

To: Members of the Senate Standing Committee on Legal and Constitutional Affairs
From: Rosemary Nairn
Re: Immigration Detention Reform Bill

The law which applies in Australia should extend to all asylum seekers on Christmas Island irrespective of when they arrived and where they were picked up.

Secondly The Bill should provide as in Article 9(4) of the ICCPR that detained people should be entitled to appeal to the courts to decide whether their detention is 'lawful'. Because of the intention of the Migration Act 1958 lawfulness of detention is determined by their citizenship or visa status not whether the detention is reasonable. Basically and fundamentally a person detained should be entitled to appeal immediately to a court for an order which would have to justify the detention. Certainly an asylum seeker should not be detained for more than 30 days unless on an application by DIAC to the court arguing that there are grounds to justify detention for a specific period. This must be the cornerstone of reform. These matters have already been voiced by Petro Georgiou MP. Senator Alan Eggleston and Senator Sarah Hanson in their minority report to the Joint Standing Committee on Migration, Inquiry into Immigration Detention, December 2008. 571/2008.

Thirdly not for profit lawyers should have access to their clients on Christmas Island. To make this a reality their travel costs should be reimbursed by the Immigration Department. Asylum seekers need to be housed within Australia for the limited period required to check identification and health status and not thousands of miles away necessitating huge travel expenses in order for them to exercise their rights.

Fourthly while Christmas Island is being used in this way, after checks have been carried out and the person is cleared of health and security checks they should be granted a bridging visa and sent off to the Australian mainland where they have a chance to maintain themselves whilst waiting the outcome of their application.

Fifthly review of a person who is detained for a period must take place after three months and thereafter on a monthly basis. This should occur by means of the Courts and not left in the hands of administrators. This fits in with the Ministers commitment that the Department will have to justify any decision to detain and not presume detention.

I appreciate your consideration of this submission.

Rosemary Nairn
private individual
30/7/09