

Your Ref:

Our Ref: International Law / Relations Committee: 21000325/92

9 November 2011

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: Legcon.sen@aph.gov.au

Dear Committee Secretary

DETERRING PEOPLE SMUGGLING BILL 2011

The Queensland Law Society (“the Society”) has had the opportunity to read the submission of the Law Council of Australia in relation to the *Deterring People Smuggling Bill 2011* and supports their comments. The Society writes this submission in order to highlight the following points regarding the process undertaken by government in relation to this legislation.

1. Short time frame for comments

The Senate Standing Committee on Legal and Constitutional Affairs emailed the Society at approximately 4.30pm on Thursday 3 November requesting comments on the Bill by 9 November 2011. This effectively gave the Society three business days to consider and collate comments on the Bill. We believe that this time frame was inadequate and we have not been able to undertake a comprehensive consideration of the Bill.

2. Lack of consultation

The Society has concerns with the lack of consultation before the *Deterring People Smuggling Bill 2011* was introduced into Parliament. The Minister for Home Affairs stated in the Second Reading Speech that there has been ‘extensive consultation’ on the Bill between government, opposition and the Greens.

Section 17 of the *Legislative Instruments Act 2003 (Cth)* is entitled “Rule-makers should consult before making legislative instruments.’ In our view, this section indicates that it is considered best practice for the government to consult with organisations or bodies that are likely to be affected by the legislation. The Society considers that, as it appears that outside stakeholders were not invited to comment on this

Bill prior to this consultation by the Senate Committee, the consultation undertaken with only political parties does not represent extensive consultation.

Section 18 of the *Legislative Instruments Act 2003* contains circumstances where it may be unnecessary or inappropriate to have public consultation. The Society does not consider that these amendments to the *Migration Act 1958* fall into any of these categories. We note that the Minister for Home Affairs commented in his Speech in relation to consultation that:

“Firstly, in relation to consultation: yes, this bill is being dealt with urgently, but there has been significant consultation with the Greens, the opposition and, more recently, with Independent members in relation to the importance of this bill and the importance of clarifying people-smuggling laws as they have been in place since 1999...

...It is an urgent matter and it needs to be dealt with.”

The Society is concerned that whilst the Minister has indicated that the Bill is being dealt with as an urgent matter, there is no further explanation as to why these particular amendments are considered so urgent that consultation with outside stakeholders was not undertaken.

3. Passage of the *Deterring People Smuggling Bill 2011* through the House of Representatives

We note that concerns have been raised regarding the sense of urgency in passing the *Deterring People Smuggling Bill 2011* through the House. It was reported that it took just 54 minutes for the Bill to pass and was then transferred to the Senate.¹

The Society reiterates concerns with the way that the Bill has been seemingly rushed through the House of Representatives. We submit that any legislation should be subjected to proper parliamentary scrutiny, and if it is not, it raises serious concerns about why the process was altered.

4. Retrospective operation of the Bill

The Society supports the Law Council of Australia in its comments regarding the retrospective application of this Bill. The Society believes that, as a guiding principle, retrospectivity should be avoided where it affects the rights of an individual.

Yours faithfully

Bruce Doyle
President

¹ Anti- people smuggling laws strengthened, Sydney Morning Herald, November 1 2011 found at <
<http://news.smh.com.au/breaking-news-national/antipeople-smuggling-laws-strengthened-20111101-1mtt3.html>