

# **Sailing Into Unchartered Waters**

Human Rights and People Smugglers

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## 1. The Politics of People Smuggling

- 1.1. "Boats carrying illegal immigrants could be a "pipeline for terrorists", Peter Reith, 2001<sup>1</sup>
- 1.2. "It makes me determined to have an immigration program which the government is able to conduct with integrity...in which the people who....respect our law and our institutions are those who are advantaged.", Philip Ruddock, 2001<sup>2</sup>
- 1.3. "People smugglers are engaged in the world's most evil trade and they should all rot in jail because they represent the absolute scum of the earth....they are the vilest form of human life. They trade on the tragedy of others and that's why they should rot in jail and in my own view, rot in hell", Kevin Rudd, 2009<sup>3</sup>
- 1.4. "People smuggling is an evil trade to be punished", Julia Gillard, 2010<sup>4</sup>
- 1.5. "People smugglers are motivated by greed and work in sophisticated cross-border crime networks...People smuggling is a pernicious trade. And the Government has a comprehensive, hardline approach to combating the scourge of people smuggling", Robert McLelland, 2010<sup>5</sup>
- 1.6. The above comments from Australian political leaders capture the bilaterally populist and inhumane approach to the treatment of both asylum seekers and the people who bring them to Australia by boat.
- 1.7. This sentiment began in earnest on 26 August 2001 when the MV Tampa rescued 438 people whose boat, the Palapa, had sunk. The people rescued by

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<sup>1</sup>3AW13 September 2001.

<sup>2</sup>Radio 2GB15 September 2001.

<sup>3</sup> ABC News April 17 2009.

<sup>4</sup>Lowry institute July 6 2010.

<sup>5</sup> Second Reading Speech, Anti-People Smuggling and Other Measures Bill 2010, 24 February 2010.

Tampacomprised for the most part persecuted Hazaras from Afghanistan.<sup>6</sup> The arrival of the Tampa in Australian waters was misrepresented to the public as a threat to our national sovereignty as means to win an election.

1.8. Alongside various endeavours over the past decade to stop the 'queue jumping' asylum seekers who come to Australia by boat, there have been increasingly harsh treatment meted out to people smugglers enacted under Australian law by successive Parliaments.

1.9. This paper argues that Australia's hysterical demonisation of people smuggling accused is in breach of multiple international commitments to preservation of human rights. This paper also argues that the treatment of the people who are punished by the anti-people smuggling legislation does absolutely nothing to deter others who may be duped, forced or otherwise paid tiny fees to actually steer the boats to small islands in distant Australian waters.

## **2. The Offence**

2.1. People who organise or facilitate groups of non-citizens (who do not have a visa) to arrive in Australia are guilty of the offence of people smuggling. The offence most commonly charged alleges the bringing or coming of five or more non-citizens into Australia - this offence is known as 'aggravated people smuggling'.<sup>7</sup>

## **3. The Penalties**

3.1. The maximum penalty for aggravated people smuggling<sup>8</sup> is 20 years imprisonment or \$220,000 fine or both.

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<sup>6</sup>BurnsideQC, J, In the Tampa confusion, we lost our moral bearings, News.com.au, 28/8/2006

<sup>7</sup> Migration Act 1958 (Cth) s233C.

<sup>8</sup> Migration Act 1958 (Cth) s233C.

3.2. Mandatory minimum sentences were introduced about one month after the MV Tampa rescued the 438 asylum seekers on the high seas. The current law requires a sentence of imprisonment to be imposed of at least:

8 years, if the conviction is for a repeat offence; or  
5 years in any other case.

3.3 A non-parole period must also be imposed of:

5 years, if the conviction is for a repeat offence; or  
3 years, in any other case<sup>9</sup>.

3.4 Most convicted people smugglers of the kind discussed in this paper would probably receive less than the mandatory minimum sentence should the proper sentencing principals enunciated in s. 16A of the Crimes Act 1914 (Cth)

#### **4. Criminal Responsibility**

4.1 The Criminal Code Act<sup>10</sup>(The Code) applies to the Migration Act<sup>11</sup> (The Act). Chapter 2 of The Code sets out the general principals of criminal responsibility.

#### **5. Physical elements**

5.1 For the offence of aggravated people smuggling the Crown must prove beyond reasonable doubt that the accused:

organised or facilitated the bringing or coming to Australia, or the entry or proposed entry to Australia, of five or more people;

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<sup>9</sup> Migration Act 1958 (Cth) s236B.

<sup>10</sup>Criminal Code Act 1995 (Cth) Ch 2.

<sup>11</sup> Migration Act 1958 (Cth)s4A.

at least five of these people were non-citizens; and

the non-citizens had no lawful right to come to Australia<sup>12</sup>.

5.2 The element of whether there are five or more people is one of absolute liability. The Crown need only prove beyond reasonable doubt that there were five or more non-citizens on board. The defence of mistake of fact is not available in relation to this element<sup>13</sup>.

## **6 Fault Elements**

6.1 The substantive offence of aggravated people smuggling does not specify a fault element, therefore s5.6 of the Code applies. Section 5.6 of the Code provides that where a physical element consists only of conduct, intention is the fault element.

6.1 If the physical element consists of a circumstance or result, then recklessness is the fault element.

6.2 In the case of people smuggling, organizing or facilitating are actions or things that are done and thus can be categorised as conduct only. Accordingly, intention is the requisite fault element.

6.3 It could be argued however that coming to Australia is also a result and thus recklessness is the test. The question is whether the gravamen or focus of the offence is the organising or facilitating or the actual arrival in Australia. We suggest that this is not the correct construction and that the Act is deliberately crafted in terms of "organizes or facilitates" to catch both the lower end fishermen and the higher end syndicates who never set foot in Australia.

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<sup>12</sup> Migration Act 1958 (Cth) s233C.

<sup>13</sup> Criminal Code Act 1995 (Cth) s6.1(1)(b).

6.4 The physical element of the passengers being non citizens with no legal right to enter Australia is a circumstance, so recklessness is the requisite fault element<sup>14</sup>.

6.5 The fault elements regarding alleged people smugglers have not to our knowledge been tested in any Australian appellate court.

## **7 Intention**

7.1 A person has the requisite intention if they:

Mean to engage in the conduct;  
Believe that a circumstance exists or will exist; or  
Is aware that a result will occur in the ordinary course of events<sup>15</sup>.

7.2 In practical terms, this means that the Crown must prove beyond reasonable doubt that the accused:

Meant to travel to Australia; or  
Was aware that they would arrive in Australia in the ordinary course of events.

7.3 This means that the Crown must prove that the accused knew where they were going and that where they were going was in fact Australia.

## **8 Recklessness**

8.1 A person is reckless in relation to a circumstance if they are aware of a substantial risk that the circumstance exists or will exist and takes an unjustifiable risk in the circumstances.<sup>16</sup>

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<sup>14</sup> Criminal Code Act 1995 (Cth) s5.6(2)

<sup>15</sup> Criminal Code Act (Cth) 1995 s5.2.

<sup>16</sup> Criminal Code Act (Cth) 1995 s5.4(1)(a) and (b).

8.2 In practical terms, this means that the Crown must also prove that the accused was aware of a substantial risk that the passengers had no lawful right of entry to Australia but, nonetheless, took an unjustifiable risk in the circumstances.

8.3 The question of whether the Crown can prove the fault elements beyond reasonable doubt is one ripe for litigation, particularly given the accused men are usually uneducated, naïve, don't know where the maritime boundaries are and are often tricked into undertaking the journeys that they do.

8.4 The accused men are also likely unaccustomed to dealing with international travel documents and probably don't know what passports and visas actually are, often cannot read Indonesian, English or Arabic let alone have the presence of mind or authority to ask to sight documents ahead of setting sail South.

8.5 In one recent case a Brisbane Judge has indicated he may not accept guilty pleas from two Indonesian fishermen accused of people smuggling. His Honour Judge Botting questioned whether one of the accused men was indeed guilty given he believed he was helping genuine refugees.<sup>17</sup> That matter is part-heard for submissions on the issue.

## **9 The asylum seekers**

9.1 Most of the asylum seekers who come to Australia by boat are from Iraq, Afghanistan and other parts of the Middle East. They are often fleeing oppressive regimes that have already killed or tortured family members or committed other atrocities. The asylum seekers will pay a local people smuggling agent a first installment of up to \$5000 US to be issued a false passport and fly from their home country to Pakistan or a United Arab Emirates country to Malaysia. They then pass through corrupt Malaysian immigration officials often by simply enclosing a sum of cash in their

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<sup>17</sup> The Queen v Gafur and Pello, District Court of Queensland, Judge Botting, 1 June 2011, unreported, reported on ABC News, 1 June 2011.

passports. A network of people smugglers then facilitates their transport by land and sea through a series of safe houses to Java which is the usual staging point for the start of the voyage by sea to Australia. A second installment of between \$5000-10,000 US is paid to the organisers in Asia.

9.2 A rough calculation of the payments to the Asian based smugglers, based on a boat of 50 asylum seekers, is \$250,000 to \$500,000 US per boat - a stark contrast to the meagre profits made by the 'people smugglers' who are captured by Australian law.

## **10 The typical 'people smuggler'**

10.1 Asis<sup>18</sup> is fairly typical of the type of person charged with aggravated people smuggling. He is 19 and comes from a small island near Roti in the far eastern end of the Indonesian archipelago. He finished his education at primary school, speaks fluently in his local dialect, has a working knowledge of Bahasa Indonesian, but can barely read or write and cannot speak English. He has never used a computer or read a newspaper (and could not afford to buy one in any event). He lives in a small one roomed wooden house with an outside toilet and no running water. His wife, infant child and aging mother are entirely dependant on his income because his father has passed away, so he is the sole breadwinner for the family. Asis mainly catches fish in nets cast from the beach for a living, but occasionally works for a few days at a time on other people's fishing boats. He takes whatever work comes to him to survive.

## **11 Recruitment**

11.1 One day Asis is visited in his home by a Javanese man who says he will pay him three million rupiah (about \$330 US) for a weeks work as crew man on a cargo boat. The payment is much better than the few dollars a day that he usually earns and Asis needs to pay for an operation on his mother's stomach. He doesn't ask why the pay is better than usual because he doesn't wish to look a gift horse in the

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<sup>18</sup> Not his real name.



mouth. The traditional master servant relationship in Indonesia is a strong one whereby employees just don't ask questions of their superiors. So Asis did what he was asked and travelled by plane to Surabaya in Java along with three other similarly uneducated and naïve men from Roti recruited for the same purpose. Two of these other men were aged 15 and 16 respectively. The third suffered a cognitive disability.

11.2 Once in Surabaya they are quickly taken to a Javanese port where they meet Mahmud<sup>19</sup>, the captain of a fishing boat. Mahmud briefly shows the four crew a small map and explains that they will take cargo to Palau Pasir, or 'Sand Island' about 80 nautical miles south of the island Roti. This trip will involve a voyage back along the archipelago to Roti before turning south and travelling for another day and a half through open waters to Palau Pasir. What Asis does not realise the Palau Pasir is also known as Ashmore Reef and, as we well know, is part of Australia contiguous zone.

11.3 The captain and crew then motor offshore and wait at sea. Meanwhile, the other organisers of the smuggling operation have corralled fifty asylum seekers in two safe houses in Surabaya. They are brought in two mini-buses then two small boats in the dead of night to board the fishing boat waiting offshore. Asis and the other crew are surprised to see passengers instead of cargo but again, don't ask questions.

## 12 The Voyage

12.1 Commonly the voyages are taken in two stages to enable the organisers to avoid the operation of Australia's anti-people smuggling laws. It is no different for Asis. Mahmud, the captain, uses his map to steer the boat along the Indonesian archipelago to near Roti. He makes a phone call and another boat sails to meet them at sea. The captain disembarks near the edge of the contiguous zone, takes the map and instructs Asis and the crew to sail south. Without a map, on the high seas and subject to insistence from an agitated group of passengers that they get to

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<sup>19</sup> Not his real name.

'Ashmore', Asis assumes control of the boat and charts a course south using the boats compass.

12.2 They miss Ashmore Island entirely and come to rest on a nearby island within the contiguous zone called Cartier Island. The passengers ask Asis if this is Ashmore and, not knowing either way, he says it is to quell any further trouble.

### **13 Apprehension and initial detention**

13.1 Inevitably, the ships will be apprehended in off shore waters by Australian authorities and the crew and passengers are detained because they are 'reasonably suspected of being unlawful citizens'.<sup>20</sup> They must then be kept in immigration detention until removed from Australia or provided with a visa.<sup>21</sup>

13.2 In the case of suspected people smugglers, the Attorney General usually stays their removal or deportation for the purposes of 'the administration of criminal justice'.<sup>22</sup>

13.3 Of the approximately 60 people in Victoria currently charged with people smuggling, some of them were kept in immigration detention for ten months before being charged. This means that they live in prison like conditions away from their families and loved ones in crushing legal limbo for close to one year.

13.4 The International Covenant on Civil and Political Rights entitles all accused to be "tried without undue delay"<sup>23</sup> and the Universal Declaration of Human Rights decrees to "no one shall be subjected to arbitrary arrest, detention or exile"<sup>24</sup>

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<sup>20</sup> Migration Act (Cth) 1958, s189.

<sup>21</sup> Migration Act (Cth) 1958, s196.

<sup>22</sup> Migration Act (Cth) 1958, s147.

<sup>23</sup> International Covenant on Civil and Political Rights, 1976, Article 14, Section 3.

<sup>24</sup> Universal Declaration of Human Rights, 1948, Article 9.

13.5 Arbitrary detention for all other offences (except terrorism) is usually only tolerated in Australia for between a few hours and a few days. But for people smugglers, our Government tolerates detention for almost one year. This affront to the human rights and dignity of those charged with people smuggling is impossible to justify as have successive Australian governments by citing lack of investigative and other systemic resources.

13.6 A backlog of accused people smugglers started growing in Darwin, then poured into Western Australian, before the Western Australian Attorney General complained last year that his state was carrying the overwhelming burden of prosecuting and imprisoning accused and convicted people smugglers.<sup>25</sup> So the tide then turned towards Queensland, then New South Wales and finally Victoria.

13.7 The accused are then flown from Darwin to Melbourne, often on a charter plane that 'stops all stations' via other capital cities to transport other immigration detainees around the country. In some cases the accused people have travelled on commercial flights with their SERCO minders, leaving before dinner time, to watch their chaperones purchase food on the plane and eat it in their full view. They have been arriving in wintry Melbourne, completely unaccustomed to and underdressed for the cold, to an underground custody centre beneath the Melbourne Magistrates Court. The AFP will then formally charge the accused in Victoria. This is possible because the alleged offence is not committed in whole or in part in a State of Australia.<sup>26</sup>

13.8 After charge and remand they are transferred into prison custody for the first time. Here they are housed alongside a freshly remanded population of often agitated and substance affected other prisoners. One human right of special importance to prisoners is the right to be treated with humanity, dignity and respect while in detention. These rights are set out in articles 7 and 10 of the International

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<sup>25</sup> 'Smugglers shipped east for court date', Michael McKenna, The Australian, 11 June 2010.

<sup>26</sup>Judiciary Act 1903 (Cth), s70A.

Covenant on Civil and Political Rights. Again, in the case of people smugglers, Australia's commitment to this important international convention is questionable.

#### **14 Detention of children in adult custody**

14.1 It is said that there are as many as 60 children currently in detention in Australia facing people smuggling charges.<sup>27</sup>

14.2 These boys arrive in Australia without any identifying documentation and, in the case of the boys brought to Victoria, have been held in immigration detention for up to 10 months without charge and without proper consideration of their true age. In most cases the boys tell the Federal authorities that they are under 18 at the point of their apprehension at sea, then again at Christmas Island and no doubt again in immigration detention in Darwin.

14.3 It is CDPP policy to not prosecute under 18 year olds for people smuggling offences. To their credit, in Victoria, the CDPP have withdrawn prosecutions against four of the six young men who have claimed to be underage. But until then these children have been remanded in detention centres and high security adult jails.

14.4 The prosecution rely on wrist x-ray tests to establish age. They are archaic and forensically flimsy.

14.5 We don't have to persuade this audience about the untold damage this experience would cause a child. We are also concerned about the Federal Government's failure to establish an early intervention system to identify these children and minimize that damage. The AFP are the point of continuity in people smuggling cases from apprehension to conclusion and are perfectly placed to implement a system for the early identification of minors.

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<sup>27</sup> Murdoch, L, Australia imprisons Indonesian boys, The Age, 14 June 2011.

14.6 The Australian Constitution provides that every child has the right “not to be detained except as a measure of last resort...[and] the child may be detained only for the shortest appropriate period of time...”<sup>28</sup>

14.7 The International Convention on The Rights of The Child provides that children should be held in detention as a last resort and for the shortest period of time possible. The Convention also states that children should not be put in prison with adults.<sup>29</sup>

14.8 Justice Mildren recently refused an application to free 14 boys in the Northern Territory because it is currently legal under Australian law to hold someone in his position for as long as is necessary to determine if they will be charged. He said "I must say I am staggered, absolutely staggered, it has taken so long".<sup>30</sup>

14.9 The United Nations Convention on Human Rights states that a child should only be jailed as a last resort and only for a minimum period.

## 15 Remand or bail – Hobson's Choice

15.1 People smuggling accused in Victoria have a prima facie entitlement to bail in Victoria.<sup>31</sup> Ordinary accused people in a like situation (no prior convictions, no history of bail breaches, low risk of re-offending and likely delay to Trial of one to two years) would easily achieve bail. But for people smuggling accused, there is no practical right to freedom from incarceration pre-trial. Bail would mean a return to immigration detention and in Victoria this means housing in the Maribyrnong Immigration Detention Centre, currently the most secure and prison like in Australia. This unenviable position is arguably akin once more to arbitrary detention and could be the basis upon which to explore a writ of Habeas Corpus.

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<sup>28</sup> The Australian Constitution s28 (1)(g).

<sup>29</sup> United Nations Convention on the Rights of the Child 1989, Article 37.

<sup>30</sup> Ibid.

<sup>31</sup> *Bail Act* 1977 (Vic), s4.

## 16 Delay

16.1 The current average length of time between commencement of proceedings in the Magistrates' Court and determination in the County Court following a not-guilty plea at committal is almost two years.<sup>32</sup> Remember that this figure is for an 'average' trial and that people smuggling trials will involve multiple accused and multiple interpreters in different languages (for the Indonesian accused and Middle Eastern witnesses). They are far from 'average trials'. Accordingly, this delay in custody is a significant matter for people smuggling accused still entitled to a presumption of innocence. On a conservative account, including the up to ten months spent in immigration detention pre-charge, by the time a trial is reached the accused is touching the three year mandatory minimum term of imprisonment applicable on conviction. Another Hobson's Choice indeed.

## 17 Mandatory Sentencing

17.1 As discussed above, on conviction, the mandatory minimum sentence of imprisonment is eight years for a repeat offence and five years in any other case. A non-parole period must be set at minimum five years for a repeat offence and three years in any other case.<sup>33</sup>

17.2 Sentencing judges around the country have been reluctant to date to impose any more than the mandatory minimum even after Trial. A number Judges have nobly railed against of the injustice of the mandatory sentencing regime and, in a number of cases, called for the Federal Attorney General release after the expiration of 12 months.<sup>34</sup> In this case both defendants suffered serious burns when the boat

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<sup>32</sup> 23.7 months according to Key Performance Statistics, Reducing Delay in the Criminal Justice System, Department of Justice, June 2011.

<sup>33</sup>Section 236B *Migration Act* 1958 (Cth).

<sup>34</sup> *The Queen v Tahir and Beny*, unreported, Supreme Court of the Northern Territory, Mildren J, as reported in *The Australian* 19 May 2011.

exploded through no fault of their own. Furthermore, they had offered to assist the Federal authorities to find people smugglers higher up the chain. His Honour noted that the sentence he was required to hand down was "greater than the justice of the case". We would be very surprised if the same Government that enacted the mandatory penalties for people smugglers would undermine them by entering Petitions of Mercy in such cases.

17.3 There have been a few exceptions to the rule that people smugglers receive no more than the mandatory minimum. The exceptions usually apply to pre-mandatory sentencing re-offenders or the "captains" of the boats (who may receive head sentences in the range of 6 to 7 years with non-parole periods of 4-5 years).<sup>35</sup> The issue of what sentencing discount applies to a plea of guilty to people smuggling will be determined by the Court of Appeal of Western Australia in the Crown appeal against sentence of Abdullah. Sentencing judges around the country have been reluctant to impose more than the mandatory minimum even after Trial. There have only been a few exceptions to that rule and the exceptions usually apply to pre-mandatory sentencing re-offenders or the "captains" of the boats (who may receive head sentences in the range of 6 to 7 years with non-parole periods of 4-5 years).<sup>36</sup>

17.4 According to Justice Mildren, in the case of *The Queen v Tahir and Beny*<sup>37</sup>, "the other dangers of mandatory minimum sentencing...include the fact that principles of parity between offenders have little or no role to play. All offenders that fall within the class will be treated equally no matter what their level of criminality may be".

## **18 Is mandatory sentencing constitutionally valid?**

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<sup>35</sup>Christou G, *Defending People Smugglers - A General Overview*, 2 June 2011.

<sup>36</sup>*Ibid.*

<sup>37</sup>*The Queen v Tahir and Beny*, Supreme Court of the Northern Territory, 28 October 2009.

18.1 It may be arguable that s233C of the Migration Act is unconstitutional on the basis of its inconsistency with Chapter III of the Constitution. The proposition may be that mandatory minimum sentences and mandatory non-parole periods offend the separation of judicial from legislative powers by virtue of Parliament impermissibly interfering with the process of a Court. According to the opinion of a number of senior counsel<sup>38</sup> this position goes against the weight of current High Court authority and finds little support in cases on the separation of powers decided by the Privy Council and the United States Supreme Court.

18.2 There is a current challenge to the NSW regime of standard non-parole periods before the High Court. The relevant issue is whether the standard non-parole period provision amount to an impermissible legislative interference, contrary to the Chapter Three constitutional mandate of continuing institutional integrity in the manner of exercise of judicial discretion in respect of imprisonment arising from a criminal conviction.<sup>39</sup> Judgement in this matter is pending and the outcome will guide whether there is any merit in a similar challenge to the mandatory detention of convicted people smugglers.

## **19 Can the anti-people smuggling regime 'stop the boats' or does general deterrence work?**

19.1 Despite the significant incursions into the internationally recognised human rights that should be accorded to accused people smugglers, there is no empirical data to support the proposition that mandatory detention serves as a deterrent to people smugglers, nor has any study shown that mandatory immigration detention deters refugees fleeing oppressive regimes. These political claims are baseless. At best they are ill-considered, at worst, cynical electioneering from both sides of Parliament.

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<sup>38</sup> Del Villar, G, Barrister, Advice, 13 April 2011 and Grace QC, D, Barrister, Advice, 6 June 2011.

<sup>39</sup>Mahmud v The Queen; Muldrock v The Queen [2011] HCAtrans 147 (8 June 2011).



19.2 The effectiveness of harsh punishments as a means to reduce crime is questionable. A recent report of the Victorian Sentencing Advisory Council concludes from a review of research findings that "...increases in the severity of penalties, such as increasing the length of terms of imprisonment, do not produce a corresponding increase in deterrence".<sup>40</sup>

19.3 The Sentencing Advisory Council also concludes that "...increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect"<sup>41</sup> In the case of the people smugglers who sail the boats to Australia, the likelihood of apprehension and punishment is certain, indeed, it is the object of the exercise to be apprehended in Australian waters. The Sentencing Advisory Council importantly qualify their findings by stating that there is a "...need for further research that separates deterrable from non-deterrable populations".<sup>42</sup> It is our contention that the barely literate, poverty stricken and naïve Indonesians who come from a country of 245 million people<sup>43</sup> belong to the 'non-deterrable population' to whom the Sentencing Advisory Council refers.

19.4 Despite this the CDPP and many Courts have placed a significant amount of weight on the issue of general deterrence. It is important for prosecutors, Courts and most importantly parliament to recognise that one needs to look at to which group this deterrence is being aimed.

19.5 Some people accused of people smuggling will be acquitted and sent home having spent many years in a combination of immigration and criminal justice detention in Australia. Arguably, Australia breaches multiple international human rights against arbitrary detention, speedy trial and humane treatment of prisoners.

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<sup>40</sup> Ritchie, D., Does Imprisonment Deter? A Review of the Evidence, Sentencing Advisory Council (Vic), April 2011, p2.

<sup>41</sup>Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> 245 613 043, Bureau of Census, Indonesia, July 2011

They will return to families and friends who had probably given them up for dead at sea.

19.6 The people subject to these laws are some of Australia's most vulnerable prisoners. It is only through talking about these issues at a national level that we can dispel the myths that are propagated about these so called 'scum of the earth'.