(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.

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

(5) Schedule 1, item 11, page 7 (line 13), omit “If”, substitute “Subject to section 197ABA, if”.
(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, item 19, page 12 (line 2), omit “2 years”, substitute “90 days”.

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

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

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

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

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

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

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

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HOUSE OF REPRESENTATIVES REASONS FOR DISAGREEING TO THE SENATE AMENDMENTS

Senate Amendment 1

This amendment would provide medical professionals and media representatives unfettered right of access to detainees. This makes detainees objects because the amendment provides rights to medical professionals and media representatives and does not give a detainee the right to decline or indeed ask for their presence. This is unacceptable.

Accordingly, the House of Representatives does not accept this amendment.

Senate Amendments 2, 4, 7, 8, 16 and 17

These amendments are based on a misunderstanding that section 196 provides the power to detain an unlawful non-citizen. This is incorrect as the authority under the Migration Act 1958 to detain an unlawful non-citizen is provided for under section 189 of the Act. Consequently, these amendments are unnecessary.

Accordingly, the House of Representatives does not support these amendments.

Senate Amendment 3

This amendment attempts to direct the Minister on how to use the Minister’s new non-compellable power contained in section 195A to grant permanent protection visas. This direction is inconsistent with the concept of a non-compellable power.

Accordingly, the House of Representatives does not accept this amendment.
Senate Amendments 5,6 and 9

These amendments require the establishment of a judicial assessor to oversight the appropriateness of detention. This is an effect requiring judicial officers to make administrative decisions.

Accordingly, the House of Representatives does not accept these amendments.

Senate Amendments 10 to 15

These amendments would require the Ombudsman to review the detention arrangements of a detainee after 90 days and then every month thereafter. These amendments would place an excessive administrative burden on the Ombudsman to effectively commence a review immediately post an earlier review regardless of any changes in the detainees’ circumstances. The Government’s commitment to speed up visa processing times render these unnecessary.

Accordingly, the House of Representatives does not accept these amendments.

I C HARRIS
Clerk of the House of Representatives

House of Representatives
23 June 2005