CHAPTER 1
INTRODUCTION

1.1   On 11 March 2010, the Senate referred the provisions of the Anti-People Smuggling and Other Measures Bill 2010 (the Bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 11 May 2010.

Purpose of the Bill

1.2   The Bill was introduced in the House of Representatives on 24 February 2010 by the Attorney−General, the Hon. Robert McClelland MP. The aim of the Bill is to strengthen the Commonwealth's anti−people smuggling legislative framework.[1] In particular, the Bill contains provisions:

 (a)   to amend the *Migration Act 1958* (Migration Act) and the *Criminal Code Act 1995* (the Criminal Code) to create new people smuggling offences and harmonise existing offences;

 (b)   to broaden the role of the Australian Security Intelligence Organisation (ASIO) to include gathering intelligence on people smuggling and other serious threats to border integrity;

 (c)   to increase the powers of law enforcement agencies to utilise surveillance devices and telecommunications interception to investigate people smuggling offences; and

 (d)   to expand ASIO's powers to utilise telecommunications interception to collect foreign intelligence.

Background

International agreements and initiatives

1.3   Australia has ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and its supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air (the People Smuggling Protocol). Article 6 of the People Smuggling Protocol requires state parties to criminalise people smuggling when it is committed intentionally and in order to obtain a financial or material benefit. Article 19 of the People Smuggling Protocol clarifies that the protocol is not intended to affect the responsibilities of states under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention).[2]

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1   Explanatory Memorandum, p. 1.

2   at www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf (accessed 17 March 2010).

1.4   There are several other international initiatives directed at combating people smuggling. Most significantly, the Bali Ministerial Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was established in 2002 and aims to bring participants together to work on practical measures to help combat people smuggling in the Asia-Pacific region and beyond.[3] The Bali Process is co-chaired by Australia and Indonesia and over 50 other countries participate as well as organisations such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).[4] The Indonesian and Malaysian Governments have indicated that they intend to criminalise people smuggling.[5]

Extent of people smuggling

1.5   Based on figures collated from media releases and reports, to 3 May 2010, there had been 92 unauthorised boat arrivals carrying approximately 4,300 people (including crew) during 2009-10.[6] In 2008-09, there were 23 vessels carrying 1033 people, while in 2007-08 there were three vessels carrying 25 asylum seekers.[7] The last peak in unauthorised boat arrivals occurred between 1999-2000 and 2001-02.

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3   www.baliprocess.net (accessed 17 March 2010).

4   www.baliprocess.net (accessed 17 March 2010).

5   Prime Minister, 'Australia-Indonesia joint statement', *Media Release*, 10 March 2010 at: www.pm.gov.au/node/6556 (accessed 17 March 2010); Attorney-General's Department, *Answers to questions on notice*, 23 April 2010, p. 3.

6   Janet Phillips and Harriet Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Background Note, 11 March 2010, at: http://www.aph.gov.au/library/pubs/BN/sp/BoatArrivals.htm (accessed 17 March 2010), p. 18; Minister for Home Affairs, *Media Releases*: 'Border Protection Command intercepts vessel' 29 April 2010, 'Border Protection Command intercepts vessel' 28 April 2010, 'Border Protection Command intercepts vessel' 27 April 2010, 'Border Protection Command intercepts vessel' 26 April 2010, 'Border Protection Command intercepts vessel' 23 April 2010, 'Border Protection Command intercepts vessel' 21 April 2010, 'Border Protection Command intercepts vessel' 11 April 2010, 'Border Protection Command intercepts vessel' 11 April 2010, 'Border Protection Command intercepts vessel' 10 April 2010, 'Border Protection Command intercepts vessel' 10 April 2010, 'Border Protection Command boards vessel' 9 April 2010, 'Border Protection Command intercepts vessel' 7 April 2010, 'Vessel intercepted by Border Protection Command' 6 April 2010, 'Border Protection Command intercepts vessel' 4 April 2010, 'Border Protection Command intercepts vessel' 2 April 2010, 'Border Protection Command intercepts vessel' 1 April 2010, 'Two vessels intercepted by Border Protection Command' 29 March 2010, 'Border Protection Command intercepts vessel' 27 March 2010, 'Border Protection Command intercepts vessel' 25 March 2010, 'Border Protection Command intercepts vessels' 23 March 2010, 'Border Protection Command intercepts vessel' 22 March 2010, 'Border Protection Command intercepts vessel' 20 March 2010, 'Border Protection Command intercepts vessel' 14 March 2010, 'Border Protection Command boards vessel' 12 March 2010 and 'Border Protection Command rescues 27 people' 11 March 2010; Hayden Cooper, 'Asylum seekers intercepted near Christmas Island', *ABC News,* 16 April 2010, at: www.abc.net.au/news/stories/2010/04/16/2874614.htm?site=news (accessed 16 April 2010).

7   Janet Phillips and Harriet Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Background Note, p. 18.

During this period, there were approximately 3,000 to 4,000 unauthorised boat arrivals per financial year.[8]

1.6   People smuggling also occurs by air but is more difficult to quantify. Many people who are refused immigration clearance or who claim protection on, or shortly after, arrival in Australia have used the services of people smugglers.[9] In 2008-09, 1,500 people were refused immigration clearance on arrival in Australia and 5,300 people applied for a protection visa onshore.[10]

1.7   UNHCR figures show that there were 377,100 asylum applications in 44 industrialised countries in 2009 of which 6,200 claims were made in Australia. This compared with total figures of 377,200 in 2008 with 4,800 claims made in Australia.[11] This means that there was nearly a 30% increase on claims made in Australia between 2008 and 2009.[12] During the previous peak in asylum applications, UNHCR reported 13,100 claims made in Australia in 2000 and 12,400 claims made in 2001.[13]

Government response to people smuggling

1.8   The 2009-10 Federal Budget included a commitment of $654 million over six years to implement a comprehensive strategy to combat people smuggling and help address the problem of unauthorised boat arrivals.[14] This included additional funding for:

> (a)   the Australian Customs and Border Protection Service (Customs) to increase maritime and aerial surveillance;
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> (b)   the Australian Federal Police (AFP), the Attorney-General's Department and the Commonwealth Director of Public Prosecutions (DPP) to support the investigation and prosecution of people smuggling offences; and

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8   Janet Phillips and Harriet Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Background Note, p. 18.

9   Department of Immigration and Citizenship, *Fact Sheet 73 – People Smuggling*, 20 May 2009, at: www.immi.gov.au/media/fact-sheets/73smuggling.htm (accessed 17 March 2010), p. 2.

10   Department of Immigration and Citizenship, *Annual Report 2008-09*, pp 93 and 102.

11   UNHCR, *Asylum Levels and Trends in Industrialised Countries 2009*, 23 March 2010, at: http://www.unhcr.org/4ba7341a9.html (accessed 25 March 2010), pp 4, 5 and 13.

12   UNHCR, *Asylum Levels and Trends in Industrialised Countries 2009*, 23 March 2010, p. 5.

13   UNHCR, *Asylum Levels and Trends in Industrialised Countries 2009*, p. 14.

14   Elibritt Karlsen, *Anti-People Smuggling and Other Measures Bill 2010*, Bills Digest No. 131, 11 March 2010, p. 4; Prime Minister, Minister for Immigration and Citizenship, Minister for Foreign Affairs, Attorney-General and Minister for Home Affairs, '$1.3 Billion to Combat People Smuggling and Strengthen Australia's National Security', *Media Release*, 12 May 2009 at: www.ema.gov.au/www/agd/agd.nsf/Page/Publications_Budgets_Budget2009_MediaReleases_ $1.3BilliontoCombatPeopleSmugglingandStrengthenAustraliasNationalSecurity (accessed 29 March 2010) p. 1.

    (c)   the AFP and Customs to improve international engagement aimed at combating people smuggling particularly with transit countries such as Malaysia and Indonesia.[15]

1.9   Between September 2008 and March 2010, the AFP made 117 arrests in relation to people smuggling offences which resulted in 28 convictions with 89 people still before the courts.[16]

Conduct of the inquiry

1.10   The committee advertised the inquiry in *The Australian* newspaper on 24 March and 7 April 2010, and invited submissions by 16 April 2010. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 30 organisations and individuals inviting submissions.

1.11   The committee received 29 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.12   The committee held a public hearing in Sydney on 16 April 2010. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at http://www.aph.gov.au/hansard.

Acknowledgement

1.13   The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearing.

Scope of the report

1.14   Chapter 2 provides an outline of the Bill and its key provisions. Chapter 3 discusses the issues raised in submissions and evidence.

Note on references

1.15   References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

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15   Minister for Home Affairs, 'New Measures to Enhance Australia's Border Protection', *Media Release*, 12 May 2009, at: www.ema.gov.au/www/agd/agd.nsf/Page/Publications_Budgets_Budget2009_MediaReleases_ NewMeasurestoEnhanceAustraliasBorderProtection (accessed 29 March 2010) pp 1-2.

16   Minister for Home Affairs, *House Representatives Hansard (Proof)*, 16 March 2010, p. 26. A media release from the Minister for Home Affairs on 21 April 2010 stated that the AFP had arrested 135 people in relation to offences under the Migration Act since September 2008.