

REFUGEE ADVICE + CASEWORK SERVICE (AUST) INC.



Ms Julie Dennett
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Senate Legal and Constitutional Committees
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By email

Dear Ms Dennett,

Inquiry into Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010

We thank you for the opportunity to provide a submission to this review.

1. Refugee Advice and Casework Service (Australia) Inc. (RACS)

RACS, the oldest Community Legal Centre specialising in providing advice to asylum seekers, was originally set up in NSW in 1987 to provide a legal service to meet the specific needs of asylum seekers.

A not-for-profit incorporated association, RACS relies primarily on income through the Immigration Advice and Application Assistance Scheme (IAAAS) administered by the Department of Immigration and Citizenship (DIAC), donations from the community, an extensive volunteer network and a Management Committee.

RACS' principle aims may be summarised as follows:

- to provide a free, expert legal service for individuals seeking asylum in Australia;
- to provide referral for counselling and assistance on related welfare issues such as accommodation, social security, employment, psychological support, language training and education;
- to provide a high standard of community education about refugee law, policy and procedure;

- to provide training sessions, workshops and seminars on refugee law, policy and procedure to legal and welfare agencies and individuals involved in advising and assisting refugees;
- to establish a resource base of current information and documentation necessary to support claims, for use by RACS, community organisations and lawyers assisting refugee claimants;
- to participate in the development of refugee policy in Australia as it relates to the rights of those seeking asylum in this country; and
- to initiate and promote reform in the area of refugee law, policy and procedures.

At a broader level, RACS aims to promote the issues asylum seekers face by raising public awareness and to advocate for a refugee determination process which both protects and promotes the rights of asylum seekers in the context of Australia's international obligations.

2. Background

RACS works with a diverse caseload of asylum seekers in the Australia. Traditionally, the majority of our applicants have been based in the Australian community. Recently, the majority of RACS' clients have been detained as part of the Australian government's policy of mandatory detention. On a daily basis, RACS caseworkers are in contact with asylum seekers detained in the numerous immigration detention centres throughout Australia, including Christmas Island, Scherger, Weipa, Curtin, Villawood and Leonora. The experience of RACS caseworkers is that continued detention of asylum seekers has profound detrimental effect on their psychological health. The uncertainty of the period of their detention compounds pre-existing vulnerabilities caused by past trauma and separation from family and community members and the difficulties associated with living in a foreign country.

The impact of detention is apparent in the tone and demeanour of communication with clients. A number of our clients have developed serious psychological conditions while they have been in detention. This contrasts substantially with the condition of clients allowed to remain in the community. Given that the vast majority of those detained are ultimately recognised as refugees, the impact of detention no doubt ultimately creates a substantial burden on the Australian community in terms of resettlement, integration and medical costs, when they are ultimately recognised as refugees.

RACS is also concerned that the psychological health of many of our clients impacts their ability to articulate their protection claims and engage with the process of protection obligation assessment undertaken by the Department, and as such it sometimes impacts the final determination of their asylum claim. For example, psychological illness often impacts memory and the clarity with which clients express their thoughts. This can sometimes result in slight inconsistencies or variations in their evidence, which is frequently used as a ground for reaching a negative decision by Department decision-makers because it is said to undermine the credibility of their claims. However, in some cases, our experience has been that prolonged psychological distress, rather than lack of credibility, is the true

explanation. Some of our clients have reached states of such serious mental illness, frequently at the appeal and review stage of their protection determination, that we have professional concerns about their ability to give instructions and to understand their situation. This can clearly impact the progress and course of their protection determination process.

RACS would also emphasise that the very concept of mandatory detention of non-criminals is anathema to core principles of Australia's legal system and human rights principles broadly. The mandatory detention of asylum seekers deemed to be unlawful non-citizens represents a grossly unfair policy which impacts the most vulnerable immigrant groups in the most devastating way and cannot be reconciled with the fact that applicants in the community who may have arrived in Australia on false documents or even bypassed immigration clearance within the migration zone are not detained. There are effectively two dramatically different classes of asylum seekers in Australia, a distinction which is based on mode of arrival and violates the principle of equal protection before the law.

For the above reasons, we strongly support the *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010*. In particular, RACS strongly supports the cessation of mandatory detention and introduction of maximum detention periods proposed by the Bill.

We appreciate that the Australian government has legitimate concerns regarding establishing the identity of asylum seekers and assessing their health and security risks to the Australian community. We believe that the Bill strikes an appropriate balance between the interests of the Australian government and community and those of individual asylum seekers. We note that the Australian government is able to conduct security checks on thousands of asylum seeker applicants each year while they are in the community and cannot see why this approach is not universally adopted for asylum seekers.

We note that the Australian delegation made much of its policy that detention is a last resort following the Palmer report. However, for the majority of asylum seekers in Australia, detention is the first and only resort clearly rendering Australia's claims that detention is a last resort a blatant lie, which seriously harms the thousands of people that this lie betrays.

Please do not hesitate to contact Sally Johnston on _____ if you require any further information or assistance with any aspect of this submission.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

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