



Campaigning for just and fair treatment of refugees and asylum seekers

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Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Senate Committee Members,

A Just Australia thanks you for the opportunity to provide a submission on the inquiry into the Migration Amendment (Complementary Protection) Bill 2009.

A Just Australia was formed in July 2002 as Australians for Just Refugee Programs in response to spiralling community concerns about the treatment of asylum seekers and refugees. Currently, A Just Australia comprises over 12,000 individual supporters, 120 non-governmental organisations and over 70 prominent Australian Patrons. We aim to achieve just and compassionate treatment of asylum seekers and refugees, consistent with the human rights standards that Australia has developed and endorsed. We believe that Australia's policies toward refugees and asylum seekers should at all times reflect respect, decency and traditional Australian generosity to those in need, while advancing Australia's international standing and national interests

We commend the Australian Government on introducing the Complementary Protection Bill. We believe that the Bill addresses a dangerous gap in Australia's asylum legislation caused by the absence of a robust mechanism to engage our complementary protection obligations. We urge the Committee to support the Bill's passage.

However, while the Bill will bring us closer in to line with our international protection obligations, several changes must be made to the text of the Bill before it will be in full alignment with these protection obligations. Most significantly, the use of the term 'irreparable harm' in the Bill creates a threshold that is inconsistent with our international protection obligations. We fully endorse the amendments to the text of the Bill as proposed by the Refugee Council of Australia, as we believe that this would render the Bill compatible with existing international human rights standards, and not set a precedent for creating a lower protection threshold.

We thank you for your consideration of this submission.

Yours sincerely,

Zhi Yan
National Coordinator (Acting)
A Just Australia

Recommendations

1. That the Bill be amended to bring the Bill into full alignment with the international human rights standards set out in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Refugee Convention.
2. That the Committee endorse Recommendations 1 and 2 of the submission by the Refugee Council of Australia (RCOA) to this inquiry, for the purpose of bringing the Bill into alignment with our international protection obligations. These recommendations are:

Recommendation 1 from RCOA's submission to this inquiry:

That s36(2)(aa) be amended to read:

A non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) to whom the Minister is satisfied Australia has protection obligations because, as a consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will be subject to serious harm as defined in sub-section (2A).

That sub-section (2A) be amended so as to stipulate that 'serious harm' means the content of that sub-section as currently set out.

That by way of consequential amendment the term "irreparable harm" also be removed from other sections of the Bill where it appears.

Recommendation 2 from RCOA's submission to this inquiry:

That the words "and it will be carried out" be deleted from s36(2A)(b).

3. That this Bill be passed, incorporating the above-mentioned amendments to the text.

Why Australia urgently needs a robust system of Complementary Protection

(Excerpt from *Playing God with Sanctuary: A study of Australia's approach to complementary protection obligations beyond the Refugee Convention*, by A Just Australia, Oxfam Australia and Oxfam Novib, 2008¹)

Current Australian law:

- Australia is now one of the few developed countries that does not have a formal system of complementary protection. Instead, Australia uses ministerial intervention powers as an informal but weak mechanism.
- Under current Australian law, all people seeking protection must file an application for refugee status with the Immigration Department even if they know from the outset that they will not fit this definition of a refugee. The claim is assessed against the Refugee Convention but not against other human rights treaties Australia has ratified, such as the Convention Against Torture (CAT).
- Unsuccessful applicants can appeal the decision to the Refugee Review Tribunal (RRT), which can again only review the application against the Refugee Convention. After a second negative decision the applicant may apply to the Minister for Immigration to assess their claim based on a much broader set of humanitarian criteria, which can include risk of torture or other claims under human rights treaties Australia has ratified.
- But the Minister does not have to intervene, no court can compel the Minister to intervene and s/he is under no obligation to give reasons for not intervening.
- If the Minister does intervene, s/he does not have to give reasons for his/her decision and no court can review the decision.

Why do we need a formal system of complementary protection?

- The current system fails people in need of protection, as it may result in the return of people to countries where they may be tortured or seriously harmed. It also results in psychologically harmful delays of protection to vulnerable people living in detention or in the community.
- The current system is more costly as it may result in prolonged detention, extra legal and financial costs and other hardships such as living in the community for extended periods without work rights or access to healthcare.
- The current system undermines the rule of law and democracy in Australia as it utilises a discretionary method to deliver international legal obligations.

¹ Available at <http://www.ajustaustralia.com/resource.php?act=attache&id=324>