

Your Ref: Ms Sarah Moulds

Our Ref: International Law / Relations Section: 21000325/84

20 May 2011

Mr Bill Grant
Secretary-General
Law Council of Australia
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Dear Mr Grant

***MIGRATION AMENDMENT (STRENGTHENING THE CHARACTER TEST AND OTHER PROVISIONS)
BILL 2011***

Thank you for allowing us to make submissions in relation to the *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011* (the Bill). The Queensland Law Society and the International Law and Relations Committee examining this Bill understand the policy rationale for the Bill and understand that this is the Federal Government's method of discouraging offences being committed in immigration detention. After close examination we are concerned with some of the provisions of the Bill and therefore cannot express our support for the legislative method by which the Government has decided to address this issue.

The Society has serious concerns about the ability of the Minister to refuse to grant, or to cancel, a visa on character grounds. More specifically we do not consider that it is appropriate that a person be deemed to fail the character test if they have been convicted of an offence committed in immigration detention, during an escape from immigration detention, during a period where a person has escaped from immigration detention whether the conviction or offence occurred before, on or after that commencement. We do not condone the commission of criminal offences in immigration detention or in Australia generally. However, we do not consider that committing an offence in detention should equate to that person being deemed to have a fundamental disrespect for Australian laws, standards and Authorities. Also, we strongly oppose a person being deemed to automatically fail the character test if they are convicted of an offence in immigration detention. This should be a factor to be taken into consideration.

The Society also has serious concerns with the retrospective application of these provisions. The Bill states that it applied to conduct that occurred before the commencement of the legislation. Retrospective application of legislation is highly undesirable and runs contrary to the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992* (Qld) which mandates that legislation, "*not adversely affect rights and liberties, or impose obligations, retrospectively*". Retrospective application of the legislation may have negative implications for the rule of law in Australia and for Australia's human rights obligations internationally.

We suggest that the Federal Government of Australia investigate why offences are being committed instead of criminalising behaviour that occurs in detention facilities and deeming failure of the character test. In this regard, it is important to note that individuals in immigration detention have had their liberty deprived, in the absence of committing any offence. Therefore, when detaining asylum seekers, it is essential that the conditions of their detention be humane and promote respect for their inherent dignity. These sentiments have been reinforced by the United Nations High Commissioner for Refugees who clearly stated that:

“Detention as a mechanism which seeks to address the particular concerns of States related to illegal entry requires the exercise of great caution in its use to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based.”

We strongly urge the Federal Government to reconsider its enactment of this legislation.

Yours faithfully

Raoul Giudes
Vice President