

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

To

Ms Julie Dennett
The Senate Standing Committee on Legal and Constitutional Affairs

Society Contact

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The Law Society of Western Australia

Date

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The Law Society of Western Australia's submission to The Senate Standing Committee on Legal and Constitutional Affairs on its Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010

The Law Society of Western Australia is opposed in principle to the current policy of the Government which results in claimants for refugee status in Australia being subjected to the possibility of indefinite detention. It is contrary to Australia's international obligations under the UDHR, ICCPR, Convention Relating to the Status of Refugees, and CAT.

The Society supports the adoption of the principles set out in the proposed new section 4AAA which declares that indefinite or arbitrary detention is not acceptable and the repeal of provisions. It is not acceptable as a matter of international law.

The Society supports the provisions in proposed new sections 195B and 195C for judicial supervision of detention exceeding 30 days as a measure designed to ameliorate the possibility of indefinite or arbitrary detention. The Society also supports the repeal of provisions relating to indefinite detention proposed in Part 5 of this Bill.

The Society supports the proposed repeal of provisions enabling the processing of refugees offshore. The system of offshore processing of refugees is fundamentally inconsistent with Australia's international law obligations to provide asylum to refugees.

The Society is opposed to the executive or the legislative arms of government denying to citizens the right to resort to the Courts to seek review of executive decisions or conduct. Consequently, the Society supports the restoration rights of procedural fairness which is proposed in Part 4 of this Bill, and supports the repeal of provisions relating to privative clause decisions proposed in Schedule 2 of this Bill.

Absent a change of Government Policy, abandoning detention of claimants for refugee status, the Council supports the Bill as providing a mechanism of appropriate judicial supervision of the detention process

Hylton Quail
PRESIDENT