. In all cases, ASIO itself is not permitted by the ASIO Act to take any administrative action.

Areas of Activity

ASIO currently provides security assessments in areas including:

- **Visa Security Assessments**

Any person applying for a visa to travel to, or remain in, Australia may have the application referred by the Department of Immigration and Citizenship to ASIO for a Security Assessment. Given the large volume of visa applications, it is not practicable for each one to be assessed by ASIO. A risk-managed referral framework has, therefore, been developed so that applications more likely to be of concern are drawn to ASIO's attention. Still, ASIO assesses many thousands of visa applications annually.

In most visa categories, a visa may not be issued (or must be cancelled) where ASIO determines the applicant to be directly or indirectly a risk to 'security' (as defined in the ASIO Act). The enabling legislation in this instance is the Migration Act 1958, specifically the Migration Regulations 1994 and public interest criterion 4002.

Separately to visa application referrals from DIAC, ASIO's security intelligence investigations will from time-to-time determine that the holder of a valid visa to Australia (sometimes they will already be in Australia, and other times still overseas) presents a risk to Australia's security. In such circumstances ASIO may make an adverse assessment and the visa will be cancelled.



- **Applications for Australian Citizenship**

Under the *Australian Citizenship Act 2007*, the relevant Minister (the Minister for Immigration and Citizenship) must not approve the granting of Australian citizenship where ASIO has made an adverse or qualified Security Assessment on the applicant.

- **Passports**

Under the *Australian Passports Act 2005*, ASIO may request on security grounds the cancellation of an Australian passport, or that an application for an Australian passport is declined.

Withholding passports is an important means of preventing Australians from travelling overseas to train, support or participate in terrorism. It may also be used to help prevent an Australian already overseas from participating (or further participating) in activities that are prejudicial to the security of Australia, or another country.

An adverse ASIO Security Assessment can also be grounds for the Foreign Minister to demand the surrender of a foreign travel document (passport) under the *Foreign Passports (Law Enforcement and Security) Act 2005*.

- **Access to national security classified information**

The Protective Security Policy Framework (PSPF) sets out Australian Government policy and guidance on protective security, including policy for the granting of clearances for access to national security classified information. In almost all circumstances a department or agency must request Security Assessment advice from ASIO as part of their overall



consideration of whether or not to grant a national security clearance. In making the assessment, ASIO reviews any intelligence it may hold, as well as considering known security risk factors.

Except for its own staff (and in a limited number of cases where ASIO is the clearance sponsor), ASIO is not the issuing authority for security clearances and it is up to individual departments and agencies to consider ASIO's advice.

From 1 October 2010, all Commonwealth security checks (except for a few exempt agencies) will be undertaken by a single security vetting agency - the Australian Government Security Vetting Agency (AGSVA). The AGSVA will be located in the Department of Defence and will consequently become ASIO's primary client for Security Assessments for national security clearances.

- **Counter-Terrorism Security Assessments**

Aviation Security Identification Cards (ASIC) and Maritime Security Identification Cards (MSIC) ensure that those with access to sensitive air and maritime port areas undergo appropriate background checking. ASIO's role in the ASIC and MSIC process is primarily to consider any terrorism concerns. AUSCHECK (Attorney-General's Department) coordinates the larger suite of background checks (including criminal history) and assesses the applicant's overall suitability to hold an ASIC or MSIC. ASIO's advice may recommend against an ASIC or MSIC if there are assessed security concerns.



ASICs are administered under the *Aviation Transport Security Act 2004* and MSICs under the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

ASIO provides (via the Australian Federal Police (AFP)) counter-terrorism background checks for licensing by the Australian states and territories for access to security sensitive ammonium nitrates (SSANs – used as an explosive particularly by the mining industry, and as a fertilizer in agriculture). Each state and territory has its own licensing regime, consistent with a set of principles agreed in 2005 by the Council of Australian Governments (COAG). Similar ASIO checks are provided for those requiring access to Security Sensitive Biological Agents (SSBA) as part of the SSBA Regulatory Scheme flowing from the *National Health Security Act 2007*. ASIO may recommend against a license for access to SSANs or SSBAs.

ASIO also provides (via the AFP) Security Assessment advice on any terrorism concerns for individuals requiring access to the Australian Nuclear Science and Technology Organisation nuclear facility at Lucas Heights.

ASIO Security Assessment advice may also be provided for background checking for special event accreditation, such as the 2007 Asia Pacific Economic Cooperation (APEC) meetings in Sydney.



Appeal Mechanisms

Where ASIO provides a Commonwealth agency with an adverse or qualified Security Assessment, the agency concerned is generally required to notify the subject within 14 days. For most categories of Security Assessment, **merits review** is available through the Security Appeals Division of the Administrative Appeals Tribunal (AAT). The Tribunal's proceedings are conducted in private and it is not bound by the rules of evidence. The Tribunal may inform itself on any matter in such manner as it considers appropriate.

Judicial review of the process of ASIO making a Security Assessment is possible through the Federal and/or High Court of Australia.

The **Inspector-General of Intelligence and Security (IGIS)** also maintains a close interest in ASIO's Security Assessments. It is not a function of the IGIS to review the merits of adverse assessments (that is the role of the AAT Security Appeals Division), but the IGIS may, under the Act, review the legality and propriety of associated ASIO practices and procedures.