



# Refugee Council of Australia

6 May 2010

**The Hon. Robert McClelland MP  
Attorney-General**

**CC: Senator Chris Evans  
Minister for Immigration and Citizenship**

Dear Mr McClelland,

The Refugee Council of Australia (RCOA) was one of 29 organisations which made a submission to the inquiry into the *Anti-People smuggling and Other Measures Bill 2010* (the Bill). In this submission, RCOA highlighted a number of concerns about the potential impacts of the Bill on vulnerable groups such as refugee families and asylum seekers and recommended that it should not be passed without significant amendment.

RCOA is extremely disappointed that Legal and Constitutional Affairs Legislation Committee has recommended that the Bill be passed with only a single amendment. We are deeply concerned that the Committee has failed to give adequate consideration to the evidence submitted by RCOA and other organisations. RCOA wishes to draw your attention to a number of aspects of the Bill which we believe require reassessment.

Firstly, the Bill remains inconsistent with Australia's international legal obligations. While the Committee's report assumes that the legislation is intended to encompass people smuggling ventures which involve asylum seekers, the scope of the legislation in fact remains unclear in this regard. The absence in the Bill of an acknowledgement that asylum seekers do have a lawful right to enter Australia for the purposes of seeking asylum creates a disparity between domestic law and Australia's international legal obligations under the United Nations *Convention Relating to the Status of Refugees*. Given that one of the stated objectives of the proposed legislation is to create greater harmonisation across Commonwealth legislation, achieving consistency between Australian domestic law and the international legal instruments to which Australia is a signatory should be regarded as an equally desirable goal.

Furthermore, RCOA is very concerned that humanitarian actions will be criminalised if the proposed legislation is passed without additional amendment. In relation to the offence of providing material support to people smuggling ventures, the Attorney-General's Department has provided assurances that the offence

*"would not capture people who innocently remit money to asylum seekers for humanitarian purposes... the prosecution, to prove this offence, would need to prove that a person intentionally provided material support and also that the person was aware of a substantial risk that the result would occur and, having regard to the circumstances known to him or her, it was unjustifiable to take that risk."* (¶ 3.15)

The proposed legislation itself, however, contains no such safeguard. The vagueness of the legislation creates potential for it to be applied in a manner contrary to its intended purpose,

with the result that people in Australia who provide support to relatives facing hardship and persecutory situations overseas may find themselves facing criminal charges. Whether or not the legislation is *intended* to be applied in this way is irrelevant. Without effective safeguards encoded in law, RCOA remains unconvinced that the legislation in its present form will effectively mitigate the risk of misapplication. A simple amendment, such as the insertion of a requirement that a person must be aware of a substantial and unjustifiable risk that their actions would support a people smuggling venture, would greatly assist in reducing these risks. RCOA finds it difficult to understand why the Committee has not recommended such changes, considering the grievous impacts that the legislation could have on innocent parties.

Additionally, RCOA believes that the Committee's report lacks sensitivity to the needs of vulnerable people, particularly those who have experienced torture and trauma. RCOA's concerns about potential frontline interaction between refugees and asylum seekers and ASIO staff, for instance, are not considered in the Committee's report. Given the potential of the legislation to increase the risk of harm to vulnerable groups, RCOA is disappointed that this issue has received such limited consideration in the Committee's report. We again wish to stress the need for ASIO to implement standards of practice and provide appropriate training on working with vulnerable people, including survivors of torture and trauma. RCOA also recommends that ASIO's expanded powers should be regulated through transparent authorisation and review processes, such as judicial monitoring of telecommunications interception.

RCOA strongly recommends a thorough reconsideration of the evidence supplied to the Committee and further amendments to the proposed legislation before it is passed by the Senate. We are convinced that this legislation will not effectively address the exploitation of innocent individuals in desperate situations; rather, it will expose already vulnerable groups to an even greater risk of harm.

Sincerely,



Paul Power  
Chief Executive Officer