

**Migration Amendment
(Detention Reform and Procedural Fairness) Bill 2010**

Northern Settlement Services Limited.

Northern Settlement
Services Limited.

Committee
Secretary Senate Legal
and Constitutional
Committees PO Box
6100 Parliament
House Canberra ACT
2600 Australia

Dear Committee Secretary,

Enclosed is a copy of this service's submission to the *Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010*. This submission has been prepared in response to the proposed *Migration Act 1958* amendments on the implementation of *asylum seeker principles*.

We have provided relevant information, data and recommendations on three key areas that we feel need to be addressed. These are; further policy alignment with international obligations, the introduction of mandatory training programs for staff at detention centres and the implementation of services and facilities to protect and promote the interests of detention detainees and their subsequent settlement in the Australian community.

The recommendations produced in this submission result from thirty years experience in settlement services and our ethical standards, which serve to guide us in our work. In providing settlement services to a number of different communities we feel that our submission offers valuable insight into the effect of migration and detention policies on individuals and the problems they may face in integrating into the community. These amendments need to take into account the detrimental effects of immigration detention on individuals and their subsequent settlement, thus our recommendations serve to minimise the long-term effects of immigration detention on individuals. Our discussion has included a number of relevant reports and assessments that we believe add to the substance of these proposals.

If you have any questions or comments regarding information presented in this submission please do not hesitate to contact me.

Sincerely,
Lulu Tantos,
Acting CEO

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03/06/2011

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1.0 Introduction

Northern Settlement Services (NSS), formerly the Migration Resource Centre of Newcastle & the Hunter Region, is an entirely not for profit entity that delivers a variety of essential settlement services to migrants and refugees. Our services include multilingual information and referral, casework and counselling, community education and development. In addition to these services we aim at promoting access and equity in service delivery to our target group to support the activities and projects of multicultural and diverse interest groups in the community. While NSS is based in Newcastle, we address the needs of migrants in northern New South Wales through our offices in the Central Coast, Armidale, Inverell and Tamworth. As a community-based service NSS experiences firsthand the long-term community effects of immigration policy.

NSS interests lie in the maintenance of a legitimate process, as summed in our mission statement;

To facilitate the successful integration of individuals and communities of non-English speaking backgrounds (NESB) into Australian life in an environment sensitive and responsive to their needs.

Given that NSS is situated at the final stage of the Australian migration process, the organisation is able to observe migration and its effectiveness in moving individuals through these processes and their settlement in Australian society. While the agency has limited business with immigration detainees, we strongly advocate for the restoration of rights and procedural fairness to all refugees and asylum seekers subject to the *Migration Act 1958*.

We observe that while the *Migration Act 1958* asserts the importance of border protection and national interest, given recent tribulations, more policy emphasis needs to be placed on the intrinsic wellbeing of refugees and asylum seekers in immigration detention. It is through our experience in dealing with refugee clients and their settlement, that the emphasis of wellbeing became integral to the success of their settlement into the Australian community.

In this submission we address:

- The need for Australian migration policy to align itself more explicitly with international standards both in the formation and implementation of procedures.
- The introduction of a mandatory ongoing training program for all staff at detention facilities to ensure that staff dealing directly with people in immigration detention are assessed as competent in:
 - cultural awareness
 - basic counselling; and

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- The implementation of structures and facilities that attempt to reflect and maintain the norms and expectations of Australian society such as appropriate primary and secondary education for children and adults.

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2.0

Background

Few things expose a nation like immigration policy. While issues and demands of migration policy are constantly evolving, central to this sphere of foreign policy is the protection and proliferation of Australia's national interests. Recent events however have suggested that new approaches to Australian migration policy are needed to respond to current and future migration. Indications are that migration will continue to affect international affairs indefinitely and Australia's standing in the world will, in part, be determined by its' policies towards those seeking settlement.

The migration process and its complexity for Australian's, reveals the extent to which a variety of structures and pressures impact on the formation of policy. It is particularly important to observe that while a number of issues are contemporary, the predominance of deep-rooted anti-immigration sentiment in Australia has helped shape the public policy area. Awareness of this needs to accompany advocates on any journey from an initial awareness of this human suffering to legitimate political responses (Gosden, 2007, p.150).

While these issues occupy an ambiguous space in Australian policy-making, much of this *anti-immigration* sentiment has been translated into tangible government policies. While Australia's history in the management of migration policy is a significant anecdote for contemporary policy, perhaps most defining are the ways in which policy makers address the current migration crisis.

The contemporary political and media obsession with asylum seekers who travel to Australia by boat has long overshadowed the many other iniquities which plague the nation's migration system (Williams, 2010). The presence of continual media coverage and sensationalism has propelled distorted perceptions to the centre of the official discourse on refugees and asylum seekers. However the complexities surrounding immigration in Australia require an assessment of how to most appropriately weigh the balance between a person's right to liberty and dignity alongside risk concerns and cost effectiveness for Australian taxpayers ((a) Joint Standing Committee on Migration, 2009, p.2). Castles and Miller point to the emergence of international migration as a force for social transformation.

While movements of people across borders have shaped states and societies since the beginning of time, what is distinctive in recent years is their global scope, their centrality to domestic and international politics and their enormous economic and social consequences (1998, p.1).

The emergence and escalation of the current migration crisis, calls for progressive assessments and political responses. Dauvergne advocates for the role of 'strategic humanitarianism' in policy making that in theory could appease the interests of national interest and humanitarian response (1999, p.623). In using humanitarianism as 'a pragmatic tool for shifting law and policy' (1999, p.597) she suggests it is perhaps 'the best tool for arguments to improve conditions for refugees both worldwide and in Australia' (2000, p.57).

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Given what has been dubbed ‘the age of the refugee’ (Said, 2000, p.174) policy makers need to establish new approaches to the management of our borders and those seeking asylum.

New challenges require policy makers to “critically assess the role that detention plays in maintaining the integrity of Australia’s immigration system, and the shape of a future immigration detention system that meets the needs of people” ((b) Joint Standing Committee on Migration, 2009, 2).

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3.0 Amendment of the Migration Act 1958

Inherent within the Amendment document is a desire to imbue more just, legitimate processes into migration policy. Connected to this is Australia's commitment to many international protocols. Given this, NSS believes that policy responses to this current humanitarian crisis should reflect a desire to 'reconcile Australian law and practice with universal minimum standards' as stated by the Senate Committee Report (2006, p. 171).

3.1

Part 1 – Amendment establishing asylum seeker principles

4AAA Asylum seeker Principles

(4) Any person making any decision about refugees, asylum seekers, immigration detention or a related matter under this Act, or under a regulation or other instrument made under this Act, must have regard to the asylum seeker principles set out in subsection (3).

As prescribed in the 'Migration Amendment (Detention Reform and Procedural Fairness) Bill':

The asylum seeker principles established in this section are based on principles contained in international conventions and treaties to which Australia is a signatory (Australian Government, 2010, p. 3).

In response to growing criticism, it has become clear that the Australian Government needs to formulate more legitimate processes that reflect a desire to maintain a distinct and universal set of standards and commitments.

According to the proposed *asylum seeker principles* (3)(d)

Living conditions in immigration detention must ensure the inherent dignity of the human person (Australian Government, 2010, p.3).

In the context of the proposed amendments to the *Migration Act 1958*, we believe the Senate must address the long-term community ramifications of individuals subjugated to the detrimental effects of prolonged detention. The International Covenant on Civil and Political Rights (ICCPR) Article 10 (1) similarly provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (United Nations, 1958)

Article 10 (1) establishes a broad understanding of humane principles. While these laws are not binding of themselves in Australia, and there is thus, no obligation to implement them, NSS believes that, given the Amendment of the Migration Act and its' establishment and insertion of *asylum seeker principles*, it would be appropriate to uphold what the international community considers acceptable and relevant to interpreting and implementing legitimate migration policy as suggested above.

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The *Migration Amendment (Detention Arrangements) Act 2005* maintained that children would no longer be held in detention unless as a last resort (Australian Government, 2005, p.3). However the Joint Standing Committee on Migration stated in 2009, ‘families with children are still placed in community detention, although some may be detained in immigration detention housing, immigration transit accommodation or alternative temporary detention prior to removal’ ((a) 81-82).

As a signatory to the Convention on the Rights of the Child (CROC) 1990, migration policy should be guided by the provisions and principles upheld by international law. Connecting to the application of Article 10 of ICCPR, these rights affirm the *inherent dignity and self worth of individuals and their right to develop to the fullest* (UN General Assembly 1989, p.2). As articulated in Article 3 of CROC, ‘actions made concerning children shall be undertaken with the best interests of the child as a primary concern’ (UN General Assembly, 1989, p.2). As substantiated by Article 3 section (3),

States Parties shall ensure that the institutions, services, facilities responsible for the care or protection of children shall conform with the standards established by competent authorities (UN General Assembly, 1989, p.2).

The Immigration Detention Centre Guidelines outline the rights of children to education whilst in detention (Human Rights Equal Opportunity Commission, 200, p.8). NSS believes such guidelines should be placed within the Migration Amendment Bill as an expression of *the inherent dignity of the human person* and their right to development.

For children, the effects of prolonged detention mean the absence of formative influences. These include impacts to their physical and mental health, education and their ability to develop in a normal environment, as required by international law. The impact of prolonged detention on individuals severely limits their capacity for settlement into Australian communities. Over the past decade, NSS has established several primary and secondary homework centres in the Newcastle area to assist school students from refugee families to overcome academic adversity. These students are often unable to receive assistance in English literacy skills and homework at home due to their parent’s or carers’ limited English or Educational skills. The effects of prolonged detention for both children and adults severely impair their ability to integrate and actively participate in Australian society. This is corroborated by an interview with an Afghan detainee in 2002:

The longer you keep the people the less psychologically healthy they will come out of the process. I’m sure you don’t want a lot of people with mental health problems in the society. So if you let them out earlier you will have healthier people who will participate in the society better. (Afghan man, interview, Curtin facility – Human Rights and Equal Opportunity Commission, 2002, p.22).

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Table 21: Final grants and final grant rates^a by age (non-IMA)

Age group (years) at final decision	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11 (first six months)
Final grants						
0-17 years	202	246	334	263	390	160
18-30 years	362	524	578	832	952	350
31-40 years	257	389	443	471	492	196
41-50 years	166	311	294	291	289	117
51-60 years	69	107	126	170	115	43
60+ years	64	114	125	146	129	43
Total	1120	1691	1900	2173	2367	909
Final grant rates ^a						
0-17 years	50.2%	58.0%	67.2%	59.9%	69.0%	62.0%
18-30 years	35.6%	44.7%	50.5%	53.3%	54.7%	36.8%
31-40 years	23.1%	28.6%	38.3%	34.8%	43.9%	35.7%
41-50 years	21.9%	31.5%	36.5%	31.3%	37.3%	31.1%
51-60 years	34.8%	42.8%	53.8%	52.6%	47.1%	39.1%
60+ years	57.7%	76.0%	74.0%	76.4%	68.3%	54.4%

Source: ICSE

(Integrated Client System Environment, 2010-2011, p.28)

Table 21 from ICSE affirms that large numbers of young migrants are settling in Australia. These are an indication to the types of services and facilities needed in immigration detention centres. Considering 62% of the 0-17 age group were granted Protection visas in the first six-months of this year, more policy emphasis needs to be placed on the importance of educational services and structures for young migrants. We believe these improved services are integral to the settlement and integration of migrants into the Australian community to enable them to more actively participate and contribute to society.

3.2

Schedule 1 – Amendment of the Migration Act 1958 Part 1 – Amendment establishing asylum seeker principles 4AAA (4)

Any person making any decision about refugees, asylum seekers, immigration detention or a related matter under this Act, or under a regulation or other instrument made under this Act, must have regard to the asylum seeker principles set out in subsection (3).

Given the nature of detention circumstances we support the Senate's proposal to engage in international conventions and treaties regarding the nature of detention. The Senate Committee report released in 2006 raised concerns regarding the mistreatment

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of detainees by staff. They reported several witnesses attesting to this culture of impunity in detention centres with one witness describing:

...a deep feeling among detention authorities, officials and workers that they have an absolute mandate to do whatever they wish, with no real prospect of losing anything... (p.166)

As upheld by Article 10 ICCPR (International Covenant on Civil and Political Rights), every detainee should be treated with respect for the inherent dignity of the human person. However, as a 2001 'Report on Visits to Immigration Detention Facilities' by The Human Rights Commissioner informs, 'respect is markedly influenced by less tangible aspects of treatment' (p.33). They state for example that "adverse or negative comments by an ACM [Australasian Correctional Management Pty Limited] staff member can impact severely on the mental health and attitude of a newly arrived asylum seeker" (p.33).

According to a report by the Joint Standing Committee on Migration, many mental health studies, reports and inquiries have documented the deleterious impact of indefinite immigration detention on mental health.

Depression, anxiety, other psychiatric disorders are prevalent in the detention environment and in particular prolonged detention. ((a) 2009, 76).

At NSS we aim to establish trust and relationships with our migrant clients by explicitly stating and upholding a set of equity standards. We offer a variety of training sessions and information packs that aim to educate those in the community in cultural awareness. In a 2006 Senate Committee Report, Legal and Constitutional References Committee, it is claimed that a number of staff at detention centres are often ex-prison officers and not trained appropriately to deal with immigration detainees, particularly asylum seekers (Senate Committee Report, p.178).

It was also argued that personnel frequently lack the necessary understanding of the trauma many detainees have suffered, the psychological impact of these experiences and the effects of detention (Senate Committee Report 2006, p.178).

The Federation of Ethnic Communities' Council of Australia (FECCA) emphasised in a previous submission to the Senate that:

It is vitally important that there be clear guidelines and protocols for management of detention centres that ensures that human rights are upheld, that people be treated with compassion and concern for their physical, emotional, spiritual and psychological welfare. (FECCA submission 101, p.6)

The Senate Committee Report 2006 indicated that they understood the effects of the emphasis on security in detention centres. It was understood that this emphasis was very similar to 'that of a correctional facility and practices often reflected those used in prisons and detainees were often seen as trouble makers' (2006, p.179). Given these circumstances, and our own aims in the community we would recommend the

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training of staff in direct contact with detention detainees as to ensure, at a minimum, proper cultural and psychological approaches.

According to 'A Report on Visits to Immigration Detention Facilities by The Human Rights Commissioner in 2001' the resident psychologist at the Villawood detention centre suggested that:

Stress levels translated into mental health difficulties after several months in detention, with various stages of deterioration thereafter. (Human Rights and Equal Opportunity Commission, 2002, p.38).

Reports have indicated that those in detention facilities for prolonged periods showed increased bitterness and disappointment at their experience in Australia. We believe these experiences contribute to a more difficult process of integration and settlement in the community, both for the clients and our own services. Given that an influx of migrants requiring mental health facilities into a regional community would create much strain on services it would be in the Senate's best interests to ensure the appropriate handling of immigration detainees by appropriately trained staff.

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4.0

Conclusions

This submission has been prepared in response to issues surrounding the implementation of the *asylum seeker principles* into the *Migration Act 1958*. Through our own experience working with refugees we have been able to identify key issues affecting the settlement of individuals into the community. While we acknowledge that in some instances immigration detention is a necessary provision, NSS aims to minimise the harmful effects of prolonged detention.

Due to the criminalisation and de-humanization of immigration detainees, there is often an inadequate public and policy recognition of the rights of asylum seekers and their potential rights as Australian citizens. While current immigration policy asserts the desire to protect the nations borders and the interests of its' citizens, amendments need to take into account this crisis of migration as well as Australia's commitment to international conventions.

We observe that while NSS does not deal directly in the handling of immigration detainees, our experiences in the provision of settlement services have informed us of the detrimental effects of prolonged detention and the subsequent effect of settlement into the Australian community and the management of such individuals in the community themselves. We submit that these amendments can address this issue by:

- ❖ further aligning of policy with Australia's international obligations in the sphere of immigration;
- ❖ introducing mandatory training programs for all staff working in direct contact with immigration detainees to ensure they are assessed as competent in areas of cultural awareness and basic counselling; and
- ❖ the implementation of educational structures and facilities which aim to prepare individuals for the demands of Australian society.

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**5.0
Recommendations**

Recommendation 1

❖ That Australia further reconcile its' migration policy with international minimum standards. The commitment to *asylum seeker principles*, asserting Australia's commitment to its' international treaties and conventions, would be further ratified by a full commitment to the International Covenant on Civil and Political Rights (ICCPR), to which it currently has conditional membership.

This commitment would further bind Australia into more legitimate and accountable migration policy decisions.

Recommendation 2

❖ That in lieu with section (4) of *asylum seeker principles*, and to protect the rights and interests of immigration detainees, there is the establishment of an ongoing training program for all staff at detention facilities.

This training program would assess staff as competent in cultural awareness and in basic counselling.

Recommendation 3

❖ That all detention centres implement structures and facilities that attempt to reflect and maintain the norms and expectations of Australian society such as; appropriate primary, secondary and higher education for children and adults.

These facilities would assist in the implementation of the proposed asylum seeker principles and ensure that immigration detainees are prepared for their potential settlement into Australian society.

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6.0

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