

**AMNESTY
INTERNATIONAL**



9 January 2014

Ms Sophie Dunstone
Secretary
Senate Legal and Constitutional Affairs
Legislation Committee
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Dear Ms Dunstone,

Committee Inquiry into the Migration Amendment Bill 2013 [Provisions]

Thank you for the invitation to submit to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the Migration Amendment Bill 2013. Although the organisation would have preferred to provide more comprehensive analysis of the proposed amendments, given the short time frame for submission, Amnesty International makes this short contribution to the inquiry to highlight our overarching concerns. The organisation will be pleased to expand on any points raised below at the Committee's request.

Amnesty International focuses our contribution on Schedule 3 of the proposed amendments, which will *'make it a criterion for the grant of a protection visa in section 36 of the Migration Act that the applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security (within the meaning of section 4 of the Australian Security Intelligence Organisation Act 1979) and associated measures.'*; and *'put beyond doubt that the Refugee Review Tribunal and the Administrative Appeals Tribunal do not have the power to review a visa refusal decision relying on, or a visa cancellation decision because of, an assessment by ASIO that the applicant for, or holder of, a protection visa is directly or indirectly a risk to security (within the meaning of section 4 of the ASIO Act). A protection visa includes a permanent protection visa.'*

Amnesty International holds that these proposed amendments to the Migration Act 1958 will serve to further entrench the existing practice in relation to protection visa applicants who receive adverse security assessments from ASIO; whereby their right to merit review of the assessment is limited, and they and their families are at risk of being held in what amounts to indefinite detention. The amendments also serve to further restrict avenues for review and appeal. Amnesty International, in line with other human rights groups and the United Nations Human Rights Committee, has consistently raised concerns relating to current Australian policy and practice in this area which are contrary to Australia's human rights obligations under the International Covenant on Civil and Political Rights (ICCPR).

Amnesty International agrees that in-depth security checks are legitimately incorporated into the process when assessing eligibility for a protection visa, and notes that these amendments serve to move this existing element of that process from supporting regulations into the Migration Act itself. However, the amendment also confirms that, should an applicant for, or a holder of, any protection visa receive an adverse security assessment from ASIO, they are permitted no recourse to review this assessment through either the Administrative Appeals Tribunal (AAT) or the Refugee Review Tribunal (RRT).

Amnesty International, as well as other human rights groups and the Inspector General of Intelligence and Security in Australia, has consistently called for a mandated mechanism of review for refugees who receive adverse security assessments.¹ Currently, the AAT hears appeals in regard to adverse security assessments of Australian citizens and permanent residents and current holders of permanent protection visas. The proposed amendment serves to 'put beyond doubt' that any such review is not available to holders of, or applicants for, any protection visa. Amnesty International notes that this extends this denial of review to those already holding a protection visa. These individuals would currently have access to an AAT review of an adverse ASIO assessment, however under the changes, should they undergo a subsequent ASIO assessment and receive an adverse outcome; their protection visas will be revoked or cancelled with no access to any review process. Amnesty International accepts that in some cases it may not be appropriate to allow an individual to hear and review the evidence against them; however this does not preclude an independent advocate with security clearance from being appointed to hear the evidence and represent them. A form of independent scrutiny that does not compromise national security must be introduced for these cases. Amnesty International encourages the Australian Government to consider a system such as that operating in New Zealand where an independently appointed Inspector General has oversight of New Zealand Security Intelligence Service findings on refugee cases. No decisions are publicly available but the independent oversight ensures a measure of accountability and consistency which is lacking from the current Australian process.

The necessity for independent review is further emphasised given the current practice for those who are found to have a genuine claim for protection, but who receive an adverse security assessment from ASIO. These individuals are held in what is practically indefinite detention in Australia's immigration detention centres, contrary to international refugee and asylum seeker standards.² Unable to be returned to their country of origin due to their valid protection claims, current Australian policy requires that they remain in detention due to the assessment of a national security threat. Having no ability to challenge their security assessment or access the evidence under which the assessment was made, these individuals are left in what amounts to indefinite detention. In contravention with the Article 9(1) of the ICCPR, the current practice of detention is arbitrary in nature as it fails to identify whether there are suitable community based detention alternatives or less restrictive forms of detention for individuals with adverse security assessments.

In August last year, the UN Human Rights Committee (the Committee) found Australia to be in breach of its obligations under international law, committing 143 human rights violations by indefinitely detaining 46 refugees for four years, on the basis of adverse security assessments issued by ASIO. The Committee found that the indefinite detention of this group of refugees was inflicting serious psychological harm upon them, amounting to cruel, inhuman or degrading treatment under article 7 of the ICCPR, and was arbitrary contrary to article 9(1) of the ICCPR.³ Amnesty International has grave concerns that these proposed amendments serve only to deeper entrench this inhumane treatment of refugees and reiterates calls on the Australian Government to urgently provide an effective remedy, including release from detention on appropriate conditions, rehabilitation and compensation.

Of grave concern also, are the repercussions of this practice for children in immigration detention. Under Article 3 and 37b of the Convention on the Rights of the Child (the Convention), detention is a measure of last resort and for the shortest period of time. The children of any person with an adverse security assessment who is in need of protection (has invoked Australia's protection obligations) could be indefinitely detained with their parent, in breach of Australia's obligations under the Convention.

¹ See for example: Amnesty International, August 2011, Submission to the Joint Select Committee on Australia's Immigration Detention Network < <http://www.aph.gov.au/DocumentStore.ashx?id=7fd54e67-9044-4ded-ba5a-669c939daddb>>

² UNHCR Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention, 2012, Guideline 6. < <http://www.unhcr.org/505b10ee9.html>>

³ United Nations Office of the High Commissioner for Human Rights, 22 August 2013, '*Australia's detention of 46 refugees 'cruel and degrading,' UN rights experts find*' <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=13648>>

Amnesty International further seeks urgent clarification as to whether the proposed amendment to introduce a specific criterion relating to ASIO assessment in section 36 of the Migration Act will result in asylum seekers being assessed as not validly in need of protection solely for having failed the secret ASIO assessment process. Amnesty International would have serious concerns that such an outcome could lead to an increased risk of individuals being refouled. Amnesty International calls on the Government to provide assurances that this amendment will not lead to any degradation in Australia's compliance with its *non-refoulement* obligations under the Refugees or other relevant conventions.

Thank you again for the invitation to submit to this inquiry. We urge the Committee to take a human rights approach to their consideration of this proposed legislation and to make strong recommendations that recognise Australia's human rights obligations.

Yours sincerely,



Claire Mallinson
National Director