THE UNIVERSITY OF
NEW SOUTH WALES

FACULTY OF LAW

9 November 2011

Senate Legal and Constitutional Affairs Committee
Via online submission

Dear Committee Secretary,

Re: Inquiry into the Deterring People Smuggling Bill 2011

Please find attached a submission in relation to the above Bill on behalf of the Migrant and Refugee Rights Project within the Faculty of Law at the University of NSW (UNSW).

The Migrant and Refugee Rights Project (MRRP) is a project of the Australian Human Rights Centre at UNSW. It engages in research and law reform initiatives to advance the human rights of refugees and migrants in Australia and Asia. MRRP runs a clinical program in which UNSW Law students gain practical experience in multifaceted approaches to human rights litigation and advocacy in both domestic and international settings, in collaboration with regional partner organizations.

Thank you for your time in considering our submission.

Yours sincerely,

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Deterring People Smuggling Bill 2011

Submission to the Senate Legal and Constitutional Affairs Committee

9 November 2011

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I. INTRODUCTION

The *Deterring People Smuggling Bill 2011* (the Bill) was introduced into Parliament on 1 November 2011. The content and timing of the Bill suggest that it was introduced in response to a test case pending before the Victorian Court of Appeals.[1] The court was due to hear argument on 3 November as to whether Parliament intended the people smuggling offence under s233C of the *Migration Act 1958* ('Migration Act') to include the "smuggling" of asylum seekers and refugees. The government (through the CDPP) argues that Parliament did so intend. The defendant argues that this was never Parliament's intent. Before the court could determine whether the defendant or the CDPP is correct, the government introduced the present Bill which legislates that the people smuggling offence includes *and since 1999 has included* within its ambit the "smuggling" of asylum seekers and refugees.

We recommend that the Committee call for the Bill to be rejected.

Our primary concerns with the Bill relate to:

1. The criminalisation of the transportation to Australia of refugees and others to whom Australia would have protection obligations under international law, deliberately frustrating their ability to engage Australia's protection responsibilities inconsistent with Australia's duty to implement its treaty obligations in good faith;

2. The retention of unjust and arbitrary mandatory sentencing provisions associated with people smuggling offences, in direct contravention of Australia's international legal obligations (including the People Smuggling Protocol which the Bill purports to implement), and despite the lack of any evidence that these disproportionate sentences have any deterrent effect;

[1] For more information on the case of Jeky Payara currently pending before the Victorian Court of Appeals, see the submission to this Inquiry from Victoria Legal Aid.

3. The retrospective application of the new offences created by the legislation, in direct contravention of Australia's international legal obligations, basic common law principles, and general rule-of-law constraints;

4. The circumstances under which the Bill has been hastily introduced, preventing informed debate on legislation that retrospectively strips people of rights that they may have had dating back to 1999; circumvents a case currently pending before the judiciary to which the government is a party; undermines the ability of refugees to obtain protection from persecution; calls into question Australia's compliance with its obligations under international law; and has a disproportionate impact on vulnerable groups.

As of February 2011, of 353 people arrested and charged with people smuggling offences, 347 were crew and only 6 were organisers. The overwhelming majority of those are poor, uneducated Indonesian fishermen who before being jailed in Australia were breadwinners for wives, siblings, parents and/or children left behind in fishing villages in Indonesia. The individuals prosecuted are generally the victims of the organisers of people smuggling operations, lured by a small sum to work as cooks and deckhands, generally without knowledge of the purpose or destination of the voyage, and without knowledge of Australian immigration or criminal laws.

The people smuggling offence under section 233C of the Migration Act is an "aggravated offence" that requires all judges to impose a mandatory sentence of five years imprisonment with a minimum 3 year non-parole period. The only "aggravating" factor that differentiates this offence from the standard smuggling offence under s233A is the element that five or more noncitizens were brought to Australia. Because unauthorised boats invariably carry five or more people, all defendants are charged with this "aggravated" offence and liable for the mandatory five year sentence – regardless of their personal circumstances, level of involvement or moral culpability.

It is our conclusion that this Bill undermines the letter and spirit of Australia's international legal obligations and erodes the rule-of-law foundations on which our legal and political systems rest. Implementation of the Bill will likely cost taxpayers millions of dollars

in legal fees and detention costs, in addition to significantly increasing the workload of local courts that will likely result in resource pressures and delays across the board. We are convinced that there is no evidence that the Bill will have a deterrent effect. As such, we perceive no identifiable benefit to Australia that could justify the level of harm and hardship that the Bill is likely to cause.

II. EXPANSION OF THE SMUGGLING OFFENCES TO INCLUDE REFUGEES UNDERMINES AUSTRALIA'S COMPLIANCE WITH THE REFUGEES CONVENTION, AND OTHER INTERNATIONAL HUMAN RIGHTS TREATIES, AND IS NOT REQUIRED BY THE SMUGGLING PROTOCOL

The Explanatory Memorandum misleadingly states that the proposed application of the smuggling offences to individuals involved in bringing asylum seekers to Australia "do[es] not affect the rights of individuals seeking protection or asylum in Australia … [and] do[es] not affect Australia's international obligations in respect of those persons." It also erroneously suggests that the Bill is required by Australia's obligations under the *Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention on Transnational Organised Crime* (the Smuggling Protocol). [2]

A. The Smuggling Protocol does not require criminalisation of the "smuggling" of refugees

Australia ratified the Smuggling Protocol in 2004. The Protocol, directed "against the Smuggling of Migrants" is intended to address the problem of irregular labour migration, not refugee flows. It does not, as the Explanatory Memorandum suggests, require criminalisation of the facilitation of crossing borders by refugees.

Article 3 of the Protocol defines smuggling as the procurement of the "illegal entry" of a noncitizen or non-resident. "Illegal entry" is defined as "crossing borders without complying with the necessary

[2] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime (2000).

requirements for legal entry into the receiving State". Article 6 requires state parties to criminalise the smuggling of "migrants".

Article 19 of the Protocol contains a "savings clause" which states:

> "Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under … international human rights law and, in particular, where applicable the 1951 Convention and the 1967 Protocol … and the principle of non-refoulement as contained therein."

The Protocol does not define "migrants" for the purpose of article 6, and does not address whether or not it includes refugees. The Protocol similarly does not address whether asylum seekers or refugees who enter without authorisation "comply[] with the necessary requirements for legal entry".

This is likely because (1) the drafters of the Protocol simply did not have refugees in mind as the objects of the conduct that the Protocol was directed to address, and (2) under international legal instruments and policy discourse, the term "migrant" is widely understood to refer to labour migrants – not refugees. As one scholar recently observed, "[t]he creation of a protection regime under international refugee law has led to a negative definition of 'migrants', which maintains that migrants are, inter alia, those who are not refugees". [3]

In its authoritative Handbook, the United Nations High Commissioner for Refugees (UNHCR) defines a "migrant" as "a person who, for reasons other than those contained in the definition [of the 1951 Convention and the Protocol], voluntarily leaves his country in order to take up residence elsewhere … If he is moved exclusively by economic considerations, he is an economic migrant".

Indeed, one of the only documents in the entire drafting history of the Protocol that even contains the word refugees -- an 'interpretive note'

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[3] Julian M. Lehmann, "Rights at the Frontier: Border Control and Human Rights Protection of Irregular International Migrants", 3 *Goettingen Journal of International Law* 2 (2011), 733-775 (Lehmann, "Rights at the Frontier") at 737.

by the UN Office on Drugs and Crime -- states explicitly that: 'The protocol does not cover the status of refugees'.[4]

B. The Bill undermines Australia's obligations under the Refugees Convention and other international human rights treaties

1. The Refugees Convention recognises that refugees must often seek protection without a visa

The Bill amends the Migration Act to define refugees who do not possess a visa as having no right to Australia's protection, and it imposes harsh mandatory sentences on anyone who brings such refugees to Australia. If the Senate had passed this Bill in 1939, Oskar Schindler and countless others who helped Jews escape to safety during the Holocaust (without valid visas) would be mandatorily sentenced to five years in an Australian prison.

In direct response to the challenges that refugees without visas faced when trying to escape the Nazis, the drafters of the 1951 Refugees Convention included the prohibition under article 31 against punishment of refugees who enter a state party without a valid visa, provided they present themselves to authorities on arrival (which virtually all unauthorised boat arrivals to Australia do). According to leading refugee law scholars, in principle "it should follow [from article 31] that a carrier should not be penalized for bringing in an 'undocumented' passenger, where that person is subsequently determined to be a refugee".[5]

2. Australia's protection obligations

Under article 14 of the Universal Declaration of Human Rights, everyone has the right to seek asylum from persecution. Although

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[4] United Nations Office on Drugs and Crime, *Travaux Preparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, New York, 2006, UN Publication E.06.V.5, p. 555.

[5] G. Goodwin-Gill, "Article 31 of the 1951 Convention relating to the Status of Refugees: Non-Penalization, Detention, and Protection," in E. Feller et al. eds., *Refugee Protection in International Law* 185 (2003), at 219.

the Universal Declaration is not binding, Australia has specific obligations under several international treaties that stem from this universal right. For example:

- Australia has a legal duty under article 33 the Refugees Convention to protect people with a well-founded fear of persecution on particular grounds (the *non-refoulement* obligation).

- Under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment ('Convention Against Torture') and the International Covenant on Civil and Political Rights ('ICCPR'), Australia is prohibited from returning an individual to a country where she would be at risk of torture, cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life. These obligations have now been implemented in Australian domestic law through the recently enacted complementary protection legislation.

- Under Article 12(2) of the ICCPR, Australia must not frustrate the right of asylum seekers and refugees to leave their own country or another country.

- In the case of children seeking refugee status, Australia is obliged under Article 21(1) of the Convention on the Rights of the Child to ensure not only that they receive protection, but also that they receive humanitarian assistance in the enjoyment of rights under that convention and other human rights instruments.

3. Australia's duty to implement its treaty obligations in good faith, and its obligation to not frustrate the right to seek protection

Australia is further obliged under the Vienna Convention on the Law of Treaties to implement all of the above obligations in good faith.[6] A

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[6] 1969 *Vienna Convention on the Law of Treaties*, 1155 *UNTS* 331, arts. 26, 31; see also *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, UNGA res 2625 (XXV) (24 Oct. 1970), para 3.

State demonstrates a lack of good faith 'when it seeks to avoid or to "divert" the obligation which it has accepted, or to do indirectly what it is not permitted to do directly'.[7] The test for good faith is an objective one; it looks at the practical effect of State action, not its intent or motivations.[8]

In the context of protection obligations, measures which have the effect of blocking access to procedures or territory may not only breach express obligations under international human rights and refugee law, but also violate the principle of good faith.[9] Indeed, 'the options available to States wishing to frustrate the movement of asylum seekers are limited by specific rules of international law and by states obligations to fulfill their international commitments in good faith.'

States are not obliged under the Refugees Convention to grant permanent asylum. However flowing from the *non-refoulement* obligations "there is a corresponding obligation on States not to frustrate the exercise of the right to seek asylum in such as way as to leave individuals at risk of persecution or some other relevant harm."[10]

According to leading refugee law scholars Guy Goodwin-Gill and Jane McAdam,

> "States that impose barriers on individuals seeking to leave their own country, or that seek or deflect or obstruct access to asylum procedures, may breach [their obligation to respect the individual's right to leave his or her country in

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[7] G S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed, Oxford University Press, 2007) 387

[8] Brownlie, I., *Principles of Public International Law,* (6th edn., 2003), 425-30, 444 in Goodwin-Gill and McAdam, *The Refugee in International Law*, above note 7, at 387.

[9] Goodwin-Gill and McAdam, *The Refugee in International Law*, above note 7, at 338.

[10] *Ibid.*

> search of protection] and, more generally, demonstrate a lack of good faith in implementing their treaty obligations."[11]

Goodwin-Gill and McAdam underscore that "visa regimes which seek to obstruct access to protection undermine the institution of asylum and international human rights and refugee law principles."[12]

III. RETROSPECTIVE APPLICATION OF THE LEGISLATION VIOLATES AUSTRALIA'S INTERNATIONAL OBLIGATIONS AND IS INCONSISTENT WITH GLOBAL PRACTICE AND AUSTRALIAN COMMON LAW

A. Creation of a new offence with retrospective effect

The Bill retrospectively declares the meaning of the phrase "no lawful right to come" to include within its scope asylum seekers, refugees, and others in relation to whom Australia has protection obligations under international law. The expanded definition of the offence is deemed to apply to all offences committed since 1999 – twelve years before the passage of the legislation by Parliament.

In the absence of this Bill, the Victorian Court of Appeal could determine that under the current version of the *Migration Act* that has applied since 1999, "no lawful right to come to" does *not* include asylum seekers and refugees within its scope. The Bill therefore does not merely "clarify" the meaning of the offence, but rather creates an offence that may not have existed previously, with retrospective application back to 1999.

B. Violation of Australia's obligations under the ICCPR

The retrospective application of the Bill directly contravenes article 15 of the International Covenant on Civil and Political and Political Rights (ICCPR) which relevantly states:

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[11] *Ibid.*, 370.

[12] *Ibid.,* 374.

> (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed…

Article 15 is one of only 5 ICCPR rights that is absolute, meaning that it cannot be suspended or restricted even during a state of emergency (other absolute rights include freedom from torture and slavery).

The absolute status of the right reflects general global consensus that an individual should not be punished for conduct that was not criminal at the time it was committed.

In addition to the ICCPR, the prohibition on retrospective criminal law is also recognised under Article 11(2) of the *Universal Declaration of Human Rights*, Article 7(2) of the *African Charter on Human and People Rights*, Article 9 of the *American Convention on Human Rights*, Article 7 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 22 of the *Rome Statute of the International Criminal Court*.

Retrospective criminal laws are prohibited by most countries, including the foundational prohibition under sections 8 and 9 of the *United States Constitution.*

C. Inconsistency with Australian common law

The odious nature of retrospective criminal laws was recognised as early as 1651, when Hobbes wrote: “No law, made after a fact done, can make it a crime ... For before the law, there is no transgression of the law.”[13]

In *Polyukovich v The Commonwealth*[14] the High Court held that Australian common law contains a prohibition against retrospective

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[13] *Polyukovich v The Commonwealth* (1991) 172 CLR 501 (Toohey J) citing *Leviathan* (1651), Chs.27-28, quoted in Glanville Williams, *Criminal Law: The General Part*, 2nd ed. (1961), 580.

[14] (1991) 172 CLR 501.

criminal law. The majority held that Parliament nevertheless had power to enact a retrospective criminal law with respect to conduct that constituted a war crime under international law at the time of its commission. Justices Dean and Gaudron each wrote powerful dissenting judgements which held that Parliament does not have power to enact retrospective criminal legislation because it usurps judicial functions in a manner barred by Chapter III of the Australian Constitution.

It is unclear whether a majority of the Court would reach a similar conclusion in relation to this Bill, particularly considering that the "smuggling" of refugees is not widely accepted as an offence under international law (and indeed the Smuggling Protocol only came into force after the retrospective start date of the Bill).

IV. MANDATORY SENTENCES VIOLATE INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND THE SMUGGLING PROTOCOL, AS WELL AS AUSTRALIAN COMMON LAW PRINCIPLES

A. Relevant mandatory sentencing provisions

We recommend that the Committee call for the deletion of the mandatory sentencing provisions under s236B of the Migration Act that are associated with the offences to which the Bill relates.

Under s236B of the *Migration Act*, a court *must* sentence a person convicted under s233C and other "aggravated" smuggling offences to at least five years' imprisonment with a minimum three year non-parole period. The sentencing court is stripped of its discretion to consider mitigating factors, regardless of their compelling nature or the unfairness or disproportionality of the sentence in light of individual circumstances.

Section 233C establishes an aggravated people smuggling offence where a person, in committing a primary offence of people smuggling, organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of at least five persons who had or have "no lawful right to come to Australia". This small number of non-citizens renders involvement in virtually every

venture an aggravated offence – even the transporting of a single nuclear family.

The present legislation extends this offence to apply even when Australia has protection obligations to the noncitizens under the Refugees Convention or other international treaties.

B. Disproportionate impact on vulnerable groups

Section 233C predominantly affects highly vulnerable people and the families that depend on them. The overwhelming majority of individuals prosecuted for people smuggling offences under this section have been impoverished Indonesian fisherman, rather than key organizers of sophisticated people smuggling syndicates. Indeed, the Indonesian Embassy in Canberra has confirmed that:

> Most of the Indonesians detained in Australia in connection with the arrival of boat people are poor traditional fishermen, lured by the promise of money (sometimes as little as $US150) from the organised people-smugglers to carry a boatload of passengers who originally come from as far away as Afghanistan. These fishermen are the boat crew and not the masterminds of people-smuggling.[15]

Imprisoning a poor Indonesian fisherman for five years is likely to render his family destitute, since they will be without their primary breadwinner. To do this without individually assessing the extent of the individual's involvement in the venture, or any mitigating factors, such as the individual's remorse or his/her cooperation with authorities to identify the true masterminds of the venture, is fundamentally unfair and achieves no identifiable benefit to Australia that could justify the level of harm and hardship that it is likely to cause.

[15] P Mailey and P Taylor, "Asylum Spike Bucks World Trend: UN Report", *The Australian* (24 March 2010).

C. Inconsistency with Australia's obligations under the ICCPR and the Smuggling Protocol

Mandatory sentencing regimes directly conflict with Australia's obligations under the ICCPR, and possibly other human rights treaties. Because mandatory sentencing does not allow consideration of the proportionality of the sentence to the crime committed in light of individual circumstances, *by definition* it may result in penal sentences that constitute arbitrary detention. Article 9 of the ICCPR prohibits arbitrary detention. Detention is "arbitrary" if it is unjust or unreasonable, even if sanctioned by law.[16]

Mandatory sentencing arguably also violates article 14 of the ICCPR, because it does not permit the right to a hearing before an independent tribunal and to a review of sentence by a higher tribunal. This is because the sentence is imposed by the legislature, is not subject to judicial control, and there is no system for sentences to be reviewed.[17] Mandatory sentencing also raises issues under articles 7 (prohibition of cruel, inhuman or degrading treatment or punishment) and 10 (treatment of people deprived of liberty) of the ICCPR.

In the past, the UN Human Rights Committee has found that mandatory sentencing laws in the Northern Territory and Western Australia raised "serious issues of compliance with various Articles" of the ICCPR.[18]

In addition to ICCPR violations, the mandatory sentencing provisions are inconsistent with article 19 of the Smuggling Protocol, which underscores that criminalisation of smuggling pursuant to the Protocol must not undermine "responsibilities of States and individuals under … international human rights law." This includes responsibilities under the ICCPR and other human rights treaties to which Australia is a party. The Explanatory Memorandum is thus incorrect when it describes Australia's people smuggling offences as

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[16] See eg *A v Australia*, UN Human Rights Committee (1997); reports of the UN Working Group on Arbitrary Detention: <http://www2.ohchr.org/english/issues/detention/> (accessed 12 April 2010).

[17] See eg S Pritchard, 'International Perspectives on Mandatory Sentencing' [2001] *Australian Journal of Human Rights* 17.

[18] UN Human Rights Committee, "Concluding Observations of the Human Rights Committee: Australia" (24 July 2000) UN doc A/55/40.

"consistent with Australia's obligations to criminalise people smuggling and aggravated people smuggling under the *Protocol.*" In order to make the smuggling offences consistent with the Protocol, the Bill must, among other things, remove the mandatory sentencing provisions associated with the people smuggling offences.

D. Inconsistency with Australian common law

Mandatory minimum sentences and the fettering of judicial discretion to apply standard sentencing principles in light of individual circumstances is inconsistent with the principle of proportionality between sentence and offence that is entrenched in Australian domestic law.[19]

E. Criticism of mandatory sentencing laws by Australian judges

The mandatory sentencing provisions have recently been the subject of strong criticism by the judges required to implement them. Justice Kelly in the Supreme Court of the Northern Territory recently made the following statements in the course of sentencing remarks:

> As I say, taking into account all of those matters which are set out in s 16A(2), I would not consider it appropriate to hand down a sentence anywhere near as severe as the mandatory minimum sentence ... Such a sentence is completely out of kilter with sentences handed down in this Court for offences of the same or higher maximum sentences involving far greater moral culpability including violence causing serious harm to victims. [20]

Justice Kelly cited the following statement made by Mildren J in *Trenerry v Bradley* (1997) 6 NTLR 175 at 187:

> Prescribed minimum mandatory sentencing provisions are the very antithesis of just sentences. If a Court thinks that

[19] See eg *Veen v The Queen (No 2)* (1988) 164 CLR 465, 472 (Mason CJ, Brennan, Dawson and Toohey JJ).

[20] Sentencing remarks by Kelly J in *The Queen v Edward Nafi (Sentence)*, SCC 21102367 (Supreme Court of the Northern Territory) Transcript of Proceedings at Darwin on 19 May, 2011.

> a proper just sentence is the prescribed minimum or more, the minimum prescribed penalty is unnecessary. It therefore follows that the sole purpose of a prescribed minimum mandatory sentencing regime is to require sentencers to impose heavier sentences than would be proper according to the justice of the case.

As he imposed the mandatory minimum sentence and non-parole period, Kelly J stated:

> This is such a case. I am compelled by the legislation to hand down a sentence which is harsher than a just sentence arrived at on the application of longstanding sentencing principles applied by the Courts and which have been applied by those Courts for the protection of society and of the individual. I have no choice.[21]

Justice Blokland recently made similar criticisms in the Northern Territory Supreme Court when forced to impose a mandatory sentence in a smuggling offence:

> I fully acknowledge the need for general deterrence, however deterring of poor, uneducated fishermen in Indonesia has not been achieved by mandatory sentences, and at the same time has removed judicial discretion to pass proportionate sentences. Other members of this court have made similar observations. It is important people be deterred from committing this offence, particularly because of the safety issues to all persons, and the understandable concern in the community about that. Unfortunately, the five year sentence I am obliged to impose has an arbitrary element to it, as does most forms of mandatory imprisonment.
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> Australia is a party to the international covenant on civil and political rights. Article 9.1, in part states that no-one shall be subjected to arbitrary arrest or detention. Assigning a five year sentence of imprisonment, without judicial consideration of the gravity of the offence, in terms

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[21] *Ibid*.

> of the circumstances of the offending and the offender may, in my view, amount to arbitrary detention. In the usual sense it is understood, it must be arbitrary because it is not a sentence that is a proportional sentence. The court is deprived of the usual function to assess the gravity and, therefore, be able to pass a proportionate sentence.
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> In this particular case it is particularly so because there is a failure to differentiate people in the circumstances of [the defendant] from those who actually orchestrate the offence on a grand scale.[22]

V. RULE OF LAW CONCERNS RELATED TO THE CIRCUMSTANCES SURROUNDING THE BILL

The Explanatory Memorandum to the Bill states that the Bill merely "ensure[s] the original intent of Parliament is affirmed." However the timing and haste of the Bill's introduction suggests that it was in fact introduced to scuttle judicial determination of Parliament's intent.

The Bill was introduced in the House of Representatives on 1 November, 2011, two days before the Victorian Court of Appeals was to hear a test case on the precise legal issue that the Bill addresses. It is our understanding that the Bill was not on the program for that day, and was introduced into the House of Representatives after 6.15pm, denying the opportunity that the Selection Committee would have had to refer it to an inquiry had the legislation been introduced before 5pm. It is also our understanding that the vote on the legislation was scheduled less than one hour after its introduction. The present Senate Inquiry was announced on 3 November, 2011, with submissions due 6 days later on 9 November, 2011.

The lack of an opportunity for informed public debate on the Bill, and its apparent timing to scuttle a case currently pending before the judiciary to which the government is a party, undermine the rule of law and circumvent critical institutional checks on government power. Were the Senate to pass the Bill under these circumstances its

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[22] Sentencing remarks of Blokland J in *The Queen v Mahendra*, SCC 21041400, Supreme Court of the Northern Territory, 1 Sept., 2011.

overreach would be especially egregious given that the Bill retrospectively strips people of rights that they may have had dating back to 1999; undermines the ability of refugees to obtain protection from persecution; calls into question Australia's compliance with its obligations under international law; and has a severe and disproportionate impact on vulnerable groups.