

17 June 2011

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

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

The Office of the Commonwealth Ombudsman has several concerns regarding the above-named Bill. Our concerns go to the significant risk that the proposed amendments to the legislation cannot be administered in a fair, just, transparent and accountable way.

Key issues that need to be addressed are that the amendments:

- negate the principle of fairness, in that
 - they are inconsistent with the Government's immigration detention value that "people in detention will be treated fairly and reasonably within the law"
 - the retrospective application of the character test amendment means that people who chose to take certain actions before the Minister announced his intention to amend the legislation could not have known the severity of the potential consequences
 - they introduce the concept of 'double punishment', as those affected may be penalised by the courts and by failure of the character test (which could result in denial or cancellation of a visa, deportation, *refoulement* or indefinite detention)
 - they do not take into consideration the seriousness of a criminal conviction—that is, any criminal conviction will lead to automatic failure of the character test regardless of the gravity of the crime
 - they will create a different standard of treatment for refugees or other visa holders who commit a crime in the community, and immigration detainees—most often Irregular Maritime Arrivals—who commit the same crime in detention
 - limited opportunities for external review of decisions may mean people are denied access to natural justice
- do not allow for the likelihood that the circumstances of immigration detention may contribute to detainees' mental health problems or out-of-character behaviours
- do not consider the root causes of behaviours that are consistent with long-term detention
- are not necessary, in that
 - the Minister already has discretionary powers to grant or cancel visas
 - the judicial system exists to deal with criminal offences.

Yours faithfully

Allan Asher
Commonwealth and Immigration Ombudsman