

Federation of Ethnic Communities' Councils of Australia

Submission to the Inquiry into the Migration Amendment

(Detention Reform and Procedural Fairness) Bill 2010

June 2011

1. The Federation of Ethnic Communities' Councils of Australia (FECCA) welcomes the opportunity to submit to the *Inquiry into the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010*.
2. FECCA is the national peak body representing the interests of Culturally and Linguistically Diverse (CALD) communities in Australia. FECCA supports multiculturalism and social justice and rejects all forms of discrimination and racism.
3. FECCA's work has a focus on ensuring that refugee and humanitarian entrants settling in Australia are able to fully participate in Australian society, and do not face undue barriers to settlement and inclusion.
4. It must be acknowledged that refugee and humanitarian entrants, who in time become Australian permanent residents or citizens, go on to make highly valuable contributions to Australian society. These persons are often in possession of useful skills and ideas that enhance and enrich Australia.
5. FECCA strongly asserts, in the first instance, that if we fail to treat asylum seekers with dignity and respect while their claims are being processed, we will not only be acting contrary to our international human rights obligations, but we will also be facilitating a difficult settlement process for those asylum seekers ultimately granted permanent protection in Australia. A traumatic immigration detention and refugee assessment period can have lasting negative repercussions, and can form a dark shadow over the lives of those seeking to build lives for themselves and their families in Australia.

6. On the whole FECCA is highly supportive of the recommendations proposed in the *Migration Amendment (Detention Reform and Procedural Fairness) Bill* and strongly supports the 'Asylum Seeker Principles' that guide it.

Offshore Processing/Excision Zones

7. Despite the Government's recent announcement in the 2011-2012 federal budget that offshore and onshore processes would be aligned and that those detained in excised offshore zones would have greater access to rights of review, FECCA still calls for the removal of the 'excision zone' language and policy from the *Migration Act* in accordance with this *Bill*. **FECCA believes that all asylum seekers should be processed onshore.** Offshore processing reduces people's access to their human rights both through unduly discretionary excision procedures and lack of transparency in review processes, and in practice due to isolation, where services for those held offshore are limited.
8. FECCA also takes this opportunity to express great concern with the possibility of asylum seekers being sent to Malaysia as part of the government's 'Malaysia Plan'. FECCA in no way supports sending those seeking refuge in Australia to countries with poor human rights records, who are not signatories to international conventions on refugees and torture.

Immigration Detention

9. FECCA also contends here, as we have time and time again, that detention should only be used as a measure of last resort and that children should never be held in detention facilities. The policy of mandatory detention is inherently flawed, and in its current application has seen the excessively lengthy and sometimes indefinite detention of those seeking refuge in Australia. We know that detaining asylum seekers indefinitely in immigration detention can have huge, negative long-lasting effects.

10. Therefore, the proposed substitution of the word ‘must’ with ‘may’ (ss 42(4), 189(1), 189(2)) in relation to mandatory detention as outlined in this *Bill* is welcome – as altering the migration legislation in this manner would hopefully precipitate a change in immigration detention philosophy, and there would no longer be an obligation to detain those who do not pose a threat worthy of detention.

Review Processes

11. The processes set out in this *Bill* in relation to reviewing the legitimacy of detention would also be, in FECCA’s view, sound process. The obligation to give timely reasons for detention and a finite period of 30 days after which detention is to be reviewed would help ensure that asylum seekers aren’t thoughtlessly, mandatorily detained, and would help ensure that more consideration and accountability are applied to the immigration detention process. Indeed, it would be ideal if the *Migration Act* was amended to the effect that a failed claim for release from immigration detention is reviewable *every* 30 days if release is denied in the first instance. Only in exceptional circumstances, should this regular review be waived. We see at present an extraordinarily high number of asylum seekers detained for lengthy periods of time (around 4,000 asylum seekers currently in detention have been there for over 6 months¹) and this is simply unacceptable. Asylum seekers are not criminals to be locked up arbitrarily – it is not illegal to seek refuge.
12. FECCA strongly believes that persons seeking asylum must be treated with the upmost dignity and respect while they are being processed by immigration officials. Regardless of the outcome of one’s claim for asylum in Australia, FECCA contends that that all persons’ human rights should be fully respected.

¹ IMMIGRATION DETENTION STATISTICS SUMMARY, *Detention Operations Division, DIAC - As at 20 May 2011*, http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20110520.pdf

13. FECCA believes that the Australian Government has a responsibility to humanely deal with the applications of all asylum seekers, and sees this *Bill* as a decidedly positive step towards ensuring this objective is met. FECCA strongly encourages support for the *Bill*.