



Australian Federation of Graduate Women Inc.

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The Honourable Mark Dreyfus QC MP
Attorney-General for Australia
PO Box 6022
Parliament House
CANBERRA ACT 2600

The Hon Brendan O'Connor MP
Minister for Immigration and Citizenship
Parliament House
M1/24 CANBERRA ACT 2600

Copy to: The Hon Julia Gillard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

1 June 2013

Dear Attorney-General Dreyfus and Minister O'Connor

ASIO ADVERSE SECURITY ASSESSMENTS FOR REFUGEES AND ASYLUM SEEKERS

We write on behalf of the Australian Federation of Graduate Women (**AFGW**). AFGW is a federation of Australian state and territory organisations which works to advance the wellbeing of women and girls through initiatives in education. Since its inception in 1922, AFGW has held a commitment towards working to secure an environment for women and children that is free from domestic violence and political oppression. AFGW notes that in November 2012, it resolved at its 35th triennial conference, as follows:

“The 35th Conference of AFGW resolves to request the Federal Attorney General to review the legal status of those asylum seekers who have been given refugee status but who are detained, indefinitely, because they have failed to receive security clearance from ASIO.”

AFGW is committed to achieving its policy resolutions and writes this letter on this basis.

ASIO's decision of 22 May 2013 was welcome; but concern still remains

AFGW welcomes the decision of the Australian Security and Intelligence Organisation (**ASIO**) on 22 May 2013 to overturn an adverse security assessment in respect of asylum seeker Manokala Jenaddarsan, and her son Ragavan, who had been held in detention since 2011. Nevertheless, AFGW expresses its concern with regards to the remaining 54 asylum seekers who remain in detention without knowing the reasons for their detention, and without recourse to review or challenge, as a result of receiving adverse ASIO security assessments.

The current regime is inconsistent with accepted notions of fairness, justice and the rule of law

AFGW appreciates that the issues of refugees, asylum seekers and Australia's national security are highly complex and contentious and subject to broad public discourse. Having said this, however, it is clear that Australia's existing policies – including, in particular, those which relate to the treatment of asylum seekers and refugees who have received an adverse



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ASIO security assessment - are contrary to accepted principles of fairness, justice and the rule of law. AFGW is aware that parliament is abreast of the unfair nature of ASIO's current policies and cites, for instance, the recommendation on 30 April 2013 by the Senate Committee in its report on the Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012 in April 2013, that:

“the Australian Government amend the Australian Security Intelligence Organisation Act 1979 to provide refugees who have received an adverse security assessment from the Australian Security Intelligence Organisation with a right to merits review of that assessment in the Security Appeals Division of the Administrative Appeals Tribunal. In developing this legislation, the committee recommends that the Australian Government give consideration to the concerns raised in evidence to this inquiry as to how best to balance the applicant's right to a fair hearing with maintaining national security.”

As the Attorney-General and Minister would no doubt be aware, the above recommendation was not made in isolation and was in fact made to reaffirm a previous recommendation made in March 2012 by a Parliamentary Select Committee following its report on Australia's Immigration Detention Network, Community Detention and Bridging Visas.

The Senate Committee's recommendation also reflects the numerous expert submissions and calls by civil society over the past 12 or so years (i.e., when extreme measures were taken to amend the *ASIO Act 1979* (Cth) following 9/11) that asylum seekers and refugees be given a statutory right to have any adverse assessment and detention reviewed by the Administrative Appeals Tribunal (AAT).¹

Changes to legislation, policies and procedures are needed to ensure procedural fairness

AFGW strongly endorses the Senate Committee's recommendation and civil society's calls to permit the administrative review of ASIO adverse assessments. It urges the Government to respond in the long and the short term to ensure that procedural fairness is afforded to all who are subject to Australia's administrative and judicial jurisdiction. In saying this, AFGW notes that there should be no difference between the treatment of Australians who are subject to adverse ASIO security assessments (who are given the opportunity for administrative review), and asylum seekers and refugees (who are not afforded an opportunity for administrative review). Could it really be said that affording refugees their time before the tribunal or in a court to test the validity of an ASIO adverse security assessment poses a threat to national security?² On what basis does the Government form this view?

As to the Government's ability to implement short-term changes, AFGW notes that although the *ASIO Act 1979* (Cth) excludes the application of procedural fairness protections of that Act to persons who are not Australian citizens, special purpose visa holders or permanent residents (including the provision of reasons for detention and right to merits review before the AAT), it does not prohibit the giving of reasons should ASIO wish to provide them.³ It is therefore evident that, pragmatically speaking, more immediate inroads could be made to amend ASIO's internal policies and procedures which relate to the discretion to provide detailed reasons for adverse security assessments to ensure procedural fairness, prior to amending the ASIO Act.

¹ Consider, for example, the recent National ASIO Campaign launched by the NSW Council for Civil Liberties and evidence and submissions provided by the Australian Human Rights Commission.

² AFGW notes that similar rhetorical questions were posed in separate open letters sent to the Hon Julia Gillard MP and Mr Tony Abbott MP by the National ASIO Campaign this year.

³ See, for example, Ben Saul, “Dark Justice: Australia's Indefinite Detention of Refugees on Security Grounds Under International Human Rights Law” *Melbourne Journal of International Law*, Vol 13, 2012.



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Having regard to Australia's long-time ratification of the International Covenant on Civil and Political Rights (ICCPR)⁴, its proud history of ensuring a "fair go for all", and the Government's recent acts of recognition of the unfair nature of Australia's current ASIO adverse assessment procedures⁵, AFGW considers there is no better a time to enact the amendments necessary to ensure the minimum level of protection needed to afford procedural fairness to all who are subject to Australia's legal system.

Yours sincerely

Dr Madeleine Laming
President
Australian Federation of University Women

Lily Tsen
Convener Peace, Human Security and Human Rights
Australian Federation of Graduate Women

⁴ AFGW reminds the Government, in particular, of Article 9(2) of the ICCPR which requires that anyone arrested "be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him", and Article 9(4) of the ICCPR which requires States to guarantee substantive judicial review of the necessity of detention.

⁵ AFGW notes, for instance, in the addition to the recent Senate Committee report and recommendations, the establishment in December 2012 of the office for "Independent Reviewer of Adverse Security Assessments" and appointment of Ms Margaret Stone as its inaugural (albeit, non-independent) reviewer. Although AFGW considers this to be a positive step towards ensuring transparency and accountability, it is not without significant deficiencies. For instance, whilst it is intended that Ms Stone will act independently, her office is not independent and there is no statutory basis for the office's existence. Further, the most Ms Stone is empowered to do is to make recommendations to the Director-General of ASIO. (AFGW notes that the same reservations were expressed in an open letter to Prime Minister Gillard and Mr Abbott as Leader of the Opposition Party sent by the National ASIO Campaign earlier this year).