

**Response to Inquiry into Deterring People Smuggling Bill 2011**

**Submission on behalf of**

**Legal Aid NSW**

**to the**

**Standing Committee on Legal and Constitutional Affairs**

**9 November 2011**

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 36 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

The Explanatory Memorandum to the Deterring People Smuggling Bill 2011 states that the proposed new section 228B is to 'avoid doubt and to ensure the original intent of the Parliament is affirmed' and that the new section is to 'make it clear' that 'this is the way the provisions have been consistently interpreted since their introduction in 1999'. Legal Aid NSW submits that interpreting the law is the role of the judiciary, and as there is currently a stated case in Victoria on this very issue, namely *The Queen v Jeky Payara*, the Parliament could let the Courts perform their constitutional function and await this case before deciding whether to take the unusual step of passing retrospective legislation by inserting the proposed section 228B in the Migration Act.

In the second reading speech, the Minister for Home Affairs/Minister for Justice stated that: The bill does not alter any of the elements of the existing people-smuggling offences in the Migration Act. Legal Aid NSW submits that the purpose of the amendment is to seek to define an element of the people smuggling offences which is a significant change to the legislation. As the proposed legislation is retroactive, the passing of the new s228B will apply to many current criminal proceedings in Australia (including many listed for trial in the next few weeks) where this new definition may then require more evidence to be served which could further delay proceedings for defendants who have already been in (both DIMIA and Corrective Services) custody for lengthy periods awaiting trial.

As the multiple hung juries and verdicts of acquittal in initial NSW trials indicate, many of those charged with people smuggling are ill informed crew who have defences. Any deterrence measures should be aimed higher up the organising chain of the criminal syndicates, based in the Middle East and the bigger Indonesian cities, which arrange passage of the asylum seekers to Indonesia and are reaping the profits.

Legal Aid NSW welcomes the opportunity to provide these comments. Should you require further information, please contact |

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