



## **Submission in relation to the Inquiry into the Deterring People Smuggling Bill 2011**

The New South Wales Council for Civil Liberties (CCL) is one of Australia's leading human rights and civil liberties organisations. Founded in 1963, NSWCCL is a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. To this end the NSWCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to parliament and other relevant bodies.

CCL thanks the Senate Committee for the opportunity to make this submission. Of necessity, it is brief.

1. We have read the submissions of Professor Ben Saul and Dr. John Menadue, and concur with the arguments they express.
2. We object to the attempt made in the bill to retroactively criminalise the behaviour of so-called people smugglers. People are entitled to certainty about what the law requires of them; but retrospective laws are arbitrary, and deny them that certainty. Imposing criminal sanctions on people for doing what was legal when they did it is necessarily unjust.

As Sir William Blackstone said:

"Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law: he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be cruel and unjust. All laws should be therefore made to commence in futuro, and be notified before their commencement; which is implied in the term 'prescribed'."<sup>1</sup>

For reasons like this, retroactive legislation with criminal sanctions is prohibited by the European Convention on Human Rights, and the constitutions of the United States of the United States of America, Brazil, Finland, Germany, India, Indonesia, Iran, Italy, Japan, Norway, Pakistan, the Philippines, Russia, Spain South Africa, Sweden and Turkey. Section 15(1) of the International Covenant of Civil and Political Rights prohibits it, as does the Universal Declaration of Human Rights, and the New Zealand and Canadian Bills of Rights.

In the absence of an Australian Bill of Rights, it falls to the Senate to prevent retroactive legislation from being enacted.

3. If there is a moral fault in people smuggling, it is not in assisting refugees to arrive in Australia by boat—after all, there appears to be no problem with assisting refugees to arrive

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<sup>1</sup> Commentaries, 17<sup>th</sup> edition, 1830, Volume 1 pp. 45-46



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by air—but in the use of unsafe boats for the purpose. It is that which might be penalised—but only when there is a means by which refugees can be kept safe, and can know that they will steadily progress to the head of a queue and ultimately be given access to safe havens.

4. While refugees, having fled persecution, find themselves in unsafe camps with polluted water supply, at risk of cholera, dysentery, rape and murder, they will, properly, seek to move on. Those who assist them should not be demonised on that account.

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