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Federation of Ethnic Communities' Councils of Australia

Committee Secretary
Joint Standing Committee on Migration
Department of House of Representatives
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FECCA submission to the Parliamentary Inquiry into Immigration Detention in Australia

FECCA congratulates the *Federal Parliament Joint Standing Committee on Migration* for initiating the Inquiry into Immigration Detention in Australia. The continued mandatory detention of refugees and asylum seekers in Australia deserves careful inquiry given the continued human rights abuses that are occurring under this system.

FECCA is the national peak body representing Australians from culturally and linguistically diverse (CALD) backgrounds. FECCA advocates on behalf of CALD communities to governments and the broader community. Our charter includes promoting access and equity, promoting community harmony, championing human rights and promoting cultural diversity as central to the social, economic and cultural fabric of Australia.

FECCA has drawn on recent consultations with CALD community members and service providers across Australia in addition to receiving input from its members for the submission.

Please find our comments attached. We would welcome the opportunity to discuss or clarify any of the issues raised in this submission. Please do not hesitate to contact FECCA on 02 6282 5755 for further information.

Yours Sincerely

Voula Messimeri
FECCA Chair

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Introduction

1. FECCA welcomes the inquiry into immigration detention in Australia. While recent reforms to immigration detention have been important, the continued evidence of suffering and deprivation by asylum seekers in detention indicates the need for further reform.
2. The introduction of mandatory detention in 1998 for asylum seekers has caused severe suffering and hardship to many asylum seekers and has drawn widespread criticism of Australia's unreasonably harsh method of dealing with asylum seekers, both at the domestic and international level.
3. FECCA believes that the detention of asylum seekers should only be used as a last resort for a limited period and only for individual adult asylum seekers whose health, character or identity may be in question. Once the health, character and identity status of individuals have been determined asylum seekers should be released into the community under community based orders while their cases are examined.
4. The detention of asylum seekers contravenes the basic principles of freedom and human rights on which our society is founded.
5. As a signatory to the 1951 Refugee Convention (CSR 1951), the Universal Declaration of Human Rights (UNDHR 1948), and the International Covenant on Civil and Political Rights (ICCPR 1966), Australia has an obligation to respect the human rights of people arriving on its shores and claiming asylum. At present many of those basic legal rights have been denied to many asylum seekers.
6. Australia continues to detain some asylum seekers for extended periods. The continuation of the prolonged and indefinite detention of asylum seekers would be in breach of Australia's international human rights obligations.

Recent changes

7. FECCA welcomes the recent changes undertaken by the Commonwealth Government regarding dismantling the offshore processing of asylum seekers in Nauru—the so called 'Pacific Solution'—and the abolition of Temporary Protection Visas (TPV's). We also welcome earlier reforms regarding children in detention.
8. However, the general policy of mandatory detention remains in place and the government continues the former government's excision policy

which removes basic legal protection for asylum seekers in excised sections of Australia, such as Christmas Island.

9. FECCA believes asylum seekers processed at Christmas Island should be afforded the same legal rights as those processed on mainland Australia.
10. The asylum seeker visa system should be further streamlined to ensure that asylum seekers can access further government support, and also have the ability to work.

Detention:

11. Reports by the Commonwealth Ombudsman (2001) and the Human Rights and Equal Opportunity Commission (HREOC) have shown that long-term detention leads to frustration, despondency and depression and can result in drastic action like self harm being taken by the detainees.
12. The detention of individuals over long periods of time has been found to cause increasing distress, severe depression, despair, hopelessness, paranoia, chronic rage, persecutory delusions and persistent self-harming behaviour.
13. The current arrangement where individuals spend long periods in detention is not cost effective. For instance some detainees who are found to be genuine refugees may need to access expensive psychiatric treatment after spending several difficult years in detention. This shows that mandatory detention has an economic as well as a human cost.
14. FECCA believes that Australia should observe its International obligations to which it's a signatory to regarding its treatment of asylum seekers.
15. FECCA believes that detention should only be used for a limited time:
 - *To allow the relevant authorities to process the asylum seekers identity, health and security checks on arrival;*
 - *For a person being returned to their country of origin or another country when their claims are unsuccessful and*
 - *If in the high risk cases supervision in the community is inadequate or raising the possibility of a person absconding.*
16. Detainees should at all times be able to challenge the lawfulness of their detention in the courts or by administrative means and have full access to our legal system.
17. Detainees should also have access to adequate translation and interpreting services.

18. The Government should also immediately end billing and any outstanding debts for detention where asylum seekers have been found to be refugees and granted residency. This is inhumane, unjust and acts as a further significant barrier to the successful settlement of refugees who have spent time unnecessarily in detention.

Detention Centres

19. Detention centres should only be used as a last resort to check the health, identity and security status of adult asylum seekers who do not have adequate health or identity credentials for a period not exceeding several months.
20. All Australian detention centres should be close to metropolitan areas to allow detainees to receive social, community and legal support during their detention.
21. Detention centres in remote areas should be closed as they have been shown to be inhumane and their remote locations hinder proper public scrutiny.
22. Public scrutiny of detention centres should be permitted to allow transparency in their operations. A large number of volunteer independent community visitors should be appointed by the Minister to conduct spot checks on detention centres and interview detainees on the conditions of their stay and provide publicly available reports to the Minister on conditions in detention centres.
23. Disabled people and people with mental health illnesses should not be housed in the same facilities as other detainees as they require specialised treatment and their conditions may be worsened by general detention.

Visas

24. FECCA does not support the disparity in conditions and rights for various asylum seekers which may be caused by different types of visas.
25. For instance visa conditions that deny asylum seekers the right to work, to access Medicare or income support, and makes asylum seekers rely entirely on charity should not be supported.
26. With such visa classes, community organisations, charities and individuals are often forced to perform social welfare functions which should be funded by the Commonwealth Government.

27. FECCA supports the Refugee Council of Australia's recommendation in their February 2007 report that asylum seekers living in the community be given the right to work and access Medicare for the duration of the refugee determination process. (*Australia's Refugee and Special Humanitarian Program: Current issues and future directions (2007-08)*)

Alternative settlement

28. While FECCA acknowledges the need by the Federal Government to establish the identities of asylum seekers to conduct criminal and health checks and determine if their cases are genuine, we strongly believe that there is also need for this process to be humane and performed in the shortest possible time.
29. The government policy on asylum seekers should be that detention is undesirable and should only be used as a last resort and the government should work towards ensuring that detainees spend no longer than a few months in detention before their cases are resolved.
30. FECCA supports alternative community based arrangements of asylum seekers into Australia and the abolition of all offshore processing (including Christmas Island), which jeopardises the rights of people to equal protection under the Australian law by preventing access to appropriate legal representation and rights. This contravenes article 9 of the ICCPR.
31. It is widely acknowledged that the *community care pilot* that has been in operation 2006 has been a great success. Based on this success the government should hasten its transition to a full community care program with additional funding and the engagement of more community organisations.
32. The community care pilot has helped families stay together and ensure that they have the freedom of movement while their refugee claims are being tested.
33. It has also protected vulnerable groups such as families, children, single and pregnant women, the disabled and the traumatised from the risk of being harmed by detention.
34. Other alternatives include the better way as proposed by Justice for Asylum Seekers (JAS).
35. We support the views of many of our members and partner organisations in recommending that the policy of non-reviewable mandatory detention

be abolished and that the detention of asylum seekers only be used as a last resort for asylum seekers who cannot establish their health, security and character credentials and for a limited time period not exceeding several months.

36. All asylum seekers must have full access to the basic underpinnings of our legal system such as legal representation and full access to the courts to challenge ones detention.

Conclusion

37. FECCA believes that now is an opportune time to reform Australia's immigration detention system to ensure that detention is only used as a last resort for those asylum seekers who cannot quickly establish their health, security and identity credentials.
38. Detention centres should only be in metropolitan areas and be subject to full public scrutiny.
39. Asylum seekers in detention centres should have access to their full legal rights.
40. Asylum seekers in the community should have access to income arrangements and health support while their cases are determined.