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By email:

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir / Madam,

Submission to Inquiry into the Migration Amendment (Complementary Protection) Bill 2009

Over 80 per cent of the world's refugee population are women. Yet among the refugees who are afforded protection in Western states, the figure drops to only 50 per cent. Clearly, then, the difficulties faced by women in being granted refugee status need to be addressed.

I would like to commend the Rudd Government for introducing the Migration Amendment (Complementary Protection) Bill 2009 ("the Bill") and welcome the opportunity to comment on its provisions. I believe it is vital that this Bill is passed in order to ensure the protection of fundamental human rights, particularly in relation to women who seek asylum.

My name is Alexandra Hutchison and I am a fifth year law student at the University of Technology, Sydney with a special interest in international law. As part of my studies in the first semester of this year, I undertook a course in Citizenship and Immigration Law in which I completed an extended research essay on the issues female asylum seekers face in meeting the definition of 'refugee' under the five grounds in the Convention Relating to the Status of Refugees 1951. The essay recommends the addition of another Convention ground, being 'gender', however the implementation of the Bill in Australia would be another means of overcoming the problems that are outlined in the essay. I have attached this essay to my submission as I feel it has some pertinent arguments in it which would support the Bill, namely:
the importance of bringing our protection visa framework up to date;

facilitating the acceptance of protection claims for victims of sexual and gender-based persecution;
the need for more consistency in the way in which asylum claims by women are decided, both internationally and domestically; and
the need for more efficiency in the system.

Due to the current immigration laws, with their strict application of the five Convention grounds, a number of groups of women subjected to sexual or gender-based persecution fall through the cracks and are unable to gain protection in Australia. I commend the emphasis, both in the media and in the second reading speech by Honourable Laurie Ferguson MP, on groups of women who, if made to return to their home country, would potentially be faced with a real risk of forced genital mutilation or 'honour killings'. However, I would like to urge the Department of Immigration and Citizenship ("DIAC") to expressly consider the following groups of women as also having the potential to be eligible for the new complementary protection visas:

women who are victims of domestic abuse in countries where the authorities either openly tolerate such violence or turn a blind eye to it, such as Pakistan (as seen in the case of *MIMIA v Khawar* (2002) 210 CLR 1, in which the Australian courts had to almost artificially manipulate the law in order to fit such a ground within the Convention ground of 'particular social group');

women who are victims of human trafficking and would face a real risk of being re-trafficked if they returned to their country of origin, as well as facing the threat of retaliation from traffickers, and extremely grave social ostracism and discrimination (as seen in the case of *VXAJ v MIMIA* (2006) 198 FLR 455 where there was, once more, some creative judicial decision-making); and

women who have received either a forced sterilisation notice from their country of origin or who would be forced to undergo an abortion if they were to return (as seen in the case of *Applicant A v MIEA* (1997) 142 ALR 331 where the courts rejected that Chinese women served with a forced sterilisation notice constituted a 'particular social group').

Once more, I would like to welcome the proposed amendments under the Bill, and urge DIAC and government Ministers alike to consider the potential application of the Bill to the abovementioned groups of women.

Yours sincerely,
Alexandra Hutchison.