



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

30 May 2011

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

Dear Committee members,

I write to the Senate Standing Committee on Legal and Constitutional Affairs Legislation to present comments from UnitingJustice Australia, the policy and advocacy unit of the Uniting Church National Assembly, on the *Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 [Provisions]*.

The Uniting Church in Australia seeks to bear witness to our Christian faith through our program of worship, service and advocacy. In the Christian tradition of providing hospitality to strangers and expressing in word and deed God's compassion and love for all who are uprooted and dispossessed, the Uniting Church in Australia has been providing services to asylum seekers and refugees in the community and in detention for many years. The Uniting Church provides direct services to refugees and asylum seekers through its network of congregations, employees, lay people and community service agencies. Through our ministers, lay and ordained, who provide ministry to the asylum seekers in detention centres and through our work with asylum seekers and refugees settling into the community, we have first-hand knowledge of the consequences of Government policies.

In July 2002, the Uniting Church released *its Policy Paper on Asylum Seekers, Refugees, and Humanitarian Entrants*.<sup>1</sup> This paper outlines principles for a just response to the needs of refugees that recognises Australia's responsibilities as a wealthy global citizen, upholds the human rights and safety of all people, is culturally sensitive, and is based on just and humane treatment, including non-discriminatory practices and accountable, transparent processes. It is through this lens that UnitingJustice Australia engages with immigration policy.

We do not support the changes to the *Migration Act 1958* proposed in this Bill.

Instead of addressing the root causes of the issue of violence within Australia's immigration detention facilities, which we believe are the length of time people are held in these facilities and the effect of the detention environment on their mental wellbeing, the Federal Government is seeking to punish those who are victims of this system. The notion that anyone who commits an offence during their time in immigration detention should fail the character test does not take into account the detrimental effect of the detention environment on people held there for any significant length of time – an environment which is a direct result of Government policy.

*For a World Reconciled*

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The most recent statistics from the Department of Immigration and Citizenship show that 65.5 percent of asylum seekers currently in detention have been so for more than six months, with 22.8 percent having been detained for more than 12 months (as at 6 May 2011).<sup>2</sup> Numerous health professionals and refugee advocates have and continue to stress the detrimental effect a prolonged time in detention has on the wellbeing and state of mind of asylum seekers, many of whom have already experienced significant trauma in their home country. Most recently, these concerns have been raised by the Australian Human Rights Commission in its report on the Commission's visit to the Villawood detention facilities.<sup>3</sup>

We are concerned that under the changes proposed in this Bill, the committing of a minor offence could prevent a refugee from being provided protection. We believe this to be a violation of the obligations and spirit of the Refugee Convention. The act of a relatively minor offence, which may include damage to property for instance, particularly when it occurs in the restrictive and oppressive environment of immigration detention, does not render a person unfit to be a part of our community.

In addition, we do not believe that the powers which presently reside with the Minister for Immigration and Citizenship under section 501 of the Migration Act are insufficient to address any character concerns which may arise during the refugee determination process.

We are of the view that the measures proposed in this Bill are a political response to misplaced public fear about asylum seekers in detention. This Bill and the Minister for Immigration's comments in the aftermath of protests at the Villawood and Christmas Island detention facilities only serve to reinforce the notion that is more important to protect Commonwealth property than to safeguard the mental health of people who are detained by Australia without committing a crime.

Australia continues to be the only Western, democratic country in the world which operates a system of mandatory detention for people seeking asylum. Processing people through this system is unnecessary, and to further punish people who have committed no crime in applying for asylum when they commit a minor offence in this environment is contrary to our commitments under the Refugee Convention and Australia's reputation as a nation who treats all fairly and with dignity.

Yours faithfully,

Rev. Elenie Poulos  
National Director

1 Uniting Church in Australia National Assembly, *Policy Paper: Asylum seekers, refugees and humanitarian entrants*, July 2002, available: [http://www.unitingjustice.org.au/images/pdfs/issues/refugees/assembly-resolutions/9\\_asylumseekerandrefugee2002.pdf](http://www.unitingjustice.org.au/images/pdfs/issues/refugees/assembly-resolutions/9_asylumseekerandrefugee2002.pdf)

2 Department of Immigration and Citizenship, Community and Detention Services Division, 'Immigration and Detention Statistics Summary', available: <http://www.immi.gov.au/managing-australias-borders/detention/pdf/immigration-detention-statistics-20110506.pdf>, accessed 26 May 2011

3 Australian Human Rights Commission (2011), 'Immigration detention at Villawood: Summary of observations from visit to immigration detention facilities at Villawood', available: [http://www.humanrights.gov.au/human\\_rights/immigration/idc2011\\_villawood.html](http://www.humanrights.gov.au/human_rights/immigration/idc2011_villawood.html), accessed 17 May 2011

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