



Our Ref: HumanRightsCommittee:VK:452838

20 May 2011

Mr Bill Grant
Secretary General
Law Council of Australia
DX 5719 Canberra

Also by email: sarah.moulds@lawcouncil.asn.au

Dear Mr Grant,

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

The New South Wales Law Society's Human Rights Committee ("the Committee") has responsibility to consider and monitor Australia's obligations under international law in respect of human rights; to consider reform proposals and draft legislation in respect of issues of human rights; and to advise the Law Society Council on any proposed changes.

The Committee understands that the Law Council of Australia intends to make a submission in relation to the *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011* (the "Bill") and thanks the Law Council for seeking comments from its constituent bodies.

The Committee wishes to endorse the points raised in paragraph 5 of the memorandum from Mr Grant dated 17 May 2011.

Additionally, the Committee makes the following points:

1. The Committee's view is that the effect of Australia's current mandatory detention policy is to violate the freedom from arbitrary deprivation of liberty (Article 9 of the *International Convention on Civil and Political Rights* (ICCPR)) and the right for persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person (Article 10 of the ICCPR).

The Committee queries the ability of the expanded powers proposed by the Bill to act as a "significant disincentive"¹ for acts for which a motivating factor may be frustration and despair at the (prolonged) deprivation of the above human rights. The Committee's strong view is that it is inappropriate to increase penalties in these circumstances.

2. The Committee's view is that the changes proposed by the Bill impose an additional burden that does not otherwise apply to asylum seekers outside detention. Further, the Committee understands that under the current regime, cancellations and/or refusals of visa applications on character grounds are not actions that are taken lightly. However,

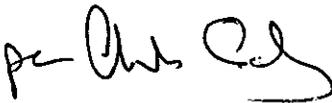
¹ Explanatory Memorandum, *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011* (Cth) at 2.

the changes proposed by the Bill would potentially allow a situation where a detained asylum seeker could have a protection visa refused because he or she has, for example, broken a government-owned window or set fire to a rubbish bin. In the Committee's view, such a governmental response would be reactionary and disproportionate.

3. As an additional but equally urgent issue, the Committee notes that as a signatory to the *Convention Relating to the Status of Refugees 1951* ("Refugee Convention"), Australia is required to respect the principle of non-refoulement (Article 33(1) of the Refugee Convention). In considering further policy and legislation in relation to asylum seekers in detention, the Committee strongly urges the Minister to observe Australia's obligations in this respect.

The Committee would be grateful if the Law Council could incorporate its comments into its submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stuart Westgarth', with a stylized flourish at the end.

Stuart Westgarth
President