

30 May 2011

Mr Jon Bell
Inquiry Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Sir,

Submission in relation to the Inquiry into *Migration Amendment (Strengthening the Character Test and other Provisions) Bill 2011*

The New South Wales Council for Civil Liberties (NSWCCL) is one of Australia's leading human rights and civil liberties organisations. Founded in 1963, NSWCCL is a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. To this end the NSWCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to parliament and other relevant bodies.

NSWCCL thanks the Committee for the opportunity to make this submission.

The writer of this submission is also a legal representative for the 7 individuals who have been charged with offences arising out of incidents which occurred at Villawood Immigration Detention Centre on 20 April 2011 and has interviewed those persons.

Summary

NSWCCL opposes this Bill on the following grounds:

- (a) it fails to address the real causes of rioting and property destruction in immigration detention centres;
- (b) it will be ineffective in eliminating or reducing the incidence of rioting and property destruction in immigration detention centres;
- (c) it is contrary to Australia's national interests by making it harder for refugees provided protection in Australia to integrate into the Australian community; and
- (d) it offends various rule of law principles, including punishment of members of certain groups more severely than others in otherwise identical circumstances, lack of proportionality and retrospective operation.

Submission

At the outset, it is important to note that the acts of violence and property destruction by immigration detainees in immigration detention facilities are not to be condoned. NSWCCCL considers that parliament should respond appropriately to them.

The tools available to parliament and government for response are primarily:

- (a) to address the underlying causes of violence and property destruction;
- (b) to deter violence and property destruction by imposing or increasing sanctions.

Addressing the real causes of violence and destruction in IDCs

In considering an appropriate response, it is necessary to have a proper understanding of the causes of violence and property destruction in immigration detention facilities. Only with such an understanding can the likely effectiveness of new or increased sanctions as proposed by this Bill be assessed.

The best available source of information concerning the conditions in immigration detention centres is a long series of reports by the Australian Human Rights Commission. The most recent of these reports concerned Villawood Immigration Detention Centre, and was released on 26 May 2011.

It is clear that immigration detention centres are:

- (a) places where human rights are routinely and inherently infringed; and
- (b) factories of mental illness.

It is unsurprising that people whose human rights are denied, and whose mental health is impaired, on occasion seek to resort to conduct that is violent and destructive.

The mental health and motives of the persons who are presently charged with criminal offences arising out of the April 2011 Villawood riots and other incidents are yet to be dealt with in the criminal justice system. Accordingly, it would be wrong at this time to make specific statements about the mental health or motivation of any individual. The comments in the following paragraph should be understood as being generalised comments.

The motivations for violent and destructive behaviour in immigration detention centres arise from feelings of desperation that legitimate claims are not being fairly or correctly processed, and that there are no legitimate ways of being heard. There is recognition that violence and destruction is wrong, but a belief that there is no viable alternative. There is an acceptance that severe consequences are likely to follow violent and destructive behaviour, but a lack of care about those consequences. These are the same feelings which have led to the multitude of self harming incidents and suicides in immigration detention centres.

Accordingly if the parliament truly wishes to reduce violent and destructive behaviour in immigration detention centres, then the parliament should strengthen its respect for the human rights of immigration detainees, and provide real avenues for the hearing of grievances.

This involves abolishing the policy of mandatory detention, or at the very least limiting the maximum time spent in detention to an acceptable level. If such policies are not introduced, it would be necessary to take measures to improve access of detainees to justice (including the ability to challenge detention itself), reducing the processing time for protection applications, changing policies so as to release persons who are currently subject to indefinite detention, and improving the mental health of detainees.

The Bill does nothing to address these underlying causes. Instead, the Bill's sole approach is to provide stronger deterrents. The Bill does this by adding to already existing criminal sanctions (which will continue to apply) consequences for protection outcomes in those cases where the persons convicted of criminal offences are refugees entitled to protection in Australia.

NSWCCL expects that the bill will be ineffective in reducing the incidence of violence or destruction of property in immigration detention centres.

Contrary to Australia's national interests

It is in Australia's national interests to promote policies that lead to the successful integration of refugees entitled to protection in Australia with the Australian community.

To this end, it is appropriate to support education and training for refugees who settle in Australia so that they can successfully engage in the labour market.

Further, it is appropriate to support family and social integration of refugees in Australia.

To the extent that refugees have committed criminal offences, Australia's national interests are best served by providing effective rehabilitation policies.

This Bill implements measures which reduce the likelihood of successful integration into the Australian community. With temporary protection, refugees will be unable to pursue study or training or take long term career decisions. Without family resettlement options, they will have greater difficulty in integrating into the Australian community.

This is directly contrary to Australia's national interests.

Rule of Law considerations

The Bill offends basic principles of the rule of law.

First, unless the punishments imposed by this Bill are taken into account by Courts sentencing refugees resulting in a reduction of sentences applied to refugees, refugees will effectively receive greater punishment compared to other members of the Australian community who are convicted of similar offences. In practice, no reduction of sentence for a refugee is likely to compensate for the additional punishment imposed by this Bill.

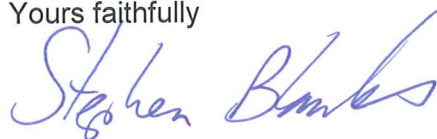
Second, denial of permanent protection to persons convicted of minor criminal offences in detention is plainly disproportionate.

Thirdly, to the extent that the Bill is retrospective it obviously will have no deterrent effect. This Bill is not only retrospective in the literal sense that it will apply to events that occurred prior to it being passed by Parliament – it is retrospective in substance by applying to events occurring prior to its announcement.

Conclusion

NSWCCL opposes this Bill for the above reasons.

Yours faithfully



Stephen Blanks
Secretary, NSW Council for Civil Liberties