

Committee Secretary
Senate Legal and Constitutional Committee
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Dear Sir/Madam

I am writing regarding the inquiry into *Migration Amendment (Immigration Detention Reform) Bill 2009*.

The NSW Commission for Children and Young People ('the Commission') promotes the safety, welfare and well-being of children and young people in NSW.

When the Commission spoke with children in 2001 about their immigration detention experiences it was clear that Australia was not meeting its obligations under the United Nations Convention on the Rights of the Child ('the Convention').

The reforms that have since been made to immigration detention, particularly the commitment not to place children in Immigration Detention Centres and the introduction of community detention for families and other vulnerable detainees have improved our compliance with our obligations under the Convention.

The *Migration Amendment (Immigration Detention Reform) Bill 2009* is an important part of the ongoing process of policy and legislative reform to improve our response to these vulnerable children and young people. The amendments proposed are consistent with Australia's obligations under the Convention to consider the best interests of children as the paramount consideration in all decisions of the state. In making amendments to this Act I recommend the Committee consider all of the Articles under the Convention.

I welcome the proposed amendment that strengthens the existing principle in section 4AA of the Act that provides that detention of a minor is a last resort, and prohibits the detention of minors in detention centres.

The direction that officers consider the best interests of minors as the paramount consideration when determining where the minor is to be detained is important. I have some concerns about possible conflict of interest in the dual role for an officer charged with decision making and advocating for a child's best interest and would like the Committee to consider the merits of separating out these responsibilities.

The principle of best interests needs to be supported by changes to policy and practice that secure rights to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27, the Convention).

It is important that Australia's commitments to children and young people in legislation express our values as a humane and caring society as well as fulfilling our

international obligations. With this in mind I appreciate the opportunity to comment on this and future legislative amendments.

Yours sincerely

Gillian Calvert

A/Commissioner

6 August 2009

The Commission for Children and Young People

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