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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013

In defence of Complementary Protection

Complementary Protection was introduced into Australian Migration Law in March 2012 to establish a domestic mechanism for certain individuals to invoke Australia's *non-refoulment* obligations, where the protection of Article 33 of the *Refugees Convention*[1] is unavailable to them. This reform acknowledges that some individuals, who do not fit within the limited scope of the definition of 'refugee', may nonetheless still need protection and have the right under international law not to be returned to harm.

The introduction of Complementary Protection codified Australia's obligations under several key international human rights instruments, including the *Convention Against Torture*[2] and the *International Covenant on Civil and Political Rights*[3]. This amendment brought Australia in line with practice in jurisdictions such as Canada, the United Kingdom and European Union.[4]

Including an assessment on Complementary Protection in the formal protection visa process, rather than burying it at the end of the appeals process, means that these often complex cases could be considered at an earlier stage and avoid the trauma of further hearings. Without being able to obtain a protection visa under complementary protection at first instances, applicants will again have exhaust their appeals options before they could make an individual plea to the Minister for Immigration relying on other human rights instruments. Front loading Complementary Protection grounds provides for more timely, cost effective processing of claims.

[1] *Convention Relating to the Status of Refugees,* opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).
[2] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)
[3] *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976)
[4] GS Goodwin-Gill and J McAdam, *The Refugee in International Law*, Oxford University Press, Oxford, 2007, third edition, p. 285

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Since its introduction less than two years ago, only 55 positive decisions have been made on Complementary Protection grounds.[5] This low number can be partly attributed to the political instability over this period, with four Immigration Ministers presiding over the humanitarian entrants program. There are currently many tens of thousands of protection visa applicants awaiting decisions, most with Complementary Protection claims.[6] The number of Complementary Protection visa grants is not an accurate gauge of the success or importance of Complementary Protection, and clearly undermines the notion that its removal is necessary in order to 'regain control of our border'.

The significance of the Complementary Protection provisions should not be diminished by domestic politics, for those 55 individuals the protection visa was often the difference between life and death. I speak from my experience assisting many individuals with their Complementary Protection claims, including 2 applicants whose visas were granted on these grounds. These cases involved complex inter-personal disputes such as extortion attempts, blood feuds, honour killings, and domestic violence. Fearing harm for any one of these reasons is not, of itself, usually sufficient to bring a claimant's case within the ambit of the Refugees Convention. Irrespective of the technical legal classification of the harm feared, it is foreseeable that individuals who are returned in such circumstances face a serious threat to their safely, if not their life.

The provocative title of this bill infers that by enshrining Australia's international human rights obligations into domestic law, and subsequently granting 55 additional protection visas, control has been lost. It also encourages an inference that the government considers people who are at risk of significant harm should not be protected. Reverting to a system where protection claims, beyond those claims made under the *Refugees Convention*, will be considered exclusively at the Minister's non-reviewable discretion is regressive. Removing the transparent assessment of whether or not Australia owes protection, per our international human rights obligations, cannot be considered best practice and is certainly not acceptable conduct from a nation which should be leading our region.

I suggest when considering this Bill, primacy should be afforded to Australia's international human rights obligations and the message that we want to send to other nations in encouraging the burden sharing of processing asylum seekers. If Australia is to take such a significant step backwards, how can we legitimately expect other nations to increase their efforts in this field?

Kind Regards,

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[5] Senate Legal and Constitutional Affairs Legislation Committee, Estimates (19 November 2013) 61 (Alison Larkins, Department of Immigration and Border Protection).
[6] *Department of Immigration and Citizenship Annual Report 2012-2013*, p 126.