

31 May 2011

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

By email:

Dear Secretary

Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011

The Human Rights Law Centre (HRLC) thanks the Committee for the opportunity to provide a comment on the *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011*.

The Bill, introduced in response to recent unrest in the Christmas Island and Villawood Immigration Detention Centres, broadens the already significant power afforded to the Minister or his delegate to refuse to grant, or to cancel, a visa on character grounds.

The HRLC strongly opposes the Bill on the basis that:

1. it excludes asylum-seekers from international refugee protection on grounds that would be deemed impermissible under the *1951 Convention Relating to the Status of Refugees*;¹
2. it may result in the return of a person to a territory where he or she faces persecution, contrary to obligations of non-refoulement contained in several international human rights treaties to which Australia is a party;² and
3. it is unprincipled and incoherent for the Australian government to impose sanctions on detainees who 'demonstrate a fundamental disrespect for Australian laws, standards and authorities'³ when the fact and conditions of detention itself constitutes a contravention of international laws, standards and authorities.⁴

The HRLC considers that the more effective and rights-compliant way of deterring criminal behaviour of persons in immigration detention would be to remove the cause of offending behaviours by repealing the provisions of the *Migration Act 1958* relating to mandatory detention.

Yours sincerely

Rachel Ball / Zara Durnan
 Director – Policy and Campaigns / Seconded Lawyer
 Human Rights Law Centre

¹ 1951 *Convention Relating to the Status of Refugees*, articles 32 and 33(2).

² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976); *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, opened for signature 15 December 1989, 29 ILM 1464 (entered into force 11 July 1991); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 3 (entered into force 2 September 1990); and *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

³ *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011*, Explanatory Memorandum, p.1.

⁴ Australia's policy of mandatory immigration detention has been consistently criticised by UN human rights treaty bodies. See, for example, comments made by the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee Against Torture and Committee on the Elimination of Racial Discrimination: *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Australia*, 95th session, 7 May 2009, CCPR/C/AUS/CO/5 [33]; *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Australia*, 42nd session, 22 May 2009, E/C.12/AUS/CO/4 [25]; *Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Concluding Observations of the Committee Against Torture, Australia*, 40th session, 15 May 2008, CAT/C/AUS/CO/1 [34]; See *Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Australia*, 77th session, 27 August 2010, CERD/C/AUS/CO/15-17 [24].