CHAPTER 3
ISSUES

3.1 This Bill seeks to address gaps in the existing framework for processing applications for protection under the Refugee Convention and other associated pieces of international law to which Australia is party, a course of action recommended by the Legal and Constitutional Affairs References Committee on several occasions in the past and also by the Senate Select Committee on Ministerial Discretion in Migration Matters in 2004.[1] The need for complementary protection legislation was expounded on in the second reading speech for the Bill:

> Complementary protection will cover circumstances in which a person may currently be refused a protection visa because the reason for the persecution or harm on return is not for one of the specified reasons in the refugee convention—that is not on the basis of race, religion, nationality, membership of a particular social group or political opinion. For example, it is not certain that a girl who would face a real risk of female genital mutilation would always be covered by the refugee convention, whereas she would be covered under complementary protection. Women at risk of so-called honour killings can also potentially fall through gaps in the refugee convention definition. In some countries victims of rape are executed along with, or rather than, their attackers. Again, depending on the circumstances, this situation may not be covered under the refugee convention.[2]

3.2 However, as pointed out by Associate Professor Jane McAdam, complementary protection does not supplant or compete with the Refugee Convention. By its very nature, it is *complementary* to refugee status determination done in accordance with the Refugee Convention. Complementary protection grounds are only considered following a comprehensive evaluation of the applicant's claim against the Refugee Convention definition, and a finding that the applicant is not a refugee.[3]

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1 See, for example, Senate Legal and Constitutional References Committee report *A sanctuary under review: an examination of Australia's refugee and humanitarian determination processes,* June 2000; Senate Select Committee report on Ministerial Discretion in Migration Matters, March 2004; and Legal and Constitutional References Committee report on the administration and operation of the *Migration Act 1958* in March 2006.

2 Hon. Laurie Ferguson MP, Second reading speech, *House Hansard*, 9 September 2009.

3 Associate Professor Jane McAdam, *submission* 21, p. 6.

3.3 Strong support was received for the direction of the Bill from submitters[4], particularly its central aim of reducing the need for the use of Ministerial intervention powers in respect of the Migration Act.[5]

3.4 In addition to improving administrative efficiency, Mr Andrew Bartlett pointed to his experience with refugee law during his time as Senator for Queensland. Mr Bartlett identified other benefits deriving from a move to a codified form of complementary protection in Australian law. These included the enhanced effectiveness and integrity of the Migration Agent profession; greater certainty and quicker resolution for applicants and those assisting them; and an improvement in the public perception of the integrity of government ministers.[6]

3.5 The Department of Immigration and Citizenship (the Department) agreed with Mr Bartlett in respect the Bill's impact on administrative arrangements:

> The use of the Ministerial intervention powers to meet non-refoulement obligations other than those contained in the Refugee Convention is administratively inefficient. The Minister's personal intervention power to grant a visa on humanitarian grounds under section 417 of the Migration Act cannot be engaged until a person has been refused a Protection visa both by a departmental delegate of the Minister and on review by the Refugee Review Tribunal. This means that under current arrangements, people who are not refugees under the Refugees Convention, but who may engage Australia's other non-refoulement obligations must apply for a visa for which they are not eligible and exhaust merits review before their claims can be considered by the Minister personally. This results in slower case resolution as it delays the time at which a person owed an international obligation receives a visa and has access to family reunion. It also leads to a longer time in removing a person to whom there is no non-refoulement obligation as this would not be determined until the Ministerial intervention stage.[7]

3.6 While going on to commend the underlying premises of the Bill as 'sound as principled' Associate Professor Jane McAdam reflected on the Bill in the following terms:

> In my view, the Bill makes the Australian system of complementary protection far more complicated, convoluted and introverted than it needs to be. This is because it conflates tests drawn from international and

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4 See, for example, Amnesty International, *submission* 25; Social Issues Executive of the Anglican Church Diocese of Sydney, *submission* 14; Federation of Ethnic Communities' Councils of Australia (FECCA), *submission* 7; Refugee Council of Australia, *submission* 10; Jesuit Refugee Service Australia, *submission* 13; Sydney Centre for International Law, *submission* 23; Liberty Victoria, *submission* 6; Human Rights Law Resource Centre, *submission* 5; Law Institute of Victoria, *submission* 26.

5 See, for example, Professor Mary Crock, *submission* 28, p. 1; Companion House, *submission* 8, p. 1; Amnesty International, *submission* 25, p. 4.

6 Mr Andrew Bartlett, *Submission* 11, p. 3.

7 Department of Immigration and Citizenship, *submission* 16, p. 2.

> comparative law, formulates them in a manner that risks marginalising an extensive international jurisprudence on which Australian decision-makers could (and ought to) draw, and in turn risks isolating Australian decision-makers at a time when harmonisation is being sought. It invites decision-makers to 'reinvent the wheel', rather than encouraging them to draw on the jurisprudence that has been developed around these human rights principles internationally. Since the purpose of the Bill is to implement Australia's international human rights obligations based on the expanded principle of non-refoulement, it seems only sensible and appropriate that Australian legislation reflect the language and interpretation of these obligations as closely as possible.[8]

3.7 Associate Professor McAdam was not alone in her conclusion that aspects of the Bill were sub-optimal. Submitters such as the Refugee Advice and Casework Service (RACS) and the Immigration Advice and Rights Centre (IARC), which submitted jointly, considered that the Bill represented a valuable step forward but fell short of meeting Australia's obligations.[9] Some of the matters raised by submitters are discussed below.

Burden of Proof

3.8 The proposed test to be met by an applicant for protection would require the Minister to have *substantial grounds* for believing that, as a *necessary and foreseeable consequence* of being removed, there would be a *real risk* of *irreparable harm* because of matter listed in subsection 36(2A).

3.9 The great majority of submitters criticise the complexity of the test and/or the difficulty in meeting it.[10] The proposed requirement that a person be at risk of 'irreparable harm' drew particular criticism. Companion House regarded the requirement as significantly stricter than what was called for under international law, and considered it could serve to exclude those deserving protection.

3.10 The Human Rights Law Research Centre (HRLRC) contended that Australia's non-refoulement obligation in relation to children attaches to a broader range of rights under the CROC than is currently reflected in the proposed s 36(2A). The HRLRC stated that the Committee on the Rights of the Child has interpreted Articles 6 and 37 – at a minimum – to require that:

> …States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 and of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed…

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8 Associate Professor Jane McAdam, *submission* 21, p. 4.

9 IARC/RACS, *submission* 24, pp 2, 10.

10 See, for example, Australian Human Rights Commission, *submission* 32, pp 6–7; Companion House, *submission* 30, p. 1; Refugee Council of Australia, *submission* 10, p. 2; Amnesty International, *submission* 25, p. 5.

> In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children shall benefit from available forms of complementary protection to the extent determined by their protection needs.[11]

3.11 The HRLRC submitted that Article 6 of CROC protects children's right to life. Article 37 of the CROC protects not only children's right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, but also their right to liberty, humane treatment in detention and prompt access to legal and other appropriate assistance when in detention. The HRLRC were of the view that that the Committee on the Rights of the Child's express recognition that the non-refoulement obligation is not limited to Articles 6 and 37 should be reflected in the Bill.[12]

3.12 The Victorian Foundation for Survivors of Torture (Foundation House) took issue with the invocation in the Explanatory Memorandum that the proposed requirement for 'irreparable harm' is consistent with the relevant provision in the CAT and the ICCPR. Foundation House submit that:

> That is incorrect. As detailed above, the CAT quite plainly does not impose a test of irreparable harm. With respect to the ICCPR…it is apparent [in the paragraph referred to in the EM that] the Human Rights Committee uses the phrase 'irreparable harm' as shorthand for the harm caused by violations of articles 6 and 7, not as an additional threshold before the obligation not to remove a person from their territory is engaged.[13]

3.13 This criticism was echoed by the Refugee Council of Australia, who submitted that it had received advice from Sir Nigel Rodley, a former UN Special Rapporteur on Torture and current member of the Human Rights Committee, that the proposed requirement regarding 'irreparable harm' was derived from a misinterpretation of the Committee's comment, on which the EM draws.[14] The United Nations High Commissioner for refugees called for the removal of the 'irreparable harm' requirement, submitting that 'such a test has no basis in international law or jurisprudence'.[15]

3.14 Associate Professor Jane McAdam reflected the view of many submitters when she said that:

> The problem with the very convoluted test currently set out in [proposed paragraph] 36(2)(aa) of the Bill is that it combines…the international and regional tests *plus* additional ones drawn from various other human rights documents such as 'necessary and foreseeable consequence' and 'irreparable harm')…it is an amalgam of thresholds that were meant to explain each other, *not* to be used as cumulative tests. This makes it confusing,

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11 Human Rights Law Resource Centre, *Submission* 5, pp 6-7.

12 Human Rights Law Resource Centre, *Submission* 5, p. 7.

13 *Submission* 4, p. 4.

14 *Submission* 10, p. 3.

15 United Nations High Commissioner for Refugees (UNHCR), *submission* 20, p. 7.

unworkable and inconsistent with comparable standards in other jurisdictions. Accordingly, the standard of proof needs to be made much simpler, otherwise it is likely to:

- Cause substantial confusion for decision-makers;
- Lead to inconsistency in decision-making;
- Impose a much higher test than is required in any other jurisdiction or under international human rights law; and
- Risk exposing people to refoulement, contrary to Australia's international obligations.[16]

3.15 As an example, Associate Professor McAdam cites commentary from the United Nations Human Rights Committee in respect of 'irreparable harm', and concludes that:

> It is clear…that the notion of 'irreparable harm' is regarded as inherent in the treatment proscribed by Articles 6 and 7 [of the] ICCPR because of its very nature…irreparable harm is synonymous with, or inherent in, the very nature of harm prohibited by these provisions.[17]

3.16 Associate Professor McAdam goes onto recommend that proposed paragraph 36(2)(aa) refer to a 'real risk that the non-citizen will be subject to serious harm, as defined in subsection (2A)'.

3.17 A number of other submitters also preferred this approach. The Public Interest Law Clearing House (PILCH) also called for a single test based on a real risk of harm[18], while the joint submission of the Immigration Advice and Rights Centre (IARC) and the Refugee Advice and Casework Service (RACS) called for the test to be a 'real risk that the non-citizen will be subject to a matter mentioned in subsection 2A'.[19] The same or similar suggestions were made by submitters including Professor Mary Crock[20], Sydney Centre for International Law[21], and the Human Rights Law Resource Centre.[22]

3.18 The committee is persuaded that the current wording of the bill is too restrictive and therefore recommends that the irreparable harm requirement be removed.

Recommendation 1

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16 Associate Professor Jane McAdam, *submission* 21, pp 11–12. See also, for example, the Human Rights Law Resource Centre, *submission* 5, p. 8; Professor Mary Crock, *submission* 28, p. 3; IARC/RACS, *submission* 24, p. 7.

17 Associate Professor Jane McAdam, *submission* 21, p. 16.

18 PILCH, *submission* 15, p. 8.

19 IARC/RACS, *submission* 24, p. 5.

20 *Submission* 28, p. 3.

21 *Submission* 23, p. 1.

22 *Submission* 5, p. 8.

3.19 The committee recommends that proposed paragraph 36(2)(aa) at Item 11 of Schedule 1, and all related paragraphs where the same words are used, be amended by omitting the words 'irreparably harmed' and replacing them with the words 'subject to serious harm'.

Personal v. Generalised violence

3.20 Another key concern emanating from submissions was the distinction in the Bill between personal and generalised violence, and the intention of the Bill to disqualify applications on the basis of risk to a person not being personal. The Department submitted that people fleeing generalised violence or places of humanitarian concern do not engage a non-refoulement obligation and would not be eligible for grant of a Protection visa under the *Convention Relating to Status of Stateless Persons* (1954) and the *Convention on the Reduction of Statelessness* (1961) but that:

> In the past, Australia has used a number of alternative responses to specific humanitarian crises including temporary suspension of removals, generous consideration of visa extensions, and specific new temporary visas. These options will continue to be used on a case by case basis as an appropriate means of assisting people in generalised humanitarian need. [23]

3.21 Associate Professor Jane McAdam had this to say:

> This provision seems intended to 'close the floodgates'. It has no legal rationale, since international human rights law is not premised on exceptionality of treatment but proscribes any treatment that contravenes human rights treaty provisions. Indeed, a key purpose of human rights law is to improve national standards and not only the situation of the most disadvantaged in a society. At its most extreme, it could be argued that this provision would permit return even where a whole country were at risk of genocide, starvation or indiscriminate violence, which would run contrary to the fundamental aims and principles of human rights law.[24]

3.22 The Refugee Council of Australia pointed to an apparent anomaly between the Bill's wording and its stated intent when it submitted that:

> We are concerned that the current wording could potentially be interpreted to exclude certain categories of person whose claims may strongly warrant complementary protection. An example is that of women and girls of a certain age or other category (such as imminent marriage) who, within a particular country, as a sub-population face the threat of female genital mutilation. We note, however, that the Second Reading Speech specifically sets out that a girl who would face a real risk of genital mutilation would be

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23 Department of Immigration and Citizenship, *submission* 16, p. 6.

24 Associate Professor Jane McAdam, *submission* 21, p. 35.

> covered under complementary protection (where she would not necessarily be covered under the Refugees Convention).[25]

3.23 Amnesty International took a similar view, submitting that:

> …the wording of section 36(2B)(c) should be revised in order to avoid misinterpretation…However, there are concerns that the current wording provides grounds to argue for the ineligibility of certain applicants in a manner that would be against the overall spirit of the bill. The requirement that the risk faced must not be 'faced by the population of the country generally' may provide, for example, for an applicant fleeing domestic violence to be excluded from protection on the grounds that the applicant originates from a country where domestic violence is widespread and where perpetrators are not generally brought to justice. Additionally, the stipulation that the risk must be 'faced by the non-citizen personally' has the potential to exclude, for example, applicants who have not been directly threatened with female genital mutilation but due to their age and gender, face a probable risk that they will be subjected to the practice upon return.[26]

3.24 By way of resolution, the Refugee Council went on to suggest that it may be necessary to make it clear that the provision does not require that a person should be individually singled out or targeted before coming within the complementary protection scheme nor does it impose a higher threshold than is required for Convention-based protection.[27]

3.25 The IARC/RACS joint submission suggested the question should not go to how many people in a country are facing risk of violence, but rather their ability to relocate to another third place to find protection, as addressed by proposed paragraph 36(2B)(a). They also argued that, were the real risk not faced by the non-citizen personally, they would not satisfy the requirements of subsection 36(2A) and would be disqualified at that stage. With these matters in mind, IARC/RACS recommended the deletion of the proposed paragraph 36(2B)(c) altogether.[28]

3.26 While the committee has been unable to explore the likely implications of the IARC/RACS recommendation, it is of concern that more than one submitter expressed a view that the provisions as they stand may not serve to protect women fleeing mutilation or culturally accepted domestic violence.[29] The committee recommends that proposed paragraph 36(2A)(c) be revisited with a view to establishing categorically that it would not serve to exclude from protection non-citizens such as those described above.

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25 Refugee Council of Australia, *submission* 10, p. 5.

26 Amnesty International, *submission* 25, p. 7.

27 Refugee Council of Australia, *submission* 10, p. 5.

28 Immigration Advice and Rights Centre and Refugee Advice and Casework Service, *Submission* 24, p. 6.

29 See preceding discussion, Refugee Council of Australia, *submission* 10, p. 5 and Amnesty International, *submission* 25, p. 7.

Recommendation 2

3.27 The committee recommends that the effect of proposed paragraph 36(2A)(c) be reviewed with a view to ensuring it would not exclude from protection people fleeing genital mutilation or domestic violence from which there is little realistic or accessible relief available in their home country.

Death penalty

3.28 The Bill requires as one possible ground for a claim of protection that the 'non-citizen will have the death penalty imposed on him or her and it will be carried out'.

3.29 A number of submitters pointed out the apparent unworkability of the provision, querying how it is possible to know whether the death penalty will or will not be exacted in the future.[30]

3.30 The Department argued that the requirement 'is an essential aspect of that ground, and it is expected that claims relating to prison conditions on death row will be considered against the last three grounds', which are those relating to torture, cruel, inhuman or degrading treatment.[31]

3.31 Nonetheless, the committee is unconvinced by this argument, considering that its acceptance may draw into question the usefulness of the death penalty ground altogether. It could also cause problems for decision-makers and the judiciary in carrying out their duties, due to the difficulty in establishing categorically that a death sentence will be carried out. The committee recommends the test be amended to require that where the death penalty is imposed, it is 'likely' to be carried out.

Recommendation 3

3.32 The committee recommends that proposed paragraph 36(2A)(b) be amended to substitute 'and it will be carried out' with 'and it is likely to be carried out'.

'Cruel or inhuman treatment or punishment' and 'degrading treatment or punishment'

3.33 A submission received from Dr Michelle Foster and Jason Pobjoy expressed concern about the inclusion of an 'intention' requirement in the definitions of 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' in proposed subsection 5(1). The submitters contended that the imposition of this additional criterion is inconsistent with Australia's international human rights

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30 See, for example, Refugee Council of Australia, *submission* 10, p. 4; IARC/RACS, *submission* 24, p. 8; Professor Mary Crock, *submission* 28, p. 3; Amnesty International, *submission* 25, p. 6.

31 Department of Immigration and Citizenship, *submission* 16, p. 4.

obligations, and that it was difficult to ascertain the justification for the imposition of this additional hurdle.[32]

3.34 Associate Professor Jane McAdam queries the separation in the Bill of the two classes of treatment or punishment, preferring to consolidate the two classes of treatment as one ground under subsection 36(2A), and simplifying the definition of cruel or inhuman treatment or punishment. Associate Professor McAdam submitted that:

> It is unclear why the Bill separates out 'cruel or inhuman treatment or punishment' from 'degrading treatment or punishment'. The standard approach internationally is to regard these forms of harm as part of a sliding scale, or hierarchy, of ill-treatment, with torture the most severe manifestation. The distinction between torture and inhuman treatment is often one of degree. Courts and tribunals are therefore generally content to find that a violation falls somewhere within the range of proscribed harms, without needing to determine precisely which it is. Indeed, the UN Human Rights Committee considers it undesirable 'to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied'. For that reason, the Human Rights Committee commonly fails to determine precisely which aspect of article 7 ICCPR has been violated, and there is accordingly very little jurisprudence from that body about the nature of each type of harm.[33]

3.35 The committee notes that the Department of Immigration and Citizenship has submitted that the exhaustive definitions of treatment or punishment are intended to guide decision-makers and the Australian judiciary in interpreting and implementing these international law concepts:

> These definitions reflect the extent of Australia's non-refoulement obligations without expanding the concepts beyond interpretations currently accepted in international law and commentary.[34]

3.36 Because of the constrained circumstances of this short inquiry, the committee has not had the opportunity to investigate these definitional issues in any detail, but notes the Department's assertion that the definitions are consistent with current international law.

People eligible but for character concerns

3.37 Article 7 of ICCPR and Article 3 of CAT impose a non-derogable duty on signatories to observe non-refoulement obligations even in respect people for whom

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32 Dr Michelle Foster, Senior Lecturer and Director, Research Programme in International Refugee Law, Institute for International Law and the Humanities, Melbourne Law School; and Mr Jason Pobjoy, PhD candidate, Gonville and Caius College, University of Cambridge, *Submission* 9, pp 20-21.

33 Associate Professor Jane McAdam, *submission* 21, p. 24. See also, for example, IARC/RACS, *submission* 24, p. 5.

34 Department of Immigration and Citizenship, *Submission* 16, p. 4.

the country of refuge harbours character concerns. Several submissions raised the proposed amendments in subsection 36(2C) and their inconsistency with these instruments.[35]

3.38 The explanatory memorandum notes that, in fulfilling its non-refoulement obligations, Australia is under no duty to grant any particular kind of visa to a person seeking protection about whom there are character concerns:

> It is intended that, although a person to whom Australia owes a non-refoulement obligation might not be granted a protection visa because of this exclusion provision, alternative case resolution solutions will be identified to ensure Australia meets its non-refoulement obligations and the Australian community is protected.[36]

3.39 The committee agrees that international obligations need to be balanced with security imperatives, and that the Government would appear to be adopting a fair and measured approach. Nonetheless, the committee looks forward to learning further details about what form 'alternative case resolution solutions' would take.

Terms of imprisonment to determine serious crime

3.40 IARC/RACS consider that the assessment of the seriousness of a person's criminal history by reference to the length of time they would be imprisoned if the same conviction were secured in Australia, is unfair. They submitted that:

> Including a quantifying figure regarding the maximum or fixed terms of imprisonment in the legislative definition removes the flexibility and scope for mitigation inherent in any criminal jurisdiction in determining 'seriousness' of offences. We submit there is no need to quantify a term of maximum or fixed sentence in defining whether or not a crime is a serious offence and that plain English and reasonable community standards should prevail to obviate the necessity to do so…[I]f the Department wants to provide guidance to decision makers on what length of sentence would generally be considered serious this can be done in policy. The inclusion of guiding quantifying figures in policy would allow flexibility in cases where there are mitigating circumstances that may not have been foreseen by the legislative drafters.[37]

3.41 Nonetheless, the level of certainty offered by the proposed amendment, and the degree of consistency in application stemming from it, appeal to the committee. A reliance on less definitive guideposts could serve to reduced consistency in the assessment of claims between applicants, and that is to be avoided.

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35 See, for example, Amnesty International, *submission* 25, p. 7; Sydney Centre for International Law, *submission* 23, p. 2; Liberty Victoria, *submission* 6, p. 3.

36 Explanatory memorandum, p. 10.

37 IARC/RACS, *submission* 24, p. 5.

Statelessness

3.42 The Bill does not provide for protection visas to be issued solely on the basis of statelessness. The Committee notes from its submission that the Department has been asked to explore 'possible policy options for the small cohort of people who are stateless but do not engage Australia's international protection obligations and cannot return to their country of former residence'[38]

3.43 The committee notes general acceptance of this position, and strong support for the implementation of new options to resolve the issue of statelessness while ensuring Australia fulfils its international obligations. For example, as noted by the Refugee Council of Australia:

> We note the decision, flagged some time ago, not to include coverage of statelessness within the matters encompassed by complementary protection. We accept the reasons for this decision – namely, that the Statelessness Conventions to which Australia is a party do not contain non-refoulement provisions and, as such, do not fall logically within a protection framework. We appreciate that stateless persons who also invoke Australia's non-refoulement obligations under another relevant treaty will be afforded protection. We welcome the assurance in the Second Reading Speech that other policy options will continue to be explored to ensure that stateless persons receive appropriate treatment.[39] [40]

Likely effect on numbers of visas granted

3.44 The Department submitted that it does not expect any 'significant increase' in visa grants as a result of the Bill as currently drafted. The Department explained that:

> Complementary protection is largely dependent on an assessment of the situation of the applicant's home country as well as a consideration of evidence as to whether the applicant is directly at risk of serious harm because of personal reasons. For this reason, there is little data available on a 'typical' complementary protection case and little data on which to make projections as to how many people may be granted Protection visas on complementary protection grounds. Past experience, however, indicates that the number of cases is low. In 2008–09, 606 visas were granted out of the Humanitarian Program. The Department estimates that less than half may have involved cases which raised non-refoulement issues.[41]

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38 Department of Immigration and Citizenship, *submission* 16, pp 5– 6.

39 Refugee Council of Australia, *submission* 10, p. 5

40 See also for example; IARC/RACS, *submission* 24, p. 3; Amnesty International, *submission* 25, p. 8. A notable exception to this sentiment was the Law Institute of Victoria, which submitted that statelessness alone should be grounds for protection – *submission* 26, p. 6.

41 Department of Immigration and Citizenship, *submission* 16, p. 7.

Conclusion

3.45 As previously noted, the References committee has on several occasions in the past recommended the introduction of complementary protection legislation, as did the Senate Select Committee on Ministerial Discretion in Migration Matters in 2004. Such legislation is premised on expectation by voters that such protections should be offered to deserving applicants, and as Mr Ferguson said in the Second Reading Speech:

> Where the harm faced is serious enough to engage Australia's non-refoulement obligations, fine legal distinctions about which human rights instrument the harm fits under should not determine whether a person is guaranteed natural justice, has access to independent merits review, or meets the criteria for grant of a protection visa.[42]

3.46 The committee is mindful that the community would expect claims of the type and gravity dealt with in this Bill to be dealt with through a process that affords natural justice and access to independent merits review. On the whole, the committee considers that this Bill achieves that outcome. The committee also notes the bill was widely supported by submitters, particularly in relation to its central aim of reducing the need for the use of Ministerial intervention powers. Subject to recommendations 1 to 3, the committee recommends the Bill be passed.

Recommendation 4

3.47 The committee recommends that subject to recommendations 1 to 3, the Bill be passed.

Senator Trish Crossin

Chair

42 Hon. Laurie Ferguson MP, Second reading speech, *House Hansard*, 9 September 2009.