

Gregory F Parkin

Committee Secretary Senate Legal and Constitutional Committee Parliament
House Canberra ACT 2600

Dear Secretary

Anti-People Smuggling and Other Measures Bill 2010

Proposed section 233A of the Migration Act seems to be self-contradictory.

Absolute liability applies to the element that the person (being smuggled into Australia) is a non-citizen.

But absolute liability does not apply to the element that the person has no lawful right to come to Australia. If the person were a citizen, they would have had a lawful right to come to Australia.

If the prosecution cannot establish recklessness as to whether the person is a non-citizen, they cannot establish recklessness as to whether the person has no lawful right to come to Australia.

This seems to mean that proposed subsection 233A(2) has no practical effect.

The same applies to proposed section 233C.

Yours sincerely

Gregory F Parkin

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