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

Inquiry into Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011
Submission from the Public Affairs Commission of the Anglican Church of Australia

The Public Affairs Commission (PAC) of the Anglican Church of Australia (ACA) advises the Primate and Standing Committee of the Church on matters of public concern. This submission is made by and on behalf of the PAC. We thank the Minister and the Senators for the opportunity to contribute to their deliberations on this important Bill.

The ACA is organised into twenty-three dioceses across Australia, and includes a diverse cross-section of Australian communities. The ACA is embedded in nearly all these communities through its local parishes, and contributes widely in public life through education, welfare and aged services, advocacy for social justice and support for Indigenous Australians. The Church has therefore had some experience of the difficulties experienced by marginalised people in general, and of the extraordinary stresses experienced by asylum seekers and refugees in particular. The General Synod has not discussed the issue, but the Public Affairs Commission is opposed to mandatory detention because it is inconsistent with both Australia's commitment to the Universal Declaration of Human Rights and with the Christian responsibility to welcome strangers.

In relation to the Bill:

1. We acknowledge that it is incumbent upon claimants for asylum to make their case in good faith, and to demonstrate a reasonable level of 'good character'. We accept the Bill's intention to signal an expectation of orderly conduct to immigration detainees. We agree that conviction for some offences (not only sentencing for them) constitutes valid grounds for visa disqualification and for character test failure.

2. However, we are concerned that the provisions of the Bill as it stands are too harsh, and expose detainees to unnecessary hardship and to intentional or unintentional abuse. We also oppose in principle the element of retrospectivity in this Bill.

3. Items 2 and 4 of the Bills introduce a new basis for visa disqualification and for character test failure that is much too harsh. The Migration Act 1958 Sec. 500A(3) only gives the Minister power to refuse visas due to very serious offences, with terms of imprisonment upward of 12 months or more. In Section 501(6a) and (7) of the Act, a person fails the character test only if they have a 'substantial criminal record'.

4. But the insertion of Items 2 and 4 of the Bill completely shifts this balance. The amendment provision allows disqualification and failure if a person has been convicted of *any* offence while in, escaping or escaped from detention. In other words, they may be disqualified from a visa, or can fail the character test, on the basis of an entirely 'insubstantial' record. This expansion of the Minister's discretionary power is quite radical.

5. A more reasonable trigger for visa disqualification, or character-test failure, would be for the person to have been convicted of an offence punishable by imprisonment for 12 months or more, in line with Act as it currently stands. Such a test would prevent minor offences disqualifying a person who may only have done something misguided or foolish due to the stress of flight, detention, and cultural misunderstandings. At worst, the Bill's provisions as they stand could hypothetically even make it possible through honest mistake or because an unscrupulous employee of a detention centre contractor, who harbours a grudge toward a particular detainee, to provoke minor conflicts that would result in disqualification and character test failure. Immigration detainees need better protection against that possibility.

6. We are also disturbed by the retrospectivity found in Item 6. The naming of the date of the Minister's announcement (rather than the date of Royal Assent) as the commencement date is not the retrospectivity to which we refer. More importantly, we note that decisions made after commencement can be based on convictions that occurred '**before**, on or after that commencement'. We think the results of this 'before' require serious analysis and scrutiny. In combination with the insubstantial offences now in view, this provision would mean that people not involved in the recent riots may now face visa disqualification or character test failure. ***Any*** minor offence, ***no matter how long ago*** during a protracted detention, could be brought against asylum seekers if the bill becomes law as it is now drafted. That is, it appears that those whose character test or visa decision is made after 26 April 2011 can have offences brought against the decision, however minor and however far back. Clearly, the goalposts would shift radically.

We seek and long for an Australia that deals with prospective citizens in ways consistent with our international commitments, humanely and in good faith, and that deals with all people justly. But this Bill changes the rules on immigration detainees most unfairly. It does not only catch up those involved in recent riots. It potentially affects all future asylum seekers and immigration detainees who are caught in small moments of folly, or even in conflicts provoked by others. It opens up every visa granted, and character assessed, after the date of commencement to any number of new offences. It seems to expect all claimants upon the nation to be able to demonstrate a near-perfect record, rather than the absence of a substantial criminal record.

We urge Senators and the Minister to amend elements of this Bill to take account of the points made in this submission.

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Chair, Anglican National Public Affairs Commission