



# Cộng Đồng Người Việt Tự Do Úc Châu Vietnamese Community in Australia

16<sup>th</sup> April 2010

Committee Secretary  
Senate Legal and Constitutional Committee  
(via email to [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au))

Dear Committee Chair and Members

## VIETNAMESE COMMUNITY IN AUSTRALIA'S SUBMISSION REGARDING "ANTI-PEOPLE SMUGGLING AND OTHER MEASURES BILL 2010"

As a community, the Vietnamese Australian community has tens of thousands of former refugees. We are greatly indebted to the generosity and humanity of Australians. We have much first-hand experience about what it is like to flee tyranny on boats, and to live in camps with no hope in sight.

We support the Government's effort to strike a balance between, on the one hand, punishing for-profit people-smugglers and, on the other, respecting Australians' compassion and Australia's international refugee obligations. In particular, we support the bill's objectives of sending a strong message to professional people-smugglers who profit from asylum seekers. However, the bill as drafted could have unintended consequences. This Submission attempts to bring them to the Committee's attention and suggest some possible solutions. We thank the Committee for the opportunity to make this Submission.

### **New Offence - Supporting the offence of people smuggling**

When there were Vietnamese asylum seekers in camps in South East Asian countries, many Vietnamese Australians sent money to the camps, either to their relatives, acquaintances, or just generally to compatriots. Some even went to the camps to visit to try to soothe their pains.

Even today, there are a few dozen Vietnamese asylum seekers in Indonesia, and a few hundred in Cambodia and Thailand. As recently as a few years ago, there were hundreds of asylum seekers in the Philippines, which our community sent money to and helped to be resettled in Australia, the United States, and Canada.

It was quite natural to want to help them. In fact it would seem wrong to not help your compatriots in distress.

If some of the recipients used some of the money to buy fuel, or pooled their moneys to rent a boat to flee the camps (where they believed they were unfairly treated by the local authorities), this did not seem wrong either. After all, both common sense and international laws told us that it was not illegal to seek asylum, either by applying from the camps or - if it was believed that applying from the camps was hopeless due to unfair treatment - by

going directly to the country where they hoped for a fairer treatment.

Now, asylum seekers buying fuel, compasses and food for the trip would be criminalised as "people smugglers". And if they use money sent by people in Australia then, under this new offence, the latter are criminalised as helping "people smugglers" and face up to 10 years imprisonment.

It is usually not possible for senders to know whether some of the money will be used for the purpose of a boat trip to Australia. Yet, because this new offence applies whether or not they know, they are criminalised.

One of the fundamental Australian values is family. Other peoples share this value, too. It ought not be a crime to help your family members.

### We therefore recommend that

- This new offence of "supporting people-smugglers" should require the prosecution to prove that the sender of money or other material help knew at the time of sending that it would be used for the purpose of "people-smuggling" (see also below); And
- This new offence of "supporting people-smugglers" should not apply where the sender



# Cộng Đồng Người Việt Tự Do Úc Châu Vietnamese Community in Australia

sends the money to help their loved ones, regardless of how the money is spent; And

- Neither the offence of "people-smuggling", nor this new offence of "supporting people-smugglers", should apply where the organiser of the trip does so primarily for them or their loved ones to seek asylum.

## **New Migration Act Offence - People smuggling involving exploitation or danger of death or serious harm**

It is easy to prove that any boat trip from any other country to Australia is a dangerous one, which involves the danger of death or serious harm. All Vietnamese boatpeople knew that up to hundreds of thousands had died on the seas, yet they still fled, because the alternative was worse.

Therefore, if this offence is strictly applied, almost everyone committed of the people smuggling offence will also be guilty of this new offence. We think this is not a consequence that the Parliament would intend.

It is also fairly easy to prove "exploitation", if the Act defines this term too broadly or the courts interpret it too broadly. It costs a lot of money for an asylum seeker to get a boat, supplies, and make the trip. If they let fellow asylum seekers join the trip and share the expenses, this is not exploitation. Again, we think that the Parliament would not intend to criminalise such people.

We therefore recommend that

This new offence should be tightly defined to apply only where the danger of death or serious harm is well beyond that normally expected for a boat trip to Australia on a typical asylum boat, or where the sums charged for places on the trip total much more than the cost of organising it.

## **Mandatory Minimum Penalties**

The bill increases the minimum sentences (5 years or 8 years, depending on the offence and circumstances), and requires courts to apply the increased minima where the person convicted of people-smuggling is also guilty of the "exploitation" or "danger" offences. The bill also applies this increased minimum sentencing in the case of people who have repeatedly smuggle.

We support the last case, because clearly it applies to people who organise trips for profit purposes, rather than to seek asylum themselves. However, in relation to the other cases, as we submitted above, there can be the unintended consequence that almost everyone convicted of people-smuggling can also be guilty of the "exploitation" and "danger" offences.

We therefore recommend that

If our above recommendations are not accepted (that is, if the definition of "people smuggling", "exploitation", and "danger" are not tightened), then no minimum sentencing be imposed by the Act, because in that case the court needs to be able to apply leniency where the organisers of the boat trip are themselves asylum seekers.

Sincerely

Phong Nguyen, Federal President