

Submission from John Menadue, Centre for Policy Development, to the Legal and Constitutional Affairs Committee Inquiry on the Deterring People Smuggling Bill 2011

Submission to:

Julie Dennett

Committee Secretary

Legal and Constitutional Committee (SEN)

(Email: LegCon.Sen@aph.gov.au)

For further information, please see <http://cpd.org.au/category/refugee-policy/>

Submission

In terms of good public policy, this Bill is a tenth-order issue. But unfortunately it has become a live political issue.

People smuggling and asylum seekers arriving by boat is a miniscule problem, not only from Australia's domestic perspective, but also by comparison with a number of asylum seekers seeking protection in other countries. For example, in one weekend in August, more boat people arrived in Italy from Africa than arrived in six months in Australia.

The focus on people smugglers has the effect, partly by design, to divert attention from vulnerable and often heroic people that need our protection, e.g. Afghanis fleeing the Taliban and the corrupt government in Kabul, the military junta in Myanmar and the violent mullahs in Iran backed by their brutal security services.

Governments need to be concerned when asylum seekers use people smugglers to take them on dangerous and possibly fatal journeys. But where there is persecution and violence and no legitimate or obvious way to escape, asylum seekers, if they have the money, will probably turn to people smugglers. Hundreds of thousands of Jewish people who came to Australia and other countries during and after WWII paid people smugglers or agents to escape. In our region, people smugglers provide a valuable service to help North Koreans escape into China across the Tumen River. If there is a market need and opportunity, someone will provide a service to help people escape.

One of the most famous people-smugglers was Oscar Schindler. He was a member of the Nazi Party and a business opportunist with a factory in occupied Poland. The inscription on his grave in Jerusalem reads "Righteous among the nations. The unforgettable life saver of 1200 persecuted Jews." For a fee, many people smugglers do save lives.

We should not allow the focus on people smugglers to obscure the motivations for people to flee their country or their need for protection. Desperate people will not abide by the rules of politicians and officials to join some non-existent queue. There are over 10 million refugees in the world with less than 100,000 resettlement places per annum. The metaphor of a lottery is more appropriate than a queue. People-flows are often messy, unpredictable and chaotic. This Bill will not change that.

Parliamentarians and the media are obsessed with boat people and people smugglers. People smugglers also assist asylum seekers who come by air, but that fact is ignored. We also ignore the fact that in the last ten years, 76% of asylum seekers came by air. In the last five years, it was 71% who came by air. We put in detention asylum seekers who come by boat, but we allow asylum seekers who come by air to live in the community while their refugee claims are being assessed. There are about 50,000 "illegals" in the country. They are people that have come legally to Australia, and have then disappeared into the community when their visas have expired. But the issue is largely ignored. What is the logic in all this? These are surely more important issues that need to be addressed.

In considering this amendment to the Migration Act 1958, the Parliament should consider two much more important issues. The first should be an amendment that clearly articulates the values, principles and obligations of Australia towards asylum seekers and refugees. This is necessary to balance the drum beat of border protection and national security since September 11, 2001, which has pushed human rights and humanitarian issues into the background. We must restore a better balance between border protection and humanitarian obligations. In Canada, refugee protection is covered in a distinct division of the Immigration and Refugee Protection Act. The Fraser Government did demonstrate that it is possible to have humanitarian refugee policies without prejudicing national security or our borders.

The second amendment should establish an Independent Refugee, Asylum and Humanitarian Assistance Authority to administer policies and programs. The Government of course must set the policy guidelines, but such an independent authority would help depoliticise refugee administration. The culture of the Department of Immigration and Citizenship is grounded in compliance and enforcement. That is important but it must be balanced by our humanitarian responsibilities and obligations. Present ministerial and departmental arrangements do not get that balance right.

I attach *A New Approach. Breaking the Stalemate on Refugees and Asylum Seekers*. This document was published by the Centre for Policy Development. It was endorsed by a wide cross-section of prominent Australians. This document elaborates on the issues mentioned above.

The parliament needs to address important and priority issues involving asylum seekers and refugees. People smuggling is not one of them.

John Menadue AO

Board Director, Centre for Policy Development

Formerly, Secretary, Department of Immigration and Ethnic Affairs, 1980-83.

Contact via the Centre for Policy Development: