



Friday December 14, 2012

Ms Julie Dennett
Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email to legcon.sen@aph.gov.au

Dear Ms Dennett

Inquiry into Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012

The Asylum Seeker Resource Centre (ASRC) thanks the Senate Legal and Constitutional Affairs Legislation Committee for the ability to make a submission to the committee regarding Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012.

The ASRC welcomes the proposed amendment to help safeguard fairness in Australian law for refugees who have received an adverse security assessment and supports the passage of the bill.

The ASRC has grave concerns for the mental health of all asylum seekers in detention, especially those who have been found to be refugees but have had an adverse ASIO assessment. The current lack of transparency and right to appeal these decisions is detrimental to the human rights of refugees.

There are currently more than 50 refugees (including 6 children) who have been languishing in detention for up to four years after being refused visas on security grounds.

Please find following the ASRC's submission to the Committee.

Thank you for the opportunity to participate in this important inquiry.

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Background

The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. We are the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, we offer comfort, friendship, hope and respite.

We are an independent, registered non-governmental agency and we do not receive any direct program funding from the Australian Government. We rely on community donations and philanthropy for 95 per cent of our funding. We employ just 40 staff and rely on over 800 dedicated volunteers. We deliver services to over 1,250 asylum seekers at any one time.

Our submission is based on 11 years of experience working with asylum seekers in Victoria.

The proposed legislation amendments

The ASRC supports the proposed Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012.

Specifically, the ASRC supports (in line with recommendations made in Professor Ben Saul's submission):

- Presumptive disclosure of the security assessment to the affected person.
- A right to AAT review of an adverse assessment.
- The establishment and use of a Special Advocate.
- Six monthly reviews of adverse security assessments.
- Notification of an assessment to the person within 14 days.
- A requirement on the Minister to consider a residence determination before resorting to detention.

Rationale – the need for the proposed amendments

Arbitrary detention

The current situation allows that all people found to be refugees who are subject to an adverse or qualified ASIO security assessment can be indefinitely detained. This is in direct breach of article 9 of the Universal Declaration of Human Rights which states that 'no one shall be subjected to arbitrary detention'. There are currently more than 50 refugees (including 6 children) who have been languishing in detention for up to four years after being refused visas on security grounds¹.

Procedural fairness

As identified by Professor Ben Saul, 'the issuing of adverse security assessments by the Australian Security Intelligence Office (ASIO) often denies basic procedural fairness to those who are not Australian citizens, permanent residents or special purpose visa holders'².

Mental Health

ASRC visitors have visited detention centres and witnessed the mental health deterioration of people in arbitrary detention. Some have been in detention for up to four years owing to an adverse security clearance. Their mental health has fluctuated from suicidal ideation, depression, psychosis and serious suicide attempts³.

¹ <http://www.smh.com.au/opinion/politics/trapped-in-the-puzzle-of-security-20121004-2725q.html>

² IBID

³ <http://www.refugeeaction.org.au/?p=2232>, <http://www.smh.com.au/opinion/political-news/second-tamil-refugee-attempts-suicide-20121115-29e0l.html>



Case studies

Teenager found to be a refugee, remained in detention for a further 12 months without any reason given. Lawyers became involved and court action commenced due to concerns of suicidal depression of the teenager in detention and refusal of DIAC to release him from detention. The boy had not been interviewed by ASIO. It was only after court action was instituted that an interview with ASIO was carried out. It was clear that a decision had been made without interview that they boy was a security risk – explaining his 12 month detention post refugee. He remains in detention to this day.⁴

A pregnant mother and her two young child were in the community after being found to be refugees. One night 8 officers arrived at the house and took her and her children to a motel overnight. She was transferred to Sydney for detention the next day due to an adverse security assessment. She is still in detention and is about to have her third child in detention⁵.

Conclusion

The ASRC welcomes the proposed amendment to help safeguard fairness in Australian law for refugees who have received an adverse security assessment. There are ways to ensure fair assessments while protecting security – measures which are included as part of the proposed amendments.

The ASRC has grave concerns for the mental health of all asylum seekers in detention, and especially those how have been found to be refugees but have had an adverse ASIO assessment. The current lack of transparency and right to appeal ASIO decisions is detrimental to the human rights of refugees.

⁴ <http://www.julianburnside.com.au/> - 'What we do to people in detention'

⁵ <http://lettersforranjini.com/ranjinis-story/>