

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Question on Notice

Senator Macdonald asked the following question at the hearing on 14 February 2014:

- a) How could the process for assessing complementary protection claims be improved upon, assuming the bill is passed?
- b) How could the process for assessing complementary protection claims be made as fair as possible, in the event a new bill were introduced?

The answer to the honourable senator's question is as follows:

- a) The Commission reiterates its support for a complementary protection regime that is enshrined in legislation. The Commission recommends that the bill not be passed.
- b) If the government decides to implement a complementary regime administratively, it should investigate all possible avenues to implement a regime that fully complies with Australia's international obligations. That process should include the consideration of all available powers under the Migration Act (for example, it is unlikely a compliant scheme could be implemented under s 417 of the Migration Act alone).
- c) In particular, the Commission considers the complementary protection framework should:
 - (i) *Be transparent.* The criteria which applicants must meet to qualify for complementary protection should be described in advance, and made available to the public as well as to all persons who may be entitled to complementary protection in international law.
 - (ii) *Apply the correct standards.* The criteria established under the regime must comply with Australia's non-refoulement obligations.
 - (iii) *Be efficient.* The regime should provide for a process under which claims for complementary protection may be made and assessed in a timely manner. In particular, it should be possible for a claim for complementary protection to be made at the same time as a claim for asylum pursuant to Australia's obligations under the Convention Relating to the Status of Refugees and the 1967 Protocol. Processing of a claim for complementary protection should commence immediately (together with any claim for refugee status). It should not, for instance, be necessary to wait for the rejection of a claim for a protection visa on refugee grounds by the Refugee Review Tribunal or the Administrative Appeals Tribunal before a claim for complementary protection can be made or assessed.
 - (iv) *Provide that unsuccessful applicants are given written reasons.* This is important to ensure that applicants have an effective avenue of review.
 - (v) *Provide an appropriate avenue of review.* Unsuccessful applicants for complementary protection should have a right to an effective and independent review of the relevant decision. It is not immediately clear how this review can be provided under a regime implemented in reliance on the Minister's personal, non-compellable, discretionary powers under the Migration Act.
- d) The criteria above should apply to any complementary protection framework, whether administrative or legislative. The list is not intended to be exhaustive.

- e) The rights to family and rights of children of persons entitled to complementary protection should be protected by a system that complies with the criteria above.
- f) It may be that a compliant complementary protection regime could only be implemented administratively by the amendment of the Migration Act.