

# CHAPTER 1

## INTRODUCTION

### Referral of inquiry

1.1 The Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012 (Bill) is a private senator's bill introduced by Senator Sarah Hanson-Young on 10 October 2012.<sup>1</sup> On 11 October 2012, the Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 5 February 2013.<sup>2</sup> The reporting date was subsequently extended to 30 April 2013.<sup>3</sup>

### Purpose of the Bill

1.2 In her second reading speech, Senator Hanson-Young referred to the circumstances of individuals who have been found by Australia to be owed protection under the Refugee Convention 1951 but, due to an adverse security assessment by the Australian Security Intelligence Organisation (ASIO), are being held indefinitely in Australian immigration detention:

As it stands, a person with an [adverse security assessment] will not be released into the community by the Minister for Immigration and, in practice, they are highly unlikely to be accepted by any third country for safe resettlement. Until a recent decision of the High Court of Australia, the [adverse security assessment] could be relied on as a reason to refuse them their protection visa. The [adverse security assessment] obstructing the grant of [a] protection visa is itself unreviewable and the reasons for the negative assessment are never disclosed to the affected person.<sup>4</sup>

1.3 The Bill seeks to amend the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), the *Administrative Appeals Tribunal Act 1975* (AAT Act) and the *Migration Act 1958* (Migration Act) to:

[B]ring fairness to the law without jeopardizing the safety of the Australian community or national security. It establishes fair and accountable procedures to ensure that security assessments and related residence

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1 *Journals of the Senate*, No. 116, 10 October 2012, p. 3101.

2 *Journals of the Senate*, No. 117, 11 October 2012, pp 3117-3118.

3 *Journals of the Senate*, No. 123, 20 November 2012, pp 3324-3325; *Journals of the Senate*, No. 134, 26 February 2013, p. 3658.

4 Senator Sarah Hanson-Young, Second Reading Speech, *Senate Hansard*, 10 October 2012, p. 7853. The High Court decision referred to is the case of *Plaintiff M47/2012 v Director-General of Security & Ors* [2012] HCA 46.

decisions made by ASIO and [the] Minister for Immigration respectively are based on up-to-date, correct and appropriately tested evidence.<sup>5</sup>

### **New position of Independent Reviewer of Adverse Security Assessments**

1.4 On 16 October 2012, the then Attorney-General, the Hon Nicola Roxon MP, announced that the Australian Government was establishing the position of Independent Reviewer of Adverse Security Assessments (Independent Reviewer or Reviewer), to provide an independent review process for those assessed to be a refugee but not granted a permanent visa as a result of an ASIO adverse security assessment.<sup>6</sup>

1.5 The Terms of Reference for the Independent Reviewer set out the process involved in the review of an adverse security assessment (ASA). The Independent Reviewer will:

- Conduct an independent review of an ASA furnished to [the Department of Immigration and Citizenship (DIAC)] in relation to an eligible person, where that person has made an application to the Reviewer within 60 days of receiving notice that the person is an eligible person to seek independent review of the ASA under this process...
- Examine all of the ASIO material that was relied upon by ASIO in making the ASA, including unclassified written reasons provided by ASIO for the eligible person, as well as other relevant material, which may include submissions or representations made by the eligible person. Where a submission from an eligible person contains new information or claims, this information should be referred to ASIO for consideration before the review proceeds.
- Upon conclusion of every review, form and record in writing an opinion as to whether the assessment is an appropriate outcome based on the material ASIO relied upon (including any new material referred to ASIO) and provide such opinion to the Director-General [of Security (Director-General)], including recommendations as appropriate.
- Provide a copy of that written opinion to the Attorney-General, the Minister for Immigration and Citizenship and the Inspector-General of Intelligence and Security (IGIS).
- Advise the subject of the security assessment in writing of the outcome of the review. This will include providing a document in unclassified

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5 Senator Sarah Hanson-Young, Second Reading Speech, *Senate Hansard*, 10 October 2012, p. 7854.

6 The Hon Nicola Roxon MP, Attorney-General, *Independent Reviewer for Adverse Security Assessments*, Media Release, 16 October 2012, available at: <http://pandora.nla.gov.au/pan/132822/20130204-0704/www.attorneygeneral.gov.au/Media-releases/Pages/2012/Fourth%20Quarter/16-October-2012---Independent-Reviewer-for-Adverse-Security-Assessments.html> (accessed 11 April 2013).

form, to the extent possible without prejudicing national security as advised by the Director-General, the Reviewer's opinion, reasons and any recommendations made and the outcome of the Director-General's consideration of the opinion and recommendations.<sup>7</sup>

1.6 The Attorney-General's Department's submission notes that the Independent Reviewer's recommendation is not binding on ASIO. However:

[T]he Terms of Reference require a copy of the Reviewer's opinion to be provided to the Attorney-General, the Minister for Immigration and Citizenship and the Inspector-General of Intelligence and Security (IGIS). This reporting requirement ensures that ASIO is accountable to relevant Ministers and the IGIS for any subsequent decision as to whether or not to accept the Reviewer's findings. The Reviewer is also required to maintain statistics for reporting purposes, which will be included in ASIO's Annual Report to Parliament.<sup>8</sup>

1.7 During the inquiry, an officer from the Attorney-General's Department provided the committee with the following update on the Independent Reviewer's work:

Our understanding is that there are 55 eligible applicants at this stage. [The Independent Reviewer] has written to people who are eligible for review notifying them of their entitlement to seek review and attaching the relevant paperwork. In fact, all the eligible people have applied for independent review. The Independent Reviewer has received 18 unclassified summaries of reasons from ASIO so far. All of these have been distributed to eligible applicants and their legal representatives. The Reviewer has received written submissions in respect of two of the applicants to date. There are two other submissions expected, although they are overdue. [The Reviewer] is giving some flexibility there. The Reviewer expects to hear oral submissions for two applicants from whom written submissions have been received sometime in the week beginning 15 April [2013].<sup>9</sup>

1.8 With respect to how the role of the Independent Reviewer relates to the measures in the Bill, the Attorney-General's Department has noted that the Bill provides a 'different mechanism' to achieve a review process for persons who are owed protection, but who are the subject of an adverse security assessment.<sup>10</sup>

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7 'Independent Review function – Terms of Reference', Attorney-General's Department, *Submission 15*, pp 4-5.

8 *Submission 15*, p. 2.

9 Mr Geoff McDonald, Attorney-General's Department, *Committee Hansard*, 22 March 2013, p. 19.

10 *Submission 15*, p. 1.

## **Conduct of the inquiry**

1.9 The committee advertised the inquiry in *The Australian* on 24 October 2012. Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website at [www.aph.gov.au/senate/legalcon](http://www.aph.gov.au/senate/legalcon). The committee also wrote to over 50 organisations and individuals, inviting submissions by 14 December 2012. Submissions continued to be accepted after that date.

1.10 The committee received 20 submissions, which are listed at Appendix 1. All submissions were published on the committee's website.

1.11 The committee held a public hearing on 22 March 2013 at Parliament House in Canberra. A list of witnesses who appeared at the hearing is at Appendix 2, and the *Hansard* transcript is available through the committee's website.

## **Acknowledgement**

1.12 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

## **Note on references**

1.13 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.