

NSW Council for Civil Liberties (CCL) supports the passage of the Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012.

In removing the mandatory minimum sentencing provisions in relation to certain people smuggling offences, the Bill redresses a situation which has been incompatible with long-held principles of justice which are the foundation of our system of jurisprudence.

The second reading speech on the Bill by Senator Hanson-Young summarises the background to the legislation and the need for change. CCL endorses the case made out in her speech.

It is submitted that:-

- (a) the current situation breaches a basic tenet of international human rights to which Australia subscribes, namely the right to security of the person and freedom from arbitrary detention. The imposition of a five (5) year period of mandatory detention without reference to the particular circumstances of the individual case breaches this principle;
- (b) central to the sentencing principles which underpin Australia's criminal law is the obligation in sentencing to take into account matters such as the degree of involvement, level of culpability, prior record, hardship, age, mental illness and remorse. The sentencer must have a discretion to be able to take these matters into account. Natural justice and the rule of law require it;
- (c) imposing maximum sentences for serious breaches is unaffected by this Bill;
- (d) a number of judges have adversely commented on the injustice of the current mandatory requirement;
- (e) no social or political benefit has been identified flowing from the current requirement. It has not had any impact on the arrival of the boats and its impact has not been on the organisers of the boat smuggling but on often unaware, poor, illiterate and often very young persons who themselves have been exploited.

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