Submission to the Senate Legal & Constitutional Affairs Legislation Committee Inquiry into the Migration Amendment (Complementary Protection) Bill 2009

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Background

I am providing this submission predominantly in my capacity as a Research Fellow with the Migration Law Program at the Australian National University (ANU)[1], where I am currently conducting a research project into how best to prepare migration agents for practice. This research provides the opportunity for me to examine issues relating to the overall activities of migration agents, as well as other aspects of the operation of Australia's immigration laws and policies and their effects on individuals and broader society.

I currently also work as a consultant for the Ethnic Communities Council of Queensland (ECCQ), the peak body for associations and individuals of migrant and refugee background, in the areas of advocacy and policy. In addition, I am serving on the Management Committee of the Refugee and Immigration Legal Service (RAILS), which is the sole accredited Immigration Advice and Application Assistance Scheme (IAAAS) service provider in Queensland, and also on the Board of Management of the Multicultural Development Association (MDA), which is the largest refugee settlement agency in Queensland.

The views expressed in this submission are on behalf of the individual author only, and are not in any way expressed on behalf of the Australian National University, the ANU College of Law or the Migration Law Program delivered by that College, or any of the other above mentioned organisations.

From 1997-2008, I served as a Senator for Queensland and throughout that time was a member of the Joint Standing Committee on Migration and the Australian Democrats' spokesperson on immigration issues. Like many other Members of Parliament, I frequently made representations to the Immigration Minster of the day regarding individual cases which arguably engaged complementary protection obligations.

I was also involved in a number of Senate Committee inquiries and Parliamentary debates which directly addressed issues which the Bill impacts on. These include the:

- Report by the Senate Legal and Constitutional References Committee report A sanctuary under review: an examination of Australia's refugee and humanitarian determination processes (tabled in June 2000);
- Report by the Senate Legal and Constitutional Legislation Committee into provisions of the Migration Amendment (Agents Integrity Measures) Bill 2003 (tabled in November 2003), and the subsequent Senate debates on 22 and 23 March 2004.
- Report by the Senate Select Committee on Ministerial Discretion in Migration Matters (tabled in March 2004); and
- Report by the Senate Legal and Constitutional References Committee on the administration and operation of the Migration Act 1958 (tabled in March 2006).

In the three reports referred to above which do not deal with a specific piece of legislation, I was part of a majority of Senators recommending consideration be given to some form of complementary protection (or in the case of the June 2000 report, a unanimous recommendation). I also introduced a Private Senators Bill, the Migration Legislation Amendment (Complementary Protection Visas) Bill 2006 [2008], which was debated in the Senate and voted down at the Second Reading stage on 20 March 2008.

[1] Segments of this submission were initially published in the article "Ministerial Discretion in the Migration Act: Policy, legislation and politics", pp 18-23, Issue 39 & 40 Immigration Review, April 2009. Written by Andrew Bartlett. Published by LexisNexis.

It is therefore not surprising that this submission expresses support for moving to introduce a codified form of complementary protection into Australia's migration laws. However, while much of the debate tends to revolve around issues of human rights and 'border security', I wish to use this submission predominantly to highlight other related and important, albeit perhaps more mundane, reasons why it is desirable to move our migration laws in this direction.

I have divided these reasons into four separate, though overlapping, categories:

1 Enhanced administrative efficiency and transparency;

2 Improved effectiveness and integrity of the Migration Agent profession;

3 Greater certainty and quicker resolutions for protection visa applicants and for those who assist them;

4 Better protection of perceptions of the integrity of government Ministers, especially those with responsibilities under the Migration Act.

These categories are expanded on after the introduction.

Introduction

The Migration Amendment (Complementary Protection) Bill 2009 (hereafter called 'the Bill') serves to further codify in legislation some of Australia's key obligations in a number of important international human rights treaties, such as:

- the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (the refugees convention);
- the 1966 International Covenant on Civil and Political Rights (ICCPR);
- the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- the 1989 Convention on the Rights of the Child (CROC).

Australia has been a party to all these treaties for many years, spanning governments of both the Coalition and Labor parties. A key obligation in all these treaties is the requirement not to forcibly return someone to a country or situation where they would be at significant risk of being persecuted, killed, tortured, or subjected to other cruel, inhuman or degrading treatment (known as the *non-refoulement* obligation).

It is important to note that, despite all the public controversy regarding some aspects of the previous government's policies towards asylum seekers, that government quite clearly stated its support for complying with the non-refoulement obligations under the CAT, CROC and ICCPR, and regularly stated that these obligations were always met.

There has clearly been disagreement between (and probably within) political parties as to whether the existing processes of ministerial discretion, predominantly through Section 417 of the Migration Act, are the best way to ensure these non-refoulement obligations would be met, but there has been no disagreement voiced from any party in the Parliament with the fundamental notion that these obligations should always be met.

For example, recommendation 33 of the majority report (i.e. Labor, Democrat and Green) of the Senate Legal and Constitutional Affairs Committee inquiry into the operation of the Migration Act, tabled in 2006, recommended the Act be amended to incorporate a form of complementary protection. The official response of the previous Coalition Government in rejecting this recommendation was that:

> *"The existing provisions of the Migration Act 1958 allow for ministerial intervention in the public interest to deal with any cases where non-refoulement obligations under the Convention Against Torture and the International Covenant on Civil and Political Rights exist for non-Refugee Convention grounds, and for cases where continued stay on Convention on the Rights of the Child grounds is in the public interest."*[2]

Therefore, **the core issue the Committee should be considering is whether the Bill will better ensure these obligations are met**, not whether complying with non-refoulement obligations of human rights treaties beyond the Refugee Convention is appropriate.

I expect a number of other submissions to the Committee's Inquiry will examine how well or otherwise the Bill ensures adherence to the above mentioned conventions, as well as others such as the Convention on Statelessness. I will leave others with greater specialty in international human rights law to address such detail.

However, regardless of the finer points of international law that might be argued over, and indeed the political contentiousness of some issues surrounding the seeking of asylum in Australia, I believe there is little doubt that the vast majority of Australians –including Parliamentarians - would agree that as a nation we should not forcibly remove a person from our country if doing so puts them at genuine risk of being returned to situations of grave danger.

1. Enhanced administrative efficiency and transparency

It should not be the job of the Immigration Minister (or any other Minister) to be micromanaging thousands of individual migration visa applications. Large numbers of public servants are employed in the Department of Immigration and Citizenship (DIAC) to assess visa applications, along with Appeals Tribunals to conduct merits reviews of any appeals lodged against those assessments.

But because there is currently no capacity for either DIAC officers or members of the Refugee Review Tribunal (RRT) to assess matters than come under the umbrella of complementary protection, a significant number of claims must pass through both primary assessment at DIAC level and then re-consideration and rejection by the RRT before it is possible for a decision to be made on whether complementary protection obligations are engaged.

This wastes significant resources and time, including the resources spent on extra work by IAAAS providers and other migration agents, as well as other resources that might be spent assisting protection visa claimants, due to the prolonging of a final determination of their claim.

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[2] Government response to Senate Committee report - Legal and Constitutional References Committee, "Administration and operation of the Migration Act 1958" – tabled in the Senate 14 June 2007. Senate Hansard page 106.

To add to the inefficiency, consideration of any complementary protection obligation can only be finalised via a decision of the Minister, exercising his or her discretion personally. By way of necessity, this requires another array of DIAC officers to sift through requests for ministerial intervention, compile briefing notes, backgrounders and possible recommendations for the Minister to look at when and if he or she chooses.

This work can also include fielding continual queries from applicants, their agents, MPs' offices and others as to the progress of the ministerial intervention request(s). Staff in Ministerial offices can also end up spending significant amounts of time fielding queries from all of the above sources. Given that by this stage it will be many months, if not years, since the protection visa application was initially lodged, it is not surprising that frustration and impatience can build up on all sides.

A further problem, unique to ministerial discretion, is that there is no requirement for reasons to be provided as to why a decision was – or wasn't – taken, and the practice over decades has been for no reasons to be provided. The current requirement under the Migration Act for notification of the use of ministerial discretion powers to be tabled in the Parliament is close to useless, providing no meaningful details other than the fact that discretion has been exercised, with no facts as to why. Of course, when there is a decision (or non-decision) not to exercise discretion, there is nothing tabled at all, although there is usually a letter sent to the applicant or their agent in such circumstances, usually stating little more than the fact that discretion has not been exercised in this instance.

All of this adds to up to a lot of activity by a lot of people over a long period of time, which eventually ends in an outcome, but with people often none the wiser as to why. I can attest from my own experiences in seeking ministerial intervention in many cases over many years that I often had little idea as to why one request was refused while another was agreed to.

On the 9th July 2008, the federal Immigration Minister Senator Chris Evans issued a media release where he stated that

> "*Ministerial intervention powers were originally intended to provide an outcome for unique and exceptional cases but there is now an industry in people appealing to the minister. There has been a substantial growth in the use of intervention powers over the last decade to the point where thousands of applications for Ministerial intervention are now made every year.*'[3]

The Minister's comments were made as he was making public a report by businesswoman Elizabeth Proust which had been provided to him over five months earlier at the conclusion of a brief review into Ministerial Powers under the Migration Act which she had conducted at the Minister's request.[4]

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[3] *"Ministerial intervention powers under review" - Media release issued by Senator C Evans, 9 July 2008. see http://www.minister.immi.gov.au/media/media-releases/2008/ce08065.htm (accessed 25/2/09)*

[4] Elizabeth Proust, "Report to the Minister for Immigration and Citizenship on the Appropriate Use of Ministerial Powers under the Migration and Citizenship Acts and Migration Regulations", 31 Jan 2008. see http://www.minister.immi.gov.au/media/media-releases/2008/proust-report.pdf (accessed 25/2/09)

The Minister's concern was understandable, although I think his description of an "industry in people appealing to the Minister" creates an unfair impression. A migration agent has an obligation to pursue all reasonable options for their client in obtaining a visa, and in many cases that includes seeking ministerial intervention – not least because it has become so commonplace and because there is uncertainty as to why some requests fail while others succeed. This is doubly the case in the area of protection visas, where in many cases the claims are being put forward by pro-bono agents or community legal centres who do not profit from prolonging a case.

At the time of his comments, Senator Evans had been the Minister for just over seven months, but he was already signalling that he was not very keen on the very wide ranging nature of his interventions powers and the large number of cases which he was required to give personal consideration to. As he said in his statement, "Ministers should deal with issues of broad public policy. It is not the job of a minister to decide thousands of individual visa cases."[5]

In theory, the Minister could avoid giving consideration to any cases where his intervention was sought by simply refusing to do so, as he is not compelled under the Migration Act 1958 to use these powers or to even give consideration to using them. But as many advocates, migration agents and parliamentarians would attest, such an approach would leave many injustices unaddressed.

In addition, as stated in the introduction to this submission, governments and Ministers both past and present have continually affirmed their commitment to upholding Australia's non-refoulement obligations across all the human rights treaties, not just the Refugee Convention. A blanket refusal to exercise Ministerial discretion would undoubtedly lead to cases where these obligations were breached.

The above mentioned report by Elizabeth Proust drew significantly on some of the 21 recommendations of the Senate Select Committee into Ministerial Discretion in Migration Matters which were first tabled in March 2004. None of those recommendations were formally responded to by the previous government in the three and a half years between when the report was tabled and when the Coalition eventually lost office. However, in developing her own report and recommendations,[6] Ms Proust included all of the 21 recommendations in an Appendix to her own report and explicitly reused some within the six recommendations in her own report. She also stated that "it is surprising that so little use has been made of the (Senate Committee) Report because many of the recommendations are common sense ones which would alleviate the current workload issues."[7]

Ministerial discretion provisions under the Migration Act cover much more than complementary protection matters such as proposed in this Bill, and the passage of this Bill will not alleviate all the existing inefficiencies inherent in the way ministerial discretion under the Act has evolved. However, it will certainly go part of the way.

2. Improved effectiveness and integrity of the Migration Agent profession

[5] "Ministerial intervention powers under review" op cit

[6] The report from Ms Proust indicated that in conducting the review, she read the 2004 Senate Select Committee Report, together with the relevant Acts and Regulations. It also indicates that she spoke to "2 former Ministers for Immigration, various stakeholders, Departmental officers and staff in (the Minister's) office." Appendix B of the Proust report lists the people who were interviewed.

[7] Proust report, page 4. op cit

Migration agents are something of a whipping boy for both media and politicians alike. A common charge levelled against migration agents is that they try to earn money by encouraging people to submit unmeritorious visa applications. Yet under the law, before ministerial discretion can even be requested in cases where complementary protection matters may apply, it first requires an application to be submitted to DIAC, assessed and refused by the Department, appealed again to the Refugee Review Tribunal and again refused.

This applies not just to humanitarian cases which might fall outside the relatively narrow criteria of the Refugee Convention, but also to many other applications for permanent visas. An example is the case of Dr Bernhard Moeller and his family, whose situation attracted a lot of public attention at the end of 2008 after their application had been initially rejected due to his son having Down Syndrome. The Minister was only able to intervene to grant the visas once the same inefficient process of application, rejection, appeal and refusal had been undergone.[8]. Such cases fall outside the scope of the current Bill, but have also been recognised to be sufficiently problematic to merit a separate inquiry currently being undertaken by the federal Parliament's Joint Standing Committee on Migration.

All these examples highlight how migration agents can be put in a position where they must submit an application they know will not succeed, simply so they can eventually make a case direct to the Minister. Even worse, there is no way an agent can guarantee a successful outcome from seeking ministerial intervention, or even give clear reasons why a request ends up being unsuccessful.

It should also be noted that unsuccessful appeals to the Refugee Review Tribunal attract a fee. For a profession which is regularly accused of encourage people to make visa claims which are doomed to fail, it is understandable why some Migration Agents are reluctant to advise clients to pursue such a drawn out, potentially expensive and highly uncertain path.

This dilemma was highlighted in evidence provided to this Senate Committee back in 2003 when it was examining proposed legislative amendments purporting to improve the integrity of migration agents. The inquiry into the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003[9] provoked sufficient concerns from all members of the Committee that it recommended against a key part of the Bill "on the basis that the measures are insufficiently targeted to vexatious agents and that the Bill grants complete discretion to the Minister, without detailing the basis on which such discretion will be exercised."[10]

This was one occasion where the Senate decided against further expanding powers of ministerial discretion under the Migration Act, but it also highlighted the impossible dilemma migration agents and advisors can find themselves in as a direct result of the lack of transparency or certainty around the use of ministerial discretion, particularly at times when the profession is being subjected to attacks regarding 'vexatious' claims.

The Migration Act, its accompanying Regulations, Ministerial Directions and interpretations are incredibly complex and constantly changing. For example, in 2005, the Migration

[8] "Statement by Senator Evans on Dr Bernhard Moeller". Senator Chris Evans, Media Release, 26 Nov 2008. (accessed on 25/2/09 at http://www.minister.immi.gov.au/media/media-releases/2008/ce08113.htm)
[9] Senate Legal and Constitutional Affairs legislation Committee, Report of the "Inquiry into the Migration Amendment (Agents Integrity Measures) Bill 2003". Parliament of Australia, Canberra. November 2003.
[10] Recommendation 3, page vii. ibid

Regulations were changed 1 100 times.[11] There are currently over 150 different classes of visa. This gives some indication of the inherent difficulty in ensuring migration agents will be able to provide optimal service, particular for vulnerable clients such as protection visa claimants and the complex cases they sometimes present.

Adding the completely opaque system of ministerial discretion to this constantly changing mix of Regulations and Directions to the sort of compelling and sometimes traumatic humanitarian cases that come under the umbrella of complementary protection can present a minefield for even experienced migration agents and lawyers if they do not have specific experience in this type of claim.

In conversations with many migration agents over a long period, terms like "reading the tea leaves" and "sniffing the wind" are regularly used as they try to assess what approaches might increase the chances of a successful request for ministerial intervention. Some will confess as to having no idea why one case was successful while another failed. Some times they have to consider whether 'going public' and seeking media support will help or hinder a positive outcome. A transparent system should ensure that such considerations are never part of determining the success of a claim.

It is true that there is often an element of uncertain in any legal proceeding, and sometimes unexpected outcomes can occur. But whether it be a decision by a Judge, a Tribunal or a case officer in DIAC, there is a requirement for reasons for the decision to be provided. This obviously allows agents and their clients to appeal or to contest matters they believe are in error. This does not happen with ministerial discretion, leaving the client and their agent (and anyone else who is trying to assist them, including Members of Parliament) completely in the dark.

3 Greater certainty and quicker resolution for protection visa applicants and those who are assisting them (including politicians and Electorate Officers)

The Senate Legal and Constitutional Affairs Committee is well acquainted via another current inquiry into the constraints and costs in accessing justice.

The Committee's inquiry into access to justice includes a term of reference to examine measures to "reduce the length and complexity of litigation and improve efficiency". The Committee would thus be aware of the wider benefits that come with quicker resolution of cases and greater certainty about the reasons why a particular outcome has been arrived at.

Many people beyond migration agents can provide assistance to protection visa applicants. By their nature, cases which raise issues of complementary protection are more likely than most other visa claims to be ones involving significant humanitarian issues, sometimes involving great trauma.

Social support services, some of them publicly funded, have their resources further stretched by prolonged, drawn out cases. Long delays in finalising protection visas claims, with the extended uncertainty and fear of being returned to situations perceived to be dangerous, often

[11] "Post-Palmer reform of DIAC and regulation of the migration advice industry". Speech by Andrew Metcalfe to the inaugural CPD Immigration Law conference, 9 Feb 2007. (quoted in "An Opinion on the Proposed New Regulation Regime for the Migration Advice Industry" by Maria Jockel. Page 3, Immigration Review, Issue 39 & 40, April 2009. Published by LexisNexis.

exacerbates the trauma experienced by claimants. Apart from the impact on the individual claimants, this also leads to an increased financial and human burden on support agencies.

In addition, a migration agent or legal service in such cases as often as not is a not-for-profit community legal centre or a pro-bono agent already struggling with large caseloads and/or resource constraints.

Information provided to the Senate Select Committee into Ministerial Discretion by the then Department of Immigration Multiculturalism and Indigenous Affairs indicated that the vast majority of Parliamentarians wrote letters to the Minister in relation to requests for intervention. It is reasonable to assume the same applies today.

I am not raising this issue to argue that Members of Parliament should consider passing laws just because it might make life a bit easier for them in dealing with some difficult constituent cases. Rather, I draw attention to this as a reminder that most Parliamentarians, and more particularly members of their staff, are likely to have had at least some experience with the uncertainties and vagaries involved with requesting ministerial intervention.

The Complementary Protection Bill will not necessarily lead to significantly greater numbers of successful protection visa claims. But it should lead to more of those claims being resolved sooner and with clearer explanation of the reasons behind a decision.

Parliamentarians and their staff who assist a constituent regarding a protection visa claim – whether for themselves or another person they support – can obviously never guarantee a successful outcome. But they would all recognise the benefits of a prompt resolution, whether the outcome is successful or unsuccessful, and the provision of clear reasons in the case of an unsuccessful claim.

In this context, it is worth noting that despite the immensely complex and ever-changing nature of our migration laws, Parliamentarians and their staff are exempt from the legal prohibition against people giving migration advice unless they are a Registered Migration Agent. [12]

Table 6.1 (page 89) of that Select Committee's report shows that over a four year period up to 2003, I had the highest 'success rate' in regards to requests to the Immigration Minister to use their discretion in particular cases. Many of these would have included matters which would come under the definition of complementary protection in the Bill currently before the Committee.

I believe I had (and retain) a good sense of what constitutes a meritorious case, and I tried to avoid requesting intervention for cases which I did not believe to be meritorious. Despite this comparatively high level of success, in many instances I had little idea of why some cases were rejected and others were accepted.

4 Perceptions relating to the integrity of government Ministers

As mentioned above, I was a member of the Senate Select Committee into the use of Ministerial Discretion in Migration Matters. In some ways it is ironic that this Senate Select

[12] Section 280(2) and 280(4) of the Migration Act 1958.

Committee report provided an unprecedented detailing of the history and use of the ministerial discretion powers and such a thorough consideration of possible policy reforms, as the genesis of this Senate Committee and its inquiry was not really due to a deep-seated concern amongst most parliamentarians about general inadequacies in the law relating to ministerial discretion powers.

Rather, it was predominantly initiated as a mechanism to increase political pressure on the government as the result of a media scandal at the time regarding so-called 'cash-for-visas' allegations against the former Immigration Minister, Philip Ruddock.

This controversy related to "cases where ministerial discretion appeared to have been granted to people who had made donations to the Liberal party or their associates."[13] But while the inquiry didn't unearth any 'smoking gun' regarding the allegations towards Minister Ruddock (or in my view, even a damp water pistol), it did end up conducting a thorough examination of the history and evolution of practices regarding the ministerial discretion powers. While the controversy surrounding a media political scandal may have generated what turned out to be a valuable general inquiry, the inherent politicisation surrounding the inquiry unfortunately served to distract from some very valuable information and some recommendations that were focused on good public administration rather than political point scoring.

The almost total lack of transparency inherent in the ministerial discretion process inevitably provides a lot of potential for speculation about what factors influence the success or otherwise of requests for intervention. It is no surprise that this speculation might sometimes lead to suspicions or allegations of the 'cash-for-visas' type.

Earlier this year, there was another burst of allegations that another former Immigration Minister, Senator Amanda Vanstone, may have been influenced by political donations made to her political party in deciding to use her discretion to grant a spouse visa to a person with alleged mafia links[14]. As my personal comments in the final report of the Senate Select Committee on Ministerial Discretion attest, I saw no evidence throughout that entire inquiry to suggest allegations regarding former Minister Ruddock were accurate, and I similarly have no reason to believe the allegations published in the media regarding former Minister Vanstone have any substance.

But the simple fact is that whilst ever there remains such a broad power and practice for a Minister to be able to exercise personal discretion to grant or refuse to grant visas, with no requirement for any reasons to be provided, any current or future Minister will remain open to the prospect of these sorts of allegations - no matter how spurious - being made. Broad powers exercised within an opaque process makes this inevitable, and risks bringing the immigration system, parliamentarians and public administration into disrepute.

Conclusion: the Senate, circa 1999. People affected, not politics

This submission has relied significantly not just on my current area of research, but also my past Parliamentary experiences with matters directly related to the Bill. The submission has

[13] "Report of the Senate Select Committee on Ministerial Discretion in Migration Matters". Senate Printing, Canberra, March 2004. Page xxix. See also "Inquiry to target Ruddock on cash-for-visas claims", Sydney Morning Herald, 20 June, 2003. (http://www.smh.com.au/articles/2003/06/19/1055828435583.html accessed 2/3/09)

[14] "Mafia Cash for Visa Scandal", The Age, 23 Feb 2009. (http://www.theage.com.au/national/mafia-cashforvisa-scandal-20090222-8eoz.html?page=-1 accessed 25/2/09); "Vanstone granted visa to mafia man", The Australian, 23 Feb 2009 (http://www.theaustralian.news.com.au/story/0,25197,24388758-12377,00.html accessed 25/2/09)

noted that a report tabled as far back as June 2000 by an earlier incarnation of this Committee – the Sanctuary Under Review report – contained a unanimous recommendation to "examine the most appropriate means by which Australia's laws could be amended so as to explicitly incorporate the *non-refoulement* obligation of the CAT and ICCPR into domestic law."[15]

The Parliamentary Secretary's Second Reading speech on introducing this Bill also mentioned this report. I expect other submissions to this inquiry will also mention it in passing.

Given it is now over ten years since this inquiry was initiated by the Senate, on 13 May 1999, it is worth reminding the Committee, and the Senate as a whole, of a case that was central to this inquiry being initiated. Rather than a political controversy about why some visas were granted, it was a public controversy about why the minister's discretion was not used to at least enable a temporary stay on the deportation of a woman.

This was the case of a Chinese woman (named 'Ms Z' in the report). She was an asylum seeker who arrived in Australia by boat in 1994 and was forcibly removed back to China in 1997. At the time of removal, she was at least eight months pregnant with what would have been her second child.

Tragically; she was subjected to a forced – and obviously extremely late-term - abortion upon her return. This case is examined in detail in Chapter 9 of the report.

It is difficult to deny that a terrible torment was inflicted on this woman which would not have occurred if her removal from Australia had at least been delayed until after her child had been born. I do not seek to criticise the Minister of that time, Senator Vanstone, who was only in an Acting Ministerial role in the Immigration portfolio at the time the deportation decision was required. She understandably relied on advice she received in this circumstance.

But, in re-examining the details of this case, it is unlikely that the same terrible outcome would have occurred if there had been an opportunity for complementary protection matters to be considered through the same thorough and transparent processes which apply in respect to the Refugee Convention.

Leaving aside all the other arguments I have put forward above, if the extra protections which come from codifying complementary protection measures in the Migration Act only prevents one such mistake occurring again, it would be more than worth it.

[15] Recommendation 2.2. Page 60 of the Sanctuary Under Review report.