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27 April 2010

Senate Standing Committee on
Legal and Constitutional Affairs

Re: Anti People Smuggling and Other Measures Bill 2010

Dear Committee,

Thank you for the opportunity to comment on the Anti-People Smuggling and Other Measures Bill 2010 ("the Bill").

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. Liberty works to defend and extend human rights and freedoms in Victoria.

Liberty Victoria wishes to express its strong disapproval of the Bill. The Bill is part of a program of demonisation of people smugglers, which is, in truth, about demonising asylum seekers by proxy. Vilifying people smugglers has become the socially acceptable way of demonising asylum seekers. The dog whistle sounds loud and clear in every message about the evils of people smuggling.

Liberty Victoria is dismayed at recent developments in asylum seeker policy in Australia, of which this Bill is a part. This Bill, and other recent developments like the suspension of asylum applications from Sri Lanka and Afghanistan, signal a retreat from the more humane policies originally introduced by the Government. This about-face represents a failure, not of policy, but of politics. It represents a capitulation by the Government to political forces it has been too inept, or too timid, to confront and deal with.

For this failure many innocent people are suffering and will suffer. Their suffering should be on the consciences of all who support this Bill.

Liberty Victoria points to the report of its Secretary Jessie Taylor, 'Behind Australian Doors', and commends the findings set out on page 7 of the report:

"In order to stop boats from coming, the Australian government need only to:

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1. *Install a controlled, robust and fair assessment and resettlement process direct from Indonesia to Australia (most logically through bolstering the capacity of the UNHCR); and*

2. *Slightly increase its resettlement intake, allowing swift durable solutions for individuals determined to be refugees under the Refugee Convention.”*

This simple, viable two-step solution would eradicate the demand for people smugglers

to carry asylum seekers into Australia. It would enable Australia to uphold its international legal obligations, and assume a credible leadership role in the expansion of human rights protections in the Asia-Pacific region. It could be rolled out in stages, including an immediate interim stage, a stop-gap stage, and a longer term diplomatic strategy, dealing with the realities of global people movement”.

Were these recommendations implemented, the need for people smuggling would collapse entirely. It is purely by lack of foresight and insight that the Australian Government is incapable of dealing productively and humanely with the human cargo who have no choice but to put their lives in the hands of people smugglers.

Liberty makes the following specific comments in relation to the Bill:

1. Liberty believes that the changes to the *Criminal Code Act 1995*, creating a new offence of supporting the offence of people smuggling, and the changes to the *Migration Act 1958* (2 new offences – supporting and people smuggling) are unwarranted and too far reaching. In accordance with international law norms, the real evil is profiting from people smuggling. That is, obtaining a benefit from the act of people smuggling. Removing the requirement that a person needs to profit from offence in our view undermines the very purpose of the criminal law and casts the net too wide where innocent people could be caught.

These unwarranted measures deny and ignore the push and pull factors influencing asylum seekers. Liberty believes these are the main reasons for people seeking asylum and taking decisions into their own hands and coming to Australia by boat.

2. The proposed amendments to the *Surveillance Devices Act 1999* are of further concern to Liberty Victoria. The initial intention of Parliament in enacting this legislation was to assist in the investigation of terrorism related offences. Except in extreme cases of emergency, a warrant should be required to tap a phone or allow optical surveillance.

Allowing emergency authorisation in migration matters is not warranted particularly in light of the recognised right to privacy in the ICCPR. Liberty considers that this interference with the right to privacy is not warranted in the context of the Migration Act and people smuggling.

Should you wish to discuss any aspect of the matters raised please contact me on or Jessie Taylor at

Yours faithfully,
Michael Pearce SC
President