

Government response to Senate Legal and Constitutional Affairs Committee report

Deterring People Smuggling Bill 2011

Introduction

On 3 November 2011, the Senate referred the Deterring People Smuggling Bill 2011 (the Bill) to the Senate Standing Committee on Legal and Constitutional Affairs (the Committee), for inquiry and report.

The Committee held a public hearing on 11 November 2011, and released its report on 21 November 2011, with four recommendations:

Recommendation 1

The committee recommends that the Explanatory Memorandum to the Bill be revised and reissued to explicitly articulate the exceptional circumstances necessary for the introduction of the Bill, its retrospective application and its application to current legal proceedings.

Recommendation 2

The committee recommends that the Australian Government, through the Attorney-General's Department, review the operation of the people smuggling offences in the *Migration Act 1958* to ensure these offences continue to effectively deter people smuggling.

Recommendation 3

The committee recommends that the Australian Government examine the Department of Prime Minister and Cabinet's *Legislation Handbook* and the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* to ensure that the articulation of policy is clear in relation to the introduction of retrospective legislation and legislation relevant to ongoing legal proceedings, with an emphasis on ensuring that the principles of the rule of law and the separation of powers within Australia's system of government are respected.

Recommendation 4

Subject to recommendation 1, the committee recommends that the Senate pass the Bill.

A response has not been provided to the Committee about the Government's position in relation to the recommendations. This document forms the Government's response.

Government response to Recommendations

Recommendation 1

The committee recommends that the Explanatory Memorandum to the Bill be revised and reissued to explicitly articulate the exceptional circumstances necessary for the introduction of Bill, its retrospective application and its application to current legal proceedings.

The Explanatory Memorandum was revised prior to the Bill being passed.

Recommendation 2

The committee recommends that the Australian Government, through the Attorney-General's Department, review the operation of the people smuggling offences in the Migration Act 1958 to ensure these offences continue to effectively deter people smuggling.

The Australian Government regularly reviews the effectiveness of offences in Commonwealth legislation. The Government is also currently considering the report of the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012.

Recommendation 3

The Committee recommends that the Australian Government examine the Department of Prime Minister and Cabinet's Legislation Handbook and the Attorney-General's Department's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers to ensure that the articulation of policy is clear in relation to the introduction of retrospective legislation and legislation relevant to ongoing legal proceedings, with an emphasis on ensuring that the principles of the rule of law and the separation of powers within Australia's system of government are respected.

The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) was last reviewed by the Attorney-General's Department in 2011 in consultation with key stakeholders including the Australian Federal Police, the Commonwealth Director of Public Prosecutions, and the Office of Parliamentary Counsel. The Guide makes it clear that offences should only be given retrospective effect in rare circumstances and where there is strong justification. Similarly, the Legislation Handbook makes it clear that legislative provisions with a retrospective operation adversely affecting rights or imposing liabilities are to be included only in exceptional circumstances (paragraph 6.18 refers).

Recommendation 4

Subject to recommendation 1, the committee recommends that the Senate pass the Bill.

The Bill was passed by the Senate on 25 November 2011, and the *Deterring People Smuggling Act 2011* received Royal Assent on 29 November 2011.