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

Dear Committee Secretary,

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

I welcome the opportunity to make a submission to the inquiry into the Migration Amendment (Strengthening the Character Test and Other Provisions Bill) 2011 ('the Bill').

In my view, the Bill is not consistent with Australia's international obligations. The Bill seeks to broaden the grounds upon which a person will fail the character test, which, in turn, may inform the Minister for Immigration's discretion to deny or cancel a visa. The criteria in the 1951 Convention relating to the Status of Refugees regarding exclusion from refugee status or return or expulsion of recognised refugees are exhaustive and very strict. Colleagues at the Sydney Centre for International Law and the Office of the United Nations High Commissioner for Refugees have brought the relevant provisions (Articles 1F, 32 and 33(2)) to the Committee's attention and commented in their respective submissions on the ways in which the Bill departs from those provisions and may impact on the ability of refugees to get on with their lives in Australia. I commend those submissions to the Committee.

The Bill is also premised on the faulty assumption that it is possible to deter behaviour that manifests as a symptom of Australia's mandatory detention system and thereby avoid dealing with the root causes of that behaviour. Australia's policy of mandatory and prolonged detention of asylum seekers has resulted in criticism by the United Nations Human Rights Committee on numerous occasions, because it violates Article 9 of the International Covenant on Civil and Political Rights. I was heartened by the adoption of 'new detention values' early in the term of the Rudd Labor government, which, if fully implemented, would do much to bring Australia into conformity with its international obligations. These detention values have not been fully implemented,

however, and I believe that prolonged periods spent in detention, combined with overcrowding, are contributing to the kinds of behaviour we have witnessed in immigration detention centres recently.

Early in my career as a human rights lawyer, I worked for a short time as a volunteer in the refugee detention camps in Hong Kong. I cannot erase from my mind the interviews with two asylum seekers. One was a young woman, whom I thought might have a very strong case for refugee status. I had reason to believe that she had been sexually assaulted. She was, of course, unable to speak about it and our interview ended in tears. I went home. She coped as best she could in detention. The other was a very young man – a boy, really. He was only seventeen years old. His family background had led to significant difficulties in his country of origin, but I thought there was a problem with his claim to refugee status. I told him what the problem was. He was grateful to receive the advice. He had no family with him. I think he was pleased to have someone to advise him. However, the next time I saw him, he was withdrawn and uncommunicative. I went home. He struggled to make an important decision about his future, on his own and in detention.

Detention was not where either of these young people deserved to be, nor did it play a productive role in shaping their decisions about how or whether to make their claims for refugee status. There is ample evidence of the destructive role that detention plays in the lives of asylum seekers. I implore the Committee to take heed of that evidence, to show compassion, and to recommend that this Bill is not passed. Australia needs to look at alternatives to immigration detention.

Yours sincerely,

Penelope Mathew
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