



Christmas Island  
WA 6798

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

**Submission made by Asylum Seekers Christmas Island**

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Background:

Asylum Seekers Christmas Island (ASCI) was established in November 2009 and its primary goal is to provide support to people immigration detention. Support is offered in the following ways.<sup>1</sup>

- Visiting and advocating for people in immigration detention. ASCI has been visiting the detention centres both on Christmas Island and the mainland on a regular basis since it was first established.
- The letter-writing project: detainees and mainland Australians write friendship letters to one another.
- The donations project: donations from mainland Australians are sent to ASCI on Christmas Island such as books, dictionaries, English as a second language teaching materials, and toys for children.

ASCI has provided support to detainees who have been associated with detention riots and protests, in most recent times on Christmas Island (November 2009, March 2011) and Villawood Immigration Detention Centre (April 2011). ASCI has also publicised its views that mandatory detention causes psychological harm and contributes to mental illnesses such as depression, anxiety, leading to incidents of self-harm, attempted suicide and suicide<sup>2</sup>

ASCI does not support the proposed Bill that seeks to amend the *Migration Act 1958* to strengthen the consequences of criminal behaviour. ASCI's position is not to condone acts of

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<sup>1</sup> For more information about ASCI's work please refer to the website: [www.asci.org.au](http://www.asci.org.au)

<sup>2</sup> For example, see ASCI Director's Report, December 17, 2010; April 29, 2011. Michael Gordon, "For young refugees, freedom and hope", *The Age*, 28 May 2011; Renee Chan, "Riots in detention, only a matter of time", *New Matilda*, 2 May 2011.

violence in any way but to clarify the reasons why these events are occurring and to demonstrate that responding punitively will in fact exacerbate these underlying issues, not curtail them. Our reasoning is premised on the following:

1. The issue of riots and protests in detention is a complex one – there are many factors that contribute to their occurrence and it cannot be treated as a single issue. Detainees’ decision to protest is a reactive response to a number of serious institutional issues within detention that are compounding their desperation and poor mental health. This observation is based on personal experience and is supported by empirical research. The proposed amendment would be counterproductive as it overlooks the root causes of why people are protesting in the first instance, runs the risk of inciting deeper resentment amongst detainees and will further compromise their poor mental health.

2. The amendment is premised on the misguided notion that clients take part in violent behaviour in reaction to, or in the hope of changing the outcome of a failed refugee assessment or appeal. It assumes that their behaviour is a willful and petulant response to a justly dealt outcome that they did not happen to agree with. This overly simplistic assumption is fundamentally wrong on a number of levels. Recent incidents on Christmas Island and at Villawood are evidence of this.

3. Finally, ASCI maintains that the current detention system is in a state of crisis. Christmas Island in particular faces many challenges due to overcrowding, its remote location and the lack of staffing and resources. Until the situation in these centres

improve, which looks highly unlikely, issues such as riots, protests, self-harm and suicides will continue to escalate.

#### Punishment as a deterrent: Overlooking root causes and compounding the problem

Using punitive measures to threaten asylum seekers not only overlooks the root causes of the distress that drove them to act, but will have the converse intended effect by confirming these core concerns and potentially inciting further resentment.

Research examining the mental health of detained refugee claimants has clearly demonstrated the deleterious effects of detention. Studies show that detention is a profoundly negative socialisation experience that exacerbates the impacts of other traumas and this increases the longer period of detention is (e.g., Browning, 2007, 2009; Dudley, 2003, Steele & Silove, 2001; Steele et al., 2004). In our experience, detainees' decision to protest is a reactive response to a number of serious institutional issues within detention that are compounding their desperation. Protests and violent behaviour are just one manifestation of this despair – this outward expression of grief is more commonly manifest as self-harm and attempted suicide, which the Department is aware is on the rise, and set to escalate. The difference is only one of expression – violence against others or violence against oneself.

Our observations are supported by empirical research. For example, Australian researchers Sultan and O'Sullivan (2001) documented common psychological reactions of asylum seekers to their detention after their first rejection and corresponding fear of over deportation. They argue that many asylum seekers' take "non-compliant" action against

their detention. The nature of this action is argued to vary: from engaging in hunger strikes and other non-violent demonstrations; to advocating (e.g., attempting to raise public awareness about the realities of detention); to engaging in confrontations, riots, detainee-guard conflict, self-harm and other inter-detainee violence.

The point we wish to emphasize here is that protesting, be that violence against others or violence against oneself, is both the space for expressing mental anguish and the vehicle for challenging on-going detention. Protesting is a reactive response to a number of serious institutional issues within detention for people struggling against acquiescence and the enforced passivity of imprisonment. To punish people for their reactive response to obviously grave concerns as a disincentive to others would not be dissimilar to penalising someone who had attempted suicide or self-harm to deter others from doing the same.

This amendment to the Migration Act is premised on the misguided notion that clients take part in violent behaviour in reaction to, or in the hope of changing the outcome of a failed refugee assessment or appeal. It assumes that their behaviour is a willful and petulant response to a justly dealt outcome that they did not happen to agree with. This overly simplistic assumption is fundamentally wrong on a number of levels.

First, detainees are not so naïve to think that violent and criminal behaviour will in any way coerce the Department of Immigration to review their cases. In the circumstance of the Villawood riots, 300 out of the 400 detainees did not take part in the protest because they feared that antagonising the government and the public would give the Department grounds to fail them irrespective of the validity of their refugee claims. ASCI's Secretary,

Renee Chan who has been visiting asylum seekers at Villawood for the last 18 months is well positioned to comment on this. Ms Chan notes, “having known for some time the detainees who took to the roof at Villawood, and having spoken to them both before and after the incident, I can guarantee that their motives were not retributive or malicious, but defeated and desperate”. When asked why they had chosen this course of action despite knowing that it would not have a positive outcome on their case, they responded that they had reached an end point of despair and that they had nothing to lose by trying to attract the Department’s attention in this way, because the cumulative result of their experiences proved that the Department had no intent to seriously engage with them to discuss these concerns.

Second, the adoption of these punitive measures also assumes that no other avenues of engaging with the Department were sought prior to their intent to protest. Preceding the riots in both Villawood and on Christmas Island, numerous attempts were made to civilly engage the Department and other investigative bodies to discuss a number of matters of concern, but the Department either did not respond, met with them to discuss their concerns but did not take action on any of the issues raised, made no attempt to follow up with the detainees who raised them or made promises that were eventually broken or simply forgotten. In the case of Christmas Island, concerns about the long processing times, the inconsistent and apparently arbitrary outcomes of refugee assessments and the frustrating lack of communication from the Department resulted in a meeting with representatives from the Ombudsman.

The following is a written statement by a detainee on the Christmas Island riots:

*“...after a week some people came from Ombudsman to listen to detainees problems. They came and sat down with clients’ representatives and promised they would pass on detainees concerns to Department of Immigration. But after couple of months no one noticed even a slight change in immigration way of processing the cases. Instead of applying a change, they started to (sic) promising detainees that everything would be better in March and there would be noticeable changes. There will be a speed up in processing the cases and a lot more promises. But when March came not only nothing special had happened, but also people started to get rejected for the second time. There happened a lot a (sic) rejection for the first 10 days of March. That caused even more anger and frustration for detainees because of the false promises from Immigration and vows that never were met...”*

In the case of Villawood, in the days prior to the protest, a letter written on behalf of 14 Afghans was given to Serco to pass on to the Department, requesting an urgent response to their request for a meeting to discuss concerns of an critical nature. They made a point of mentioning that they had written the letter as a way of avoiding involvement in behaviour that they didn’t agree with. They concluded the letter with a request for an urgent response from a senior representative of the Department, and implied that other ways of eliciting a response might be sought. No response was received. In their minds this confirmed that the Department did not take their request for a meeting nor their concerns seriously, which left them few other avenues to make their concerns known.

The use of punitive action to make an example of a certain few in order to deter others has been used before in detention, both on Christmas Island and in Villawood, and in both circumstances this has had the opposite intended effect. Following both incidents, a group

of clients were selected by AFP under the advice of Serco to be publically and forcibly removed and locked down in a separate compound without access to facilities for several days if not weeks. In the case of Villawood, a number were locked down in a dorm of the high security facility of the centre, and 22 were arrested and kept in solitary confinement in Silverwater jail. The arbitrary and indiscriminate way that people were selected for punishment, which according to the detainees included a significant number of people who were not involved in the activities for which they were being detained not only raised their initial ire but confirmed their initial distrust of the authorities. In the case of Christmas Island, this resulted in a threat to mass harm; in Villawood this has enculturated an even deeper resentment that has the potential to reignite unrest.

Finally, ASCI maintains that the current detention system is in a state of crisis. Christmas Island in particular faces many challenges due to overcrowding, its remote location and the lack of staffing and resources. Until the situation in these centres improve, which looks highly unlikely, issues such as riots, protests, self-harm and suicides will continue to escalate.

### **Recommendations**

ASCI does not support these proposed changes to the Migration Act that will allow detainees to be punished for engaging in what ASCI and empirical research see as reactive behaviour to trauma suffered while in detention, nor do we support its intent to 'show force' to deter others from doing the same. Such an amendment would be counterproductive to its aim by inciting deeper resentment and further compromising the



mental health of those detained. ASCI views the proposed changes as reactionary measures and offers the following recommendations as alternative, preventative responses:

1. The Senate/Department should conduct an inquiry to address the fundamental institutional problems at the root cause of people's growing despair rather than undertaking reactive, punitive measures. ASCI has identified the following institutional problems that compound detainees despair: indefinite periods of detention and excessively long processing times; over-crowding and under-resourcing (including limited access to case managers); excessive use of force by officers against detainees; inconsistent and arbitrary review outcomes; high initial fail rates eventually overturned on appeal; removal teams approaching clients on a regular basis encouraging them to accept voluntary removal; gaps in service provision such as access to lawyers in order to access the judicial system of appeal.
2. Formal avenues and opportunities for clients to engage the Department at a senior level should be established to address detainees urgent concerns. These avenues and opportunities should be made more accessible and should be formalised and documented. The Department should also make every effort to take decisive and documented action to address these concerns and to communicate this action with detainees.

Should the Committee require more information they can contact ASCI's Vice-Chair, Lisa Hartley on

