

17 December 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Melbourne Office

350 Queen St
Melbourne VIC 3000
GPO Box 4380
Melbourne VIC 3001
DX 210646 Melbourne VIC
t: 03 9269 0234
1800 677 402
www.legalaid.vic.gov.au
ABN 42 335 622 126

Dear Committee Secretary

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

Thank you for the opportunity to provide comments on the Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012 (the Bill).

About Victoria Legal Aid

VLA is an independent statutory authority established under the *Legal Aid Act 1978* to provide legal aid and improved community access to justice. The provision of legal aid in migration matters is one of a number of civil law priorities in the National Partnership Agreement to which legal aid commissions abide. In the 2011/12 financial year, we provided legal advice or information to clients in migration matters on more than 2000 occasions. We also provided minor assistance in 336 cases, and legal representation pursuant to a grant of aid in 132 cases.

The Bill

The Bill seeks to amend the *Australian Security Intelligence Organisation Act 1979*, the *Administrative Appeals Tribunal Act 1975* and the *Migration Act 1958* to provide for the review of security assessments for refugees who have received an adverse security assessment.

VLA supports the principles informing the content of the Bill as a positive step towards securing procedural fairness for non-citizens seeking protection in Australia. The Bill will remedy the current denial of procedural fairness occasioned by a person having no access to review of an assessment by the Australian Security and Intelligence Organisation (ASIO) and no access to the reasons for an adverse or qualified finding by ASIO.

We understand that on occasion there will be legitimate national security concerns that will warrant an adverse security assessment. We also understand that government may not be able to disclose national security intelligence to a person who receives an adverse security assessment. The Bill provides access for non-citizens to a process of merits review of an adverse security assessment in the Administrative Appeals Tribunal.

It creates a new role of 'Special Advocate' who will be an intermediary in the review process. We support the creation of the role of "Special Advocate" as a pragmatic solution to improving the balance between national security and procedural fairness. Importantly, the Bill will better ensure that the material relevant to the primary decision is tested as part of the merits review process.

Legal assistance

Finally we support the Bill's contemplation of a continued role for legal representatives as part of the merits review process.

Our casework has demonstrated the benefit of legal advice and representation for people seeking protection in Australia. The direct participation in complex review processes is often beyond the capacity of vulnerable people unfamiliar with the Australian legal system. Legal advice and representation becomes an important tool in improving administrative decision making consistent with the Government's Strategic Framework for Access to Justice report, for promoting equality before the law and assisting people to exercise their legal rights. Further, by providing people with early advice where their claims have limited prospects of success, the efficiency of the system is improved.

Yours faithfully

BEVAN WARNER

Managing Director