

Proposed Reforms – Complementary Protection Provisions

The following statement can be attributed to Law Council President, Mr Michael Colbran QC:

- The Law Council of Australia is concerned by the introduction of the *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013*, into Parliament on 4 December 2013.
- If enacted, this Bill would remove the complementary protection criteria from section 36 of the *Migration Act 1958* (Cth), meaning that the criteria for grant of a protection visa would be limited to:
 - non-citizens in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; and
 - non-citizens in Australia who are part of the same family unit as someone meeting that criteria who already holds a protection visa.
- This change will affect onshore and offshore visa applicants.
- People who do not meet the refugee definition in the Refugee Convention, but who nonetheless face a real risk of serious human rights abuses if returned to their country of origin, cannot apply directly for a protection visa under section 36 of the *Migration Act*.
- This could include people who have been subjected to gross violations of their human rights for non-Refugee Convention reasons (such as persecution on the basis of gender or sexuality); people who face a real risk of torture upon return to their country of origin or women fleeing honour killings and genital mutilation who would not be considered refugees under the Refugee Convention.
- To date, 57 grants of protection visas have been made on complementary protection grounds, suggesting that they comprise a small proportion of the total protection visas granted, but remain an important source of protection for men, women and children who face a real risk of serious harm if returned. It is noted that all protection visa holders must also meet other criteria in the *Migration Act*, such as those relating to character and past criminal record.
- Under the proposed reforms, people in fear of human rights violations under other treaties such as the *Convention Against Torture* would need to rely upon personal intervention by the Minister in their case if they are to obtain protection in Australia.
- The Minister has the power to intervene and grant a visa under a number of provisions in the *Migration Act*, such as section 417, and as part of pre-removal procedures. However these powers are non-compellable and non-reviewable, and

have previously been shown to give rise to lengthy and inefficient administrative processes that provide inadequate and inconsistent protection against the risk of returning a person to a place where they will suffer serious harm or rights violations.

- The inadequacies of these administration processes led to the introduction of the complementary protection provisions into the *Migration Act* in March 2012, which were supported by the Law Council on the grounds that they ensure that persons who may be subject to death, torture or cruel, inhumane or degrading treatment on return to another country can use the same scheme as persons meeting Australia's International non-refoulement obligations under the Refugee Convention.
- The Law Council considers that the complementary protection provisions provide a clear statutory process for considering whether a person invokes the full range of Australia's protection obligations under international law and offer greater transparency and consistency than the process proposed in the Bill that relies purely on the exercise of Ministerial discretion.
- For these reasons, and in light of the relatively small number of protection visas granted on these grounds since March 2012, the Law Council queries the necessity to remove components of the visa regime designed to provide protection for those shown to be at risk of significant harm.
- The Government has not made the case for the changes to the *Migration Act* - ones which will clearly have a very serious adverse impact on people who beyond question are in need of, and deserving of, help.

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