

31 July 2009

Committee Secretary
Senate Legal and Constitutional Committee
Email to: legcon.sen@aph.gov.au

Dear Committee Secretary,

Re: Submission to the Inquiry into *Migration Amendment (Immigration Detention Reform) Bill 2009 (Detention Bill)*

Community Legal Centres NSW Inc (**CLCNSW**) is the peak body for 39 community legal centres across NSW. Our members provide a variety of free legal services to disadvantaged clients and communities across the State including legal advice, casework, referral, community legal education, resources and law reform activities. Some of our member centres work exclusively to assist clients with immigration and refugee matters, namely the Immigration Advice and Rights Centre, and the Refugee Advice and Rights Centre. Other community legal centres also provide advice or assistance to people affected by the immigration system.

We endorse the detailed submission which will be made to this inquiry by the Immigration Advice and Rights Centre, and the Refugee Advice and Rights Centre.

While we remain fundamentally opposed to the policy of mandatory detention, the principles and measures introduced by the Detention Bill are a step in the right direction towards a more humane immigration system in Australia. We welcome the attempt to incorporate into legislation the principles of detention as a last resort, and for the shortest possible time. We also welcome the provisions which prohibit the detention of minors in immigration detention centres.

However, as detailed in the submissions by IARC and RACS, in a number of regards, the provisions in the Detention Bill are inadequate to give substance to the principle of detention as a last resort, and for the shortest possible time.

In addition, in order to protect the best interests of children affected by the detention regime, the legislation should provide a clear mechanism for parents or guardians to remain together with their children, who are accommodated in alternative forms of detention.

Without reiterating the reasoning provided in the IARC / RACS submission, we state our support for the recommendations in that submission, namely:

- **Recommendation 1** – Relevant draft regulations should be released for comment prior to commencement.
- **Recommendation 2** – Clear and publicly available guidelines must be developed in relation to the central principles and concepts of the Detention Bill.
- **Recommendation 3** – Section 4AAA(1) should be amended to state that a person may be detained for the purpose of resolving their immigration status, where necessary to do so.
- **Recommendation 4** – The Detention Bill should be amended to state that the best interests of the child should be a primary consideration in the placement of the child’s immediate family as well as the placement of the child.
- **Recommendation 5** – Section 4AA(4) should be amended to state that the best interests of the child should be a primary consideration in the decision about where and how the child should be detained.
- **Recommendation 6** – A time limit should be placed on the detention of a person for health, security and identity checks (e.g. 90 days) unless there is evidence to suggest that the person poses an unacceptable risk to the Australian community.
- **Recommendation 7** – Mandatory detention should not apply to persons who have had their visa cancelled under section 501.
- **Recommendation 8** – The Detention Bill should be amended to include the right of judicial review for persons detained longer than a specified period of time.
- **Recommendation 9** – Regulations introducing new bridging visa provisions should ensure that where a person is released from detention on a bridging visa, that bridging visa provides work rights.
- **Recommendation 10** – Where a request for a TCAP is refused, written reasons for the refusal should be provided and an internal appeal process made available.

We thank the Senate Legal and Constitutional Committee for this opportunity to comment.

Sincerely,

Roxana Zulfacar
Advocacy & Human Rights Officer