2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Migration Amendment (Detention Arrangements)
Bill 2005

(Amendments to be moved by Senator Ludwig on behalf of the Opposition in committee of the whole)

(1) Schedule 1, page 5 (after line 19), after item 9, insert:

9A After section 194
Insert:

194A Independent medical access etc.
The Secretary must ensure that independent medical professionals and media representatives have access to a person detained under section 189 or 196.

(2) Schedule 1, item 10, page 5 (line 26), after “189”, insert “or 196”.

(3) Schedule 1, item 10, page 6 (after line 7), after subsection 195A(4), insert:

Considerations to be taken into account in granting visas

(4A) In exercising the power under subsection (2), the Minister must have regard to whether a person has a need for temporary protection or for permanent protection.

(4B) If the Minister considers that a person has a need for temporary protection, the Minister may grant the person a visa for a period not exceeding two years. At the end of that period, unless the Secretary has presented evidence to the Minister that satisfies the Minister that the decision to grant a visa should be reversed, the Minister must grant a further visa permitting the person to remain in Australia indefinitely.
(4C) If the Minister considers that a person has a need for permanent protection, the Minister must grant the person a visa permitting the person to remain in Australia indefinitely.

(4D) If the Minister considers that a person does not have a need for permanent protection but considers that the person has made, and can continue to make, a long term contribution to economic, social or community life, the Minister may grant a visa permitting the person to remain in Australia indefinitely.

[considerations for issuing visas]

(4) Schedule 1, item 11, page 7 (line 9), after “189”, insert “or 196”.

[application]

(5) Schedule 1, item 11, page 7 (line 13), omit “If”, substitute “Subject to section 197ABA, if”.

[consequential]

(6) Schedule 1, item 11, page 7 (after line 25), after section 197AB, insert:

197ABA  Children to reside at specified place rather than being held in detention centre etc.

(1) Unless the Minister receives a determination under section 197ABC from the Judicial Assessor, the Minister must make a residence determination for a child under the age of 18 years within 30 days of the day on which this section commences.

(2) Unless the Minister receives a determination under section 197ABC from the Judicial Assessor, if the Minister has made a residence determination under subsection (1) for a child, the Minister must also make a residence determination for any parent, brother or sister of the child if that parent, brother or sister is held in detention with the child.

197ABB  Appointment of Judicial Assessor

(1) As soon as practicable after this section commences, the Minister must appoint a person as the Judicial Assessor for the purposes of this section.

(2) A person appointed as the Judicial Assessor must either:

(a) be a judge of the Federal Court of Australia; or
(b) have been:

(i) a judge of the Federal Court of Australia; or
(ii) a judge of the Supreme Court of a State or Territory.

(3) The role of the Judicial Assessor is to consider applications by the Secretary for a determination by the Judicial Assessor that a residence determination should not be made under subsection 197ABA(1) for a child or under subsection 197ABA(2) for a parent, brother or sister of a child.

197ABC  Determinations by Judicial Assessor

(1) If the Secretary makes an application to the Judicial Assessor for a determination under this section for a child or the parent, brother or sister of a child, the Secretary must ensure that all information held by the Department relating to that person is made available to the Judicial Assessor.
(2) The Judicial Assessor must not make a determination that a residence determination should not be made for a child or the parent, brother or sister of a child unless the Judicial Assessor concludes that, if the person were allowed to leave immigration detention, there would be a significant risk that:
   (a) the person would represent a danger to the safety and welfare of the Australian community or to a segment of that community; or
   (b) the person would not be available if required for any further action under this Act.

(3) A determination by the Judicial Assessor under this section must:
   (a) be made by notice in writing; and
   (b) be provided to the Minister within 7 days after it has been made.

(7) Schedule 1, item 11, page 7 (line 28), after “189”, insert “or 196”.

(8) Schedule 1, item 11, page 8 (line 2), after “189”, insert “or 196”.

(9) Schedule 1, item 11, page 9 (line 28), omit “The”, substitute “Subject to section 197ABA, the”.

(10) Schedule 1, page 11 (after line 23), after item 18, insert:

18A Before Part 9

insert:

Part 8ABA—Inspector-General of Detention

486KA Inspector-General of Detention

As soon as practicable after this section commences, the Minister must appoint a person as the Inspector-General of Detention (the Inspector-General).

486KB Functions of Inspector-General of Detention

(1) The functions of the Inspector-General are to:
   (a) receive and make determinations concerning complaints from persons in immigration detention; and
   (b) pay particular attention to the needs of children in immigration detention, in community care or in residence at a place specified under section 197AB; and
   (c) consider general or systemic matters the Inspector-General decides of his or her own volition to consider; and
   (d) consider all matters the Minister directs the Inspector-General to consider.

(2) For the purpose of this section, in immigration detention means being detained in a place accordance with paragraph (b) of the definition of immigration detention in subsection 5(1).
486KC  Exercise of functions of Inspector-General of Detention

(1) The Secretary must ensure that the Inspector-General is given unrestricted access to:
   (a) detention centres and immigration processing facilities (including those on Christmas Island); and
   (b) detainees; and
   (c) the staff of the Department or of private contractors employed at detention centres or immigration processing facilities; and
   (d) all records relevant to a complaint made under section 486KB.

(2) The Inspector-General may make a finding about any matter considered by the Inspector-General.

(3) The Secretary must take action to give effect to any finding made by the Inspector-General.

[inspector-general of detention]

(11) Schedule 1, item 19, page 12 (line 2), omit “2 years”, substitute “90 days”.

[detention reporting time]

(12) Schedule 1, item 19, page 12 (line 10), omit “2 years”, substitute “90 days”.

[detention reporting time]

(13) Schedule 1, item 19, page 12 (line 11), omit “2 years”, substitute “90 days”.

[detention reporting time]

(14) Schedule 1, item 19, page 12 (line 15), omit “2 years” (twice occurring), substitute “90 days”.

[detention reporting time]

(15) Schedule 1, item 19, page 12 (line 22), omit “6 months”, substitute “one month”.

[detention reporting time]

(16) Schedule 1, item 19, page 12 (line 31), omit “6 months”, substitute “one month”.

[detention reporting time]

(17) Schedule 1, item 20, page 15 (line 5), after “189”, insert “or 196”.

[duration of detention—application]

(18) Schedule 1, item 20, page 15 (line 10), after “189”, insert “or 196”.

[duration of detention—application]