



ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

10/141, MC10/6433

26 MAY 2010

Mr Paul Power  
Chief Executive Officer  
Refugee Council of Australia  
Suite 4A6, 410 Elizabeth Street  
SURRY HILLS NSW 2010

Dear Mr Power

Thank you for your letter of 6 May 2010 about the Anti-People Smuggling and Other Measures Bill 2010 (the Bill) and the recent report by the Senate Committee on Legal Constitutional Affairs.

I note your concern about Australia's obligations under international law. The amendments are consistent with Australia's international legal obligations, including our obligations under the *United Nations Convention relating to the Status of Refugees 1951* and our human rights obligations. Importantly, the new measures contained in the Bill will not target asylum seekers. Rather they will target the people smuggling organisers, facilitators and people who provide material support, placing the lives of asylum seekers at risk.

As you would be aware, the *Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organised Crime* (the Protocol) requires State Parties to adopt legislative measures establishing aggravating circumstances in relation to people smuggling offences, in particular those that endanger or are likely to endanger the lives or safety of the migrants concerned. Taking into account that people smuggling is frequently an organised crime, Australia has adopted a stricter approach than the requirements of the Protocol. This approach is consistent with Article 34 of the Convention against Transnational Organised Crime, which states that Parties may adopt more strict measures than those in the Convention for preventing and combating transnational organised crime.

You have also raised concerns about the operation of the proposed offence of providing material support or resources to a people smuggling venture in relation to those who provide humanitarian support. As the Committee recognised in its report, the actions of pilots, ship captains that rescue asylum seekers or other persons who are not aware of a substantial risk the material support or resources they provide will be used to aid people smuggling are not criminalised. Additionally, it is important to note that the Commonwealth Director of Public

Prosecutions (CDPP) makes its prosecutorial decisions independently of the Government, and the prosecution policy of the CDPP requires that prosecutions only take place if they are in the public interest.

I note your concern that ASIO should implement standards of practice and provide appropriate training on working with vulnerable people, including survivors of torture and trauma. ASIO officers interact with people from many different cultures and backgrounds. ASIO reflects the diversity of Australian society. This is true of all public sector agencies but it is particularly important for ASIO where building connections and trust is such an integral part of its work.

Cultural awareness training and exposure to different cultural perspectives and issues is an important component of ASIO's operational training. ASIO currently runs programs – and has programs run for ASIO by external providers including major tertiary education institutions – that have cultural awareness as a specific component.

I note your recommendation that ASIO's powers be regulated through transparent authorisation and review processes, such as judicial monitoring of telecommunications interception. ASIO is currently subject to a range of reporting, oversight and accountability mechanisms that appropriately reflect ASIO's role in collecting, evaluating and disseminating intelligence relevant to security. This includes ministerial authorisation for the issuing of a telecommunications interception warrant and Ministerial Guidelines which require, among other things, that any means used for obtaining information must be proportionate to the gravity of the threat posed and the probability of its occurrence. ASIO's operational activities are also subject to oversight by the Inspector-General of Intelligence and Security which operates independently of Government and has extensive investigatory powers. ASIO is also accountable to the Parliamentary Joint Committee on Intelligence and Security in relation to its administration and expenditure.

I trust this information is of use to you.

Yours sincerely



Robert McClelland