

# Smuggling in nasty laws

(facsimile text-typed reproduction of original article)

Soon Australia will have new anti-people smuggling laws fighting “vile and evil” people smuggling networks – so your politicians will tell you – that prey on vulnerable asylum seekers and refugees.

However, on the routes from Indonesia, those “smugglers” are often no more evil than your local pawnbroker or payday lender.

Just as pawnbrokers assist people who cannot access small bank loans, smugglers operate successful businesses because people use their services. Their travel services are massively overpriced. Using old and at times barely seaworthy boats in our region, service quality is inferior, customer service is lousy – but smugglers (contrary to slave labour ‘traffickers’) operate on mutual terms. Customers know what they offer, they choose what it brings. Why?

The answer is simple. Smugglers assist others with clandestine border crossings. Oskar Schindler, (*Schindler’s Ark*) made a list of Jewish friends before committing himself to get them to safety from the Nazis. German pastor Dietrich Bonhoeffer, the PM’s hero and guru, was arrested in 1943 by the Gestapo for helping 14 Jews to escape Germany.

## Risk arrest

Many refugees cannot openly leave countries, unable to travel using formal means because they risk arrest.

Others grow up without birth certificates or official ID papers. Elsewhere departure is a criminal offence without approval, making travel by air – or bus, train, ferry – impossible without false papers. Only smugglers and false papers can help them while, for refugees, their only ‘home’ is a country that has signed the UN Refugee Convention.

The UN “migrant trafficking” Convention includes the Smuggling Protocol. Australia has signed it. It defines a smuggler as gaining “a material benefit” from passengers.

Australia’s harsh 1999 smuggling laws do not catch smugglers, nor will the new laws catch them. Instead, they dole out harsh imprisonment to many broke, illiterate and unemployed Indonesian fishermen who find work for smugglers, sailing a boat to their ancient Ashmore Reef fishing grounds, bringing refugee groups to safety.



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Last week four young men – two of them 19 years old – were jailed in Darwin. They had made as little as \$63 for their offending activity. Two were brothers, and their father was audibly sobbing in the court.

Justice Kelly almost apologized to the men when sentencing them to five years gaol under the mandatory sentencing demands of the laws. She was not the first judge to make such remarks. Justice Mildren showed similar frustration and anger about the laws when sentencing other offenders who had received severe burns and lifelong injuries after their boat exploded last year.

I am deeply ashamed when our politicians make political mileage by courting the redneck vote, peddling laws that interfere in ugly ways with natural justice of our courts. Around the smuggling laws I am even more ashamed, because under Gough Whitlam in 1976 Australia stole Indonesia’s rich fishing grounds, including Ashmore Reef, from the island communities under a secret agreement with Indonesian president Suharto. We created devastation in the communities, stole their centuries-old traditions and then proceeded to gaol hundreds who kept fishing their grounds.

Australia’s smuggling problem is easy to resolve. Currently, about 2,500-3,500 people from countries like Afghanistan, Iraq and Sri Lanka try making the final journey’s leg from Indonesia. Some have been there for almost nine years waiting for Australia and the UN to offer safety.

However, we could easily ‘snatch’ everyone from the smugglers, leaving them to wonder what happened to their business. After collecting everyone, five

to seven aircraft, flown annually if needed, moving covertly in darkness to Australia under media bans, would end the misery. Instead of making such a smart move, Australia pays millions of dollars annually to Jakarta’s UN and to the International Organisation for Migration for hostels, food and administration, hoping to stop everyone from coming here. Presently Australia resettles about 50 refugees annually from this load.

## Covertly monitored

In open defiance of the UN’s Smuggling Protocol directives, Australia’s new anti-smuggling law removes from the Criminal Code clauses that smugglers need to gain financial benefits. This change will enable Kevin Rudd to goal for up to 20 years smugglers like Oskar Schindler and Dietrich Bonhoeffer – and Tampa Captain Arne Rinnan, who received the United Nations Hansen Medal after defying Howard in 2001, bringing 460 refugees to Christmas Island.

Under the laws, anyone supporting refugees in Indonesia can be covertly monitored by ASIO, arrested, and convicted of “providing material support” for smuggling and jailed for up to 10 years.

Lawyers, NGOs, church groups and university researchers like me may be covertly followed and arrested by Australia’s spooks.

Except from a Greens dissenting report, the Senate Inquiry into the laws ignored all pleas from refugee law experts, legal and human rights peak bodies and civil society, recommending the laws be passed without major amendments.

Its report was published a week before deadline, giving ample grounds to conclude the inquiry was a hurried cover-up so politicians can be seen to be harsh to smugglers.

We should be regarding it as a white-wash.

Playing football with the world’s most vulnerable citizens has become a nasty Australian tradition during election seasons, but the world is taking note of Australia, also around these laws.

Last week they received their first damning comments in a lecture by a doctoral candidate from Irvine University in California.

No politician or party soiling themselves, opportunistically using refugees as election fodder, deserves your vote at the next election.