

## Independent Review Function – Terms of Reference

### Role

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The role of the Independent Reviewer (Reviewer) is to conduct an independent advisory review of Australian Security Intelligence Organisation (ASIO) adverse security assessments (ASAs) furnished to the Department of Home Affairs (Home Affairs) in relation to those persons (eligible persons) who:

- remain in immigration detention, and
- have been found by Home Affairs to be owed protection obligations under international law, and
- are ineligible for a permanent protection visa, or have had their permanent protection visa cancelled, because they are the subject of an ASA.

The Reviewer is required to examine all material relied upon by ASIO in making the security assessment, provide an opinion to the Director-General of Security (Director-General) on whether the assessment is an appropriate outcome based on the material ASIO relied upon and make recommendations accordingly, for the Director-General's consideration.

The Reviewer will also conduct a periodic review of ASAs on eligible persons every 12 months.

### Functions

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#### Primary review function

The Reviewer's primary function will be to conduct a review of ASAs furnished to Home Affairs in relation to eligible persons who request the Reviewer to undertake a review in accordance with this process. In carrying out this function the Reviewer will:

- Conduct an independent review of an ASA furnished to Home Affairs 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.
  - If an application is received after 60 days, the Reviewer may use his discretion in deciding whether to conduct a review.
- 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 this opinion to the Director-General, including recommendations as appropriate.
- Provide a copy of that written opinion to the Attorney-General, the Minister Home Affairs

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 form, to the extent possible without prejudicing national security<sup>1</sup> 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.

### **Periodic review function**

The Reviewer will also conduct a periodic review every 12 months of ASAs in relation to eligible persons from the time the Reviewer completed an independent review of an ASA at the request of the eligible person.

In carrying out this function the Reviewer will:

- Obtain ASIO security advice on whether ASIO holdings contain any new information relevant to the eligible person that was not available when the ASA was furnished to Home Affairs. Where ASIO identifies new information, the Reviewer will obtain ASIO advice on the relevance of that information to the ASA.
- Where ASIO advises the Reviewer that there is new information that is relevant to the ASA, ASIO will reconsider the ASA in light of the new information and advise the Reviewer of the outcome of the reconsideration.
- The Reviewer will receive a report from ASIO on the conduct and conclusions of ASIO's reconsideration of the ASA in light of the new information. The Reviewer will maintain discretion to request further information if the Reviewer thinks appropriate.
- The Reviewer will form and record in writing an opinion as to the status of the ASA and where relevant, whether the conclusion ASIO made on any new material was an appropriate outcome, and provide such opinion to the Director-General, including recommendations as appropriate.

### **Requirements in performing functions**

- The Reviewer will apply the Protective Security Policy Framework (PSPF) at all times during the review process.
- Throughout the review process, the Reviewer will obtain and adhere to ASIO's security advice on the protection of ASIO's intelligence capability when the Reviewer is communicating, either orally or in writing, within the public domain including directly with the eligible person, when carrying out his function.<sup>2</sup>
- In forming an opinion the Reviewer will take into account ASIO's role and statutory functions including ASIO's mission to identify and investigate threats to security and provide advice to protect Australia, its people and its interests and that, therefore, ASIO's security

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<sup>1</sup> Throughout this document the word 'security' is a reference to 'security' as defined in section 4 of the *ASIO Act 1979*

<sup>2</sup> ASIO will provide security advice on the intended content of external communications within the public domain including directly with an eligible person, to ensure those communications do not prejudice security through the disclosure of ASIO's capabilities including the identity of its officers, sources, operational methodologies, operations, investigations and liaison partners.

assessments are anticipatory in nature, enabling preventive action to be taken.

- The Reviewer will take into account that security assessments are made in the interests of security and any relevant legislative test ASIO was required to consider in making the security assessment.
- Independent advisory review is available to eligible persons. Eligible persons will be notified of their eligibility to request a review under this process.
- The Reviewer will seek to complete reviews within **three months** from the date of request, if practicable.
- The Reviewer will work with ASIO, the Home Affairs and AGD to ensure appropriate materials are provided to eligible persons when they are notified of an ASA, outlining their rights to seek review. The materials will use simple language and be translated into foreign languages.

### **Reporting**

The Reviewer is required to prepare and provide statistics annually for inclusion in ASIO's unclassified report on the following:

- The number of ASAs reviewed during the preceding financial year;
- Of those ASAs, the number of assessments where the Reviewer formed the opinion that the assessment was/was not an appropriate outcome based on the material relied upon by ASIO and the number of times the Reviewer recommended that the Director-General review the security assessment;
- The number of occasions where the Director-General has/has not accepted and actioned the recommendations of the Reviewer;
- The number, if any, of cases where the outcome of any reassessment was different to the original ASA; and
- The number of periodic reviews conducted by the Reviewer in the preceding financial year.

### **Engagement with ASIO**

- When an eligible person makes a request for independent review, ASIO will provide an unclassified written summary of reasons for the decision to issue an ASA to the Reviewer on the basis that it will be provided to the eligible person. The reasons will include information that can be provided to the eligible person to the extent able without prejudicing the interests of security.
- ASIO will endeavour to provide the Reviewer with the necessary support and assistance to enable him to carry out the function independently together with the use of secure ASIO premises. This support will include the initial provision of all information relied upon by ASIO in making the assessment for every review commenced under this process at the request of an eligible person.

- Where it appears to the Reviewer that he or she may arrive at an opinion that it was not an appropriate outcome that ASIO furnished the ASA on the material ASIO relied upon, including where that opinion is based upon information that was not available to ASIO when the security assessment was furnished to Home Affairs, the Reviewer will provide the Director-General with a reasonable opportunity to comment, before finalising the opinion.