

# Australia: Bipartisan agreement on retrospective anti-refugee law

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The Gillard Labor government and the Liberal Opposition joined forces to rush legislation through the lower house of parliament last week that further violates the basic democratic and legal rights of refugees to seek asylum in Australia.

In less than one hour, and with virtually no notice, the Deterring People Smuggling Bill 2011 was pushed through on the evening of November 1 and sent to the Senate, where it is expected to be adopted later this month after a token committee inquiry.

Under the pretext of combatting “people smuggling,” the bill is clearly aimed at the asylum seekers who desperately attempt to get to Australia by purchasing places on board boats sailing from Indonesia or other Asian countries. “People smuggler” is the misleading and politically loaded term adopted by successive Australian governments to refer to those people, mostly poor Indonesian fishermen, who organise or crew refugee boats.

The bill retrospectively amends all the so-called people smuggling offences in the Migration Act. It expunges any legal argument that defendants are not guilty because they were helping refugees who have a right, under international law, to seek protection from persecution.

The legislation effectively repudiates the 1951 Refugees Convention by specifying that there is “no lawful right to come to Australia” without a visa, for anyone “seeking protection or asylum [and] whether or not Australia has, or may have, protection obligations ... under the Refugees Convention.”

While the 1951 convention imposes only very limited obligations on signatory states, it does provide for a right to seek protection and prohibits the imposition of penalties or discriminatory measures on asylum seekers because of their supposedly illegal entry into the country.

With the agreement of the opposition, the bill was rammed through the House of Representatives in just 54 minutes. This anti-democratic procedure pre-empted a Victorian Court of Appeal case involving Jeky Payara, a 20-year-old Indonesian fisherman who faces trial for “aggravated people

smuggling.” His case has now been adjourned until November 30, pending the outcome of the Senate vote.

Payara’s lawyers had succeeded in August in having his trial adjourned in order to challenge his prosecution. They argued that the people he ferried by boat had a legal right to claim asylum in Australia. Legal analysts had predicted that his challenge would be successful.

Payara is one of the 353 people currently jailed in Australia, some for two years, awaiting trial for “people smuggling” offences that carry sentences of up to twenty years’ imprisonment.

According to the Human Rights Law Centre, a civil liberties body, only six of these prisoners are accused of organising refugee boats. The remainder are mostly young Indonesian fishermen who were offered small amounts of money to work as crew members. The Indonesian embassy has estimated that about 50 of these detainees, all held in adult jails, are teenagers who were under 18 years at the time of their arrests,

The amendment to the Migration Act will be backdated to 1999 so that all the current prisoners, and potentially other people not yet charged, can be prosecuted for a crime that did not exist at the time they assisted refugees. For centuries, retrospective criminal legislation has been opposed as repugnant because of the capacity it creates for arbitrary punishment by governments of what was previously lawful activity.

Victorian Legal Aid lawyer Saul Holt, who is representing Payara, told reporters: “The new legislation targets this case specifically and it means that our argument can’t win. Retrospective legislation in criminal law is an extraordinary step. It is hardly ever taken by parliaments and the significance of that shouldn’t be lost.”

This is the second time in recent weeks that the Labor government has moved to overturn court rulings and basic legal precepts in order to extinguish refugee rights. During September and October it sought to negate a High Court decision that had outlawed its so-called Malaysian Solution. The judges ruled that the plan to deport 800 asylum seekers

to Malaysia, a country notorious for its abuse of democratic rights, failed to protect even the minimal rights to seek protection contained within the Migration Act.

For its own political purposes, the Liberal opposition refused to back the amendments designed to counteract the High Court ruling. However, the Liberals swiftly agreed to the supposed anti-people smuggling bill, demonstrating the essential unity between the two major parties on the underlying drive to stop refugees entering Australia.

Both major parties cynically blame “people smugglers” for the drowning of hundreds of refugees attempting to reach Australia. In 2001, 353 people aboard the SIEV X were killed and last December another 50 refugees drowned when their boat smashed onto the rocks of Christmas Island. There is considerable evidence that the Australian governments involved permitted the tragedies to occur, for the purpose of deterring other asylum seekers from attempting similar voyages. Last Tuesday night, another boat packed with refugees sank off the Indonesian coast, drowning at least 20.

Refugees risk their lives on these dangerous journeys only because successive Australian governments have erected vast security networks—including radar surveillance, naval and aerial patrols, and Australian Federal Police spying operations—that make it impossible for refugees to reach Australia in any legal or safe manner. Responsibility for the death toll lies fully with the entire Australian political establishment.

The “people smuggling” provisions can also be used against anyone within Australia, including refugee organisations, family members and relatives, who assist asylum seekers to sail to Australia. Under amendments introduced by Labor in 2010, it is a crime for an Australian resident to “provide resources” to a refugee entering Australia “illegally.”

The latest legislation is a further attack on the basic democratic right of people to work and reside, with full social and political rights, where they choose. Innocent asylum seekers have been made scapegoats to divert public attention from the mounting government-backed corporate offensive underway against the jobs, wages and conditions of the working class as a whole.

Greens’ MP Adam Bandt opposed the bill, objecting to its retrospectivity and rushed passage. He appealed to parliamentarians from both major parties to adopt a “long-term, practical, humane and compassionate policy towards refugees, like this country used to have” in the 1970s.

No such golden age of humanitarianism ever existed. After the end of the US-led and Australian-supported Vietnam War in 1975, the Fraser Liberal government sought to stem a small influx of boat arrivals by striking deals with South East Asian countries to take a share of those who had fled

South Vietnam and were trapped in regional refugee camps. Fraser also had definite political calculations, accepting supporters of the defeated US puppet regime in Saigon, while keeping the door shut to other refugees.

Since then, successive Australian governments, Labor and Liberal alike, have imposed increasingly draconian measures to keep out asylum seekers, underpinned by the mandatory detention regime introduced by the Hawke and Keating Labor governments in the early 1990s. The Greens entirely support this underlying policy, proposing only a 90-day limit on detention, subject to health and “security” checks. They back the continued detention and deportation of asylum seekers who fail the narrow refugee test or are denied clearance by the Australian Security Intelligence Organisation.

In order to stop asylum seekers arriving by boat, the Greens call for a marginal increase, to just 20,000 a year, in the intake of authorised off-shore refugees and “humanitarian entrants.” By doing so, the Greens are also attempting to politically distance themselves from the deeply unpopular Gillard government, with which they remain in a de facto coalition, and exploit the widespread hostility to the government’s ever-more blatant persecution of innocent asylum seekers whose only “crime” is to try to flee oppression.

*The authors recommend:*

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