



**VICTORIA**

**SUBMISSION TO SENATE INQUIRY**

**Anti-People Smuggling And Other Measures Bill 2010**

From Labor for Refugees (Victoria)

It is the view of Labor for Refugees (Victoria) that, while effectively pulling together various pieces of legislation, this Bill has been substantially misconceived in terms of its central focus and intended outcomes.

2. There can be no doubt that the mass movement of peoples across the globe as they flee conflict, persecution and destitution is a major problem for all countries. What we see in Australia is the end product of this movement i.e. asylum seekers arriving on our shores without benefit of visas or other formal documentation. We used to call them 'illegals', now we call them 'irregular' arrivals. These labels do not change their situation on the ground. By and large they are unfortunates seeking protection.

3. This Bill seeks to criminalize the activities of those other unfortunates who ferry them here – mostly poor people it would seem - who seek to rent out their fishing boats for a small profit. It has been well documented that 'the snakeheads' who master mind this service and collect the lion's share of the profits operate way behind the front line of this activity. From reports in the Indonesian and Australian press many of these people are often well known to the various authorities but rarely seem to be caught in any nets set to catch them. If this Bill operates to target such operatives all well and good, but it seems much more likely that it will be the front line people who will be caught. **The Bill must distinguish between the two classes of people involved in the activity if it is to have the desired effect.**

4. The number of Indonesian fishermen now in Australian prisons is already a controversial issue within Indonesia; in seeking to deter people smuggling, this Bill may exacerbate tensions towards Australia, which we can ill-afford. Application of harsh mandatory penalties to the frontline crew of the boats engaged in bringing asylum seekers to Australian territory will inevitably generate further resentment in the poverty-stricken Indonesian fishing communities from where most of these people are recruited.

Given that the Bill specifies that a person may be convicted of an offence of people smuggling even if the elements of the charge cannot be proven, it is even more likely to provide cause for resentment and a sense of injustice. It is also inconsistent with the basic tenets of the rule of law.

5. We note with approval that the new offences will apparently not apply to asylum seekers themselves or to the families in Australia who in desperation may supply funds for their passage. We do wonder though how this will play out in practice, given the range of possible 'offences' indicated in the Minister's reading of the Bill. We are concerned that the Bill might ultimately lead to harsh penalties being imposed on refugees here enduring lengthy separation and limited options in being reunited with family members.

6. It seems to us that the Federal Government would do well to attempt an investigation of the problem at its source. We note efforts are already under way to provide money through IOM for support of asylum seekers in transit countries. Unfortunately all the reports about the efficacy of this provision to date appear to have been inadequate and have instead created further pain and suffering. We would do well to review the way this 'support' is managed and to make more stringent efforts to see that our aid dollars actually aid people. Such funding may be better withdrawn and used for more useful programs that Australia can oversee more directly.

7. Another problem with the Bill as it stands is that by focusing on people smugglers as the 'straw men' in the debate and not clarifying exactly who they are, the Government is making a very political statement about the media bogies of border protection and national security. This may go down well with an uninformed public in an election year but does very little to deal with the ultimate cause of the problem - the reason for flight in the first instance.

8. In addition, we find it offensive in the extreme when our Government continues to promulgate the myth that every asylum seeker is readily able to access 'authorized migration processes'. This is not the case and never has been the case. The implication should be removed from the proposed legislation because it flagrantly contradicts our responsibilities as a signatory to the various international conventions on refugees and migration.

9. We note also that our Government has attempted to work with officials in the 'home' countries of many of the refugees to convince them to take back those who have fled. While in some respects this may be an admirable ambition it does fail the test of reality – both in regard to long term hatreds and antagonisms in the home communities and of the impossibility of external oversight of any agreements to this effect. It also ignores the circumstances of flight from countries of origin- often persecution and repressive acts by governments in source countries. It is thus an approach that might result in people being returned to situations of potential risk, in direct contravention of our non-refoulement obligations.

10. We are concerned that the legislation as drafted further entrenches into law the notion that people seeking asylum ('second persons') are 'unlawful' (s232A, s233C). This is inconsistent with the spirit and letter of the Refugee Convention which confers a right to seek asylum in signatory countries for people who have a well founded fear of persecution. Their presence on Australian territory is not unlawful if they are found to be refugees deserving of protection under the provisions of the Refugee Convention assessment processes.

We suggest the following alternative methods of achieving more honourable and effective policy outcomes to reduce the incidence of people smuggling:

11.1 Establish Australian refugee assessment centres in countries of first resort. These might be permanent or temporary offices. This is the only honest way of dealing with what is essentially a diversionary 'people smuggler' issue. We would need to establish quotas relative to our ability to cope socially and in terms of our environmental capacities.

11.2 Monitor regularly and report publicly on the efforts of the IOM in helping refugees in our region. This will assist in making the general public aware of the significance and extent of the problem.

11.3 Set up a team to develop education materials/information and programs to better inform the Australian public about the facts relating to refugees and asylum seekers, and Australia's obligations as a signatory to international conventions. This might be achieved through formal connections to refugee groups already in the community. The former Multi-Cultural Affairs Department comes to mind as a possible model.

11.4 Open 'reception centres' in all the main capital cities and major regional centres of Australia with a mandate to deal with settlement issues, language development, education and job training. These centres would need to be closely linked with existing social support agencies. This is undoubtedly a more effective and more economical way of managing new arrivals than supporting what is effectively a gaol on Christmas Island.

11.5 Increase the number of places for refugee family reunion, as a part of the wider migration intake, to create an orderly process for application and sponsorship, without impacting on the current size of the refugee program. The lack of real opportunity for family reunion under the current humanitarian intake causes immense suffering for refugees faced with lengthy separation, and as such continues to provide an incentive for the risky and costly alternative of reunion via people smugglers.

We would appreciate the opportunity to appear before a Senate hearing on this subject.