



Edmund Rice Centre

for Justice & Community Education

A w a r e n e s s ♦ A d v o c a c y ♦ A c t i o n

Submission to the Standing Committee on Legal and Constitutional Affairs

Inquiry into the Migration Amendment (Complementary Protection) Bill 2009

Summary

- Edmund Rice Centre (ERC) strongly supports such reforms and commends the Government and Minister on the initiative
- ERC Research including *Deported to Danger* series found evidence of the inadequacy of the current system (neglected non-refoulement obligations, need for legal recognition/integration of complementary protection).
- The Amendment would enable the protection of asylum seekers within a broader human rights framework that is not limited to the narrow criteria of the Refugee Convention,
- There is an immediate need for protection for those currently facing rejection from Australia but who would be protected under the provisions of this Amendment Bill.

The Edmund Rice Centre (ERC) commends the Government and Senator Evans in particular, for its recent initiative to introduce the Migration Amendment (Complementary Protection) Bill.

The Edmund Rice Centre in collaboration with the Australian Catholic University and the Dominican Sisters has undertaken over the past five years extensive research into those rejected by Australia's protection process. This work has been presented in two successive *Deported to Danger* reports, and was the subject of the documentary *A Well Founded Fear* last year. In the course of this work we have met with over 250 rejected asylum seekers in 22 countries to investigate how Australia has dealt with asylum seekers over the last decade.

Our findings have indicated that people with real and well-founded fears for their lives and security were sent back to live in dangerous situations, facing violence and torture with very inadequate or no protection from the Governments of the places they had been sent to by Australia. Tragically, we found that rejected asylum seekers had been killed in Afghanistan, Pakistan, Colombia, Iran and Sri Lanka.

Our research has found that at times Australian officials applied criteria from the Refugee Convention inadequately, resulting in decisions that we believe being made that were in contravention of Australia's non-refoulement obligations under international law. The lack of any complementary protection measures resulted in a number of people being sent back to serious danger and in some cases death.

For those asylum seekers with claims that fell outside the Refugee Convention criteria (of a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a social or political group), Australia was limited by the Convention alone. Too often ministerial intervention did not afford them protection, and mistakes were made. These asylum seekers were people who held fears arising from civil war, reprisals by criminals, who were stateless, had a fear of torture, or

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realistic fears of violence outside the Refugee Convention protections. Without complementary protection measures their fate is a lottery.

We are very pleased to see that the current Migration Amendment Bill before the Parliament offers legal recognition to the protecting of asylum seekers against torture and/or other cruel or inhuman treatment or punishment. It introduces greater fairness, integrity and efficiency into Australia's arrangements for adhering to its *non-refoulement* obligations, evaluating requests for asylum against the wider obligations to offer protection to people who need and deserve it. This is a positive step and the Government and Senator Evans are to be congratulated. It also brings Australia into line with similar nations such as the United States, Canada, New Zealand and the European Union, all of whom have complementary protection provisions.

ERC's research into the fate of people whose claims for asylum in Australia were rejected documented the stories of those who came to Australia seeking asylum with a well-founded fear and were turned away. The fact that many were sent back to face danger, persecution, and, in some cases death, or the death of family members, indicates that many specific individuals' fears were indeed justified. The fact that their right to asylum was not recognised and they return to live in fear illustrated the stark need for change.

Both *Deported To Danger* reports concluded that Australia's refugee protection system was in urgent need of reform in accord with universal human rights principles. Clearly, people who fail to establish that they are refugees in Convention terms but are deemed to be in need of protection also have claims for non-refoulement.

Australia has obligations under the Convention Against Torture, the International Convention on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child. Under these international obligations Australia has a responsibility not to remove rejected asylum seekers to places in which they are unsafe. The Migration Amendment (Complementary Protection) Bill 2009 is a step in the right direction to putting in place systemic change into the law of the land rather than limit these protections to the purview of the Minister alone.

Clearly the Refugee Convention affords protections that are narrowly defined. The context of the signing of the Convention was in the aftermath of the Second World War. The Convention criteria do not reflect the changes that have occurred in the world or changes in international law that have occurred since the early 1950's. The stories of the individuals followed in the *Deported to Danger* reports show the potentially fatal limitations of these criteria. In addition, the characteristics of those seeking asylum – and of that from which protection is sought – have changed remarkably since the Convention was created in 1951. The proposed Amendment is an important opportunity for Australia to legally begin to put right such discrepancies.

Those that slipped through the cracks were sent back into danger as they didn't warrant protection under the legal classifications of refugee. However, other circumstances also gave rise to a well founded fear of persecution including statelessness, civil war, cultural oppressions such as the genital mutilation of women.

We note that in the official media release on the Bill, Minister Chris Evans' supports the introduction of the new laws to better protect people at risk of violation of their fundamental human rights,

offering the example of women and girls at risk of female genital mutilation.¹ We hold grave concerns at present for the fate of young African women being deported to such a fate.

We believe the need to recognise, and honour, our international human rights obligations is essential. The passing of the Migration Amendment (Complimentary Protection) Bill 2009 points to a more modern integrated approach, an approach which is needed now in order to limit the possibilities of re-fouling refugees. Our research over many years has shown that these are potentially life-or-death deportation decisions. These changes in this Amendment Bill will enhance our non-return obligations in law and provide for all claims to be considered more efficiently, and not leave all provisions to the discretion of an individual minister.

This bill would introduce greater fairness, integrity and efficiency into Australia's arrangements for meeting our human rights obligations under international human rights law, in offering protection complementary to that owed to refugees under the Convention. It allows all of Australia's international human rights obligations to be considered under the same visa process as claims under the Refugees Convention. Without this reform, Australia continues to risk sending those most at need back into the arms of danger.

Conclusion

In 2002 the Executive Committee of the UN High Commissioner for Refugees included as an objective of its Agenda for Protection: Provision of complementary forms of protection to those who might not fall within the scope of the 1951 Convention but require international protection. This Bill assists Australia meet that objective.

Edmund Rice Centre has long recognised and advocated for the establishment of complementary protection, protection which acknowledges the existence of well-founded fear and real danger of persecution or suffering on returning, which do not fit into the criteria established under the Refugee Convention. The legal recognition of Australia's obligations inherent in this Bill is a welcomed and necessary reform.

However, recognition of justice must not wait until such reforms are implemented. Those with claims for complementary protection today require protection today. They cannot wait until the legislation is formally in place. Even as we wait for such much needed reforms, it is paramount that those in immediate danger are not ignored.

In keeping with the aims of the Bill, such applicants should not be removed or deported from Australia while waiting for the Amendment to be passed. Those currently waiting the political process to change must not suffer. Like the stories presented in our ongoing research, the severe, even fatal, implications of ignoring our obligations is too high a price to be gambled with. This Bill goes some way to enhancing justice in our processes.

Phil Glendenning

Director

Edmund Rice Centre

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