MIGRATION INSTITUTE OF AUSTRALIA

7 August 2009

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

Dear Mr Hallahan

Inquiry into the Migration Amendment (Immigration Detention Reform) Bill 2009

The Migration Institute of Australia (MIA) welcomes the opportunity to comment on the provisions of the *Migration Amendment (Immigration Detention Reform) Bill 2009* (the Bill). The MIA views the changes as a positive step, however obstacles to a fairer and less punitive detention policy still exist within the current proposal.

The MIA's key recommendations are numbered throughout.

About the Migration Institute of Australia:

The MIA is the peak representative body for the Australian migration advice profession and advances the interests of Registered Migration Agent (RMA) members.

Registered Migration Agents provide professional services to applicants and sponsors for temporary visas and permanent migration. RMAs facilitate the process of migration by advising people on visa applications and presenting their cases in the strongest way.

We provide the most extensive Continuing Professional Development (CPD) throughout Australia, including CPD programs for lawyers in the field of Migration Practice.

This inquiry and its terms of reference

We support the proposals adopted in the *New Directions in Detention Policy* announcement on 29 July 2008. However the MIA views the proposed legislation as inadequate in addressing mandatory detention concerns raised by international human rights organisations, judicial and legal organisations and organisations that receive funding through the Immigration Advice and Application Assistance Scheme (IAAAS).

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Proposed Legislation

1. **Ss189(1), (1A) AND (1C)**

The MIA welcomes the proposal that detention will only be mandatory when certain criteria have been satisfied. The amendments to section 189 provide that mandatory detention will occur when an officer knows or reasonably suspects that a person is an unlawful non-citizen and where subsection 189(1)(b)(i)-(v) can be satisfied. In this subsection it is proposed that mandatory detention be considered if a person "poses an unacceptable risk to the Australian community" as defined by the proposed subsection 189(1A). The MIA believes this important provision should be clearly defined in the *Migration Act.* Amendments by subordinate legislation, like the Migration Regulations, should be prevented.

Under the proposed subsection 189(1C) the MIA believes that a "broad discretion" should not exist, allowing an officer to detain someone when that person does not meet ss189(1) criteria. The criteria for the officers discretionary powers are not defined therefore potentially putting vulnerable people at risk.

Recommendation 1

The MIA believes that a prescriptive approach is necessary in detailing the types of circumstances that the officer must take into account when exercising their discretion in deciding to detain someone.

2. **Subsection 189(1B)**

Under the current proposal subsection 189(1B), identity, health and security checks are required to resolve the person's immigration status. The *Migration Act* makes no reference to time limits on the period for the Department to complete these checks.

Recommendation 2

The MIA believes that the Department of Immigration complete cases within 3 months. This will allow DIAC time to initiate and follow up health and security checks.

If the Department does not complete the checks within that time period, the Department should make an application to the relevant legal jurisdiction for an extension of time. This gives the courts the power to grant a further order for the detention to continue and provide an opportunity for further scrutiny on the Department's processes.

3. **Ss4AAA(1)(b)**

The MIA believes that this proposed subsection is contrary to the spirit and intention articulated by the Commonwealth Government in the *New Directions in Detention Policy* announcement in 2008. The current proposal views detention as a primary measure to use in determining a person's immigration status. The MIA believes that short-term detention should instead be used solely for the purpose of determining a person's identity, health check and security risk if that person represents a possible threat to Australian security.

Recommendation 3

The proposed subsection 4AAA(1)(b) be abandoned.

4. Section 194A – Authorised officer may grant a temporary community access permission

The MIA welcomes the introduction of temporary community access permissions which allow detainees periods of absence from detention for specified purposes. The MIA believes the Department should specify what those purposes are and how a decision is made for permission to be granted. The section implies that a temporary community access decision is non-reviewable. The section also states that officers do not have to make a decision whether or not to grant permission.

Recommendation 4

As detention is the most punitive measure, the MIA believes a mechanism for review of temporary community access decisions should exist. There should also be specific direction on how detainees can access review.

Conclusion

The MIA supports the introduction of the Bill and changes to mandatory detention policy. Addressing the issue of children in detention and shortening the time a person spends in detention is a welcome development.

However for the reasons outlined above further amendments are required to ensure that the proposed immigration detention policy is determined according to the spirit of the 2008 announcement and complies with accepted international human rights standards.

The MIA advocates for greater funding of the non commercial sector, as well as IAAAS providers and other organisations which assist detainees. This would ensure greater availability of professional migration advice to vulnerable applicants. Inadequate funding for this sector impacts negatively on detainee's welfare and legal rights.

Yours sincerely

Maurene Horder
Chief Executive Officer
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