

Submission from Refugee Action Network Newcastle (RANN) re - Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010

21 May 2011

Dear Senators,

RANN consists of a variety of Newcastle citizens drawn together in their belief that Australia should uphold its ethical obligations to care for asylum seekers. These obligations are also reflected in the many international charters Australia is a signatory to.

We are pleased to write in support of this Bill.

It is a sad fact that in the past decade the Migration Act has not protected the rights of asylum seeker children and their families. Many of them have been locked up and/or separated without reasonable justification.

The following comments have been written and made with respect to ensuring the rights of children are upheld, originally in connection with Migration Amendment (Detention of Minors) Bill 2010 (see my annotated copy of it attached- "migration act children amendment.pdf"). I am not clear as to the fate of this bill, however please consider these comments in relation to the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010.

The explanatory memorandum explains that the Bill aims to ensure that keeping children out of detention does not depend on the goodwill of the Minister of the day. RANN would argue that human rights should never be subject to the whims of political parties. RANN regards this Bill as part of the effort that all societies should make: that is to create laws that uphold human rights no matter what the politics of the day might be.

The Bill is timely in upholding our obligations under the United Nations Convention on the Rights of the Child, as this is also one of the principles of the the Human Rights (Parliamentary Scrutiny) Bill 2010. Through seeking to expand the residence determination process the expression that detention should only be a "matter of last resort" is given meaning. The processes arising from this in ensuring children are placed in the community within 12 days may be useful in future amendments to the Migration Act.

RANN hopes that if the Bill is passed its benign effect on the processing of child asylum seekers may become uncontroversial, and be extended to include all asylum seekers.

We are concerned that there may be a difference between how the definition of "community" may be interpreted by the Department of Immigration and Citizenship (DIAC), with how most people would interpret "living in the community" to mean. We bear in mind that DIAC asserts it provides 'alternative places of detention' (APODS). Despite trying to claim these settings - such as that at Leonora- are a form of community residence, they are surrounded by rows of razor wire and guards.

RANN recommends that:

- a) the Bill be passed, and
- b) that "community" be defined as not being a location that is kept under surveillance or where freedom of movement is restricted by guards.

Yours truly,
Dr. Niko Leka