Lawyers for the People

AUSTRALIAN LAWYERS ALLIANCE

Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013 (Cth)

Submission to Senate Legal and Constitutional Affairs Legislation Committee Inquiry

23 January 2013

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WHO WE ARE

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

More information about us is available on our website.[1]

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INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee in its inquiry into the *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013* (Cth).

In essence, we note:

- Australia's human rights record;
- the importance of independent review;
- practical considerations regarding persons of Afghan Hazara origin;
- practical considerations regarding persons of Sri Lankan origin;
- disappointment at rushed consultations.

We also note that 55 of 1200 protection visas granted since March 2012 are within the complementary protection category, and thus suggestions that this visa category is being 'overrun' are simply unwarranted.

OVERVIEW OF THE BILL

The *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013* (Cth) ('the Bill') proposes to essentially remove all reference to 'significant harm' as a grounds of complementary protection from the *Migration Act* 1958 (Cth), including extending protection of family members of individuals at real risk of 'significant harm'. These visa categories were previously enshrined in s36(2)(aa) and (c). Significant harm is defined in s36(2A)

It will apply to each application that was made for a protection visa on or after the day that Schedule 1 commences, or to applications existing that have not had a decision made by that time (cl 20).

For decisions that were made prior to the Bill coming into effect, and that rejected an application for a protection visa, such 'affected decisions' will not be reviewable by the Refugee Review Tribunal if they were made relying on the former complementary protection regime under s36(2)(aa) or (c).

Under the proposed amendments, decisions of the Minister under s36(2C)(a) or (b) that the individual's application does not satisfy s36(2(aa), will not be reviewable in the Administrative Appeals Tribunal (cl 21), even if, apart from this amendment, there would have been grounds for this form of review (cl 21). (Note, review will however be available to the extent the decision was made re s500(1)(c).)

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If passed, the amendments will also prevent a non-citizen from applying for a protection visa if the non-citizen had earlier been refused a protection visa based on the 'significant harm' provisions.

These amendments fail to consider the importance of procedural fairness and independent review; the amendments also fail to acknowledge the imperfections and deficiencies in decisions made by the Minister, or any of his delegates.

We also raise concern at the deletion of definitions in s5 of the *Migration Act* 1958 (Cth) that refer to Australia's human rights obligations. Deletion from the legislation would appear to convey the message that these references are no longer of relevance or in force in Australia's migration law.

We are concerned as to the combined effect of the proposed amendments with the *Migration Amendment Bill 2013* [Provisions] (Cth), which further strikes out access to appeal and review. In particular, we draw attention to the following amendments in the [Provisions] Bill:

- The Minister has no power to vary or revoke the decision after the day and time the record (regarding refusal/grant of visa) is made (cl 4 and 9);
- Barring of future applications for protection visa (see Schedule 2);
- Removal of ASIO assessments from effective appeal (see Schedule 3).

The combined effect of these two Bills is the placing of a stranglehold on protection visa applications, while narrowing avenues for protection, creating significant obstacles to receiving successful applications and generating potential negligent situations where defective decisions have limited or no path to review.

We believe that placing such a stranglehold does nothing to 'regain Australia's control over its protection obligations'. The title of this Bill is a misnomer that obscures the Bill's character as restricting Australia's protection visa regime and crushing the independent review of Australian government decisions.

AUSTRALIA'S HUMAN RIGHTS RECORD

We emphasise that Australia's human rights record on asylum seekers is under scrutiny on the international stage.

On 22 January 2014, Human Rights Watch's *'World Report 2014'* outlined Australia's failures, particularly in reference to asylum seeker policy, which it cited as 'draconian'.

Human Rights Watch also stated that:

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> 'Australia has a strong record protecting civil and political rights, **but has damaged its record and its potential to be a regional human rights leader** by persistently undercutting refugee protections.
>
> In 2013, successive Australian governments continued to engage in scare-mongering politics at the expense of the rights of asylum seekers and refugees.'[2]

We are concerned that in 12 months time, Human Rights Watch's assessment of Australia's asylum seeker policy will be much worse.[3]

This is especially if legislation such as the *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013* (Cth), and *Migration Amendment Bill* 2013 [Provisions] (Cth), and the swathe of similar legislation we expect to be introduced in months to come, is passed.

COMPLEMENTARY PROTECTION

Complementary protection is a type of safeguard for those who do not satisfy the definition of a refugee but whom cannot be returned to their home country as there is a real risk of suffering a certain type of harm, thus invoking Australia's international *non-refoulement* (non-return) obligations.

These obligations stem from the Refugees Convention and international human rights conventions to which Australia became a party in the 1980s and 1990:

- the *International Covenant on Civil and Political Rights* (ICCPR) and its *Second Optional Protocol aiming at the abolition of the death penalty*
- the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

Non-refoulement obligations can be activated where there are substantial grounds for accepting that a necessary and foreseeable consequence of being removed from Australia will result in a real risk the person will suffer significant harm.

Significant harm is where a person will be subjected to:

- arbitrary deprivation of his or her life
- the death penalty
- torture
- cruel or inhuman treatment or punishment
- degrading treatment or punishment.

The complementary protection framework was inserted into the Act in March 2012. Prior to this time, Australia met its *non-refoulement* obligations via a Ministerial

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Intervention process, subsequent to an unsuccessful application for protection to the department and the Refugee Review Tribunal.

The former government integrated the assessment of complementary protection claims into the legislative structure. Refugee and complementary protection claims were considered as part of one cohesive process. Its objective was to increase the speed at which a claim for protection was completed. There was efficiency and transparency in the process.

The Government has declared consideration of complementary protection is not to be deliberated as part of a protection visa application. Australia's *non-refoulement* obligations are to revert to being considered within an administrative process. The Minister may exercise his / her personal and non-compellable intervention power available under the Act if satisfied Australia's *non-refoulement* obligations are involved.

However, if proposed amendments under the Migration Amendment Bill 2013 [Provisions] proceed, (which ensures that amendments will be made to ss67 and 138 so that the Minister has no power to vary or revoke the decision after the day and time the record (regarding refusal/grant of visa) is made (cl 4 and 9)) this intervention power will be significantly limited.

The return to an administrative process removes the right of review over the decision. It is a completely discretionary power. The Minister cannot be compelled to exercise it, and in the case of S*ZQRB*, to be examined later in this submission, the Minister chose not to exercise it.

The Government has justified the Bill on the grounds that the system was being abused and was being accessed by people who had committed serious criminal offences. Debunking these assertions are the facts that the Department's figures (as of September 2013) state that 55 of 1200 protection visas granted since March 2012 are within the complementary protection category. Those who had committed serious crimes were excluded from complementary protection. Undoubtably, the existence of these visas provides an important role in the provision of protection to specific people at risk.

The ICCPR proscribes arbitrary or unlawful interference with a family and entitles one to legal protection from such interference. The family unit is entitled to protection by society and the state. Currently, the Act permits a protection visa to be granted to the family members of a visa applicant who has satisfied the *non-refoulement* obligations. The Bill does not expressly provide an opportunity for members of the family unit to be granted protection visas when one member of the

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family has triggered Australia's *non-refoulement* obligations. Therefore, a person may be granted complementary protection through the administrative intervention power of the Minister but the person's family is not guaranteed any such protection.

A person who is not a refugee by definition but who is facing the death penalty or torture if returned to his / her homeland will be unable to seek a protection visa under the Act.

The repeal of the complementary protection provisions appears to be an additional cue that the Government seeks to conduct the immigration portfolio behind closed doors.

A CONSIDERATION OF PRACTICAL IMPACTS

We raise deep concern at the potential practical impacts of the removal of complementary protection from those who would otherwise have been able to access it. As Jane McAdam writes:

> 'So if the bill passes, someone living in disputed territories in Syria caught up in the civil war, or a woman at risk of being the victim of an honour killing, may be sent home.'[4]

We raise concern about the practical impacts of such changes on the types of individuals that have previously accessed the complementary protection visa regime, such as people from the Hazara ethnic minority that are also Shia, from Afghanistan.

We also raise concern about ministerial intervention being the only means by which individuals may access complementary protection. Especially in light of the Australian government's reticence to recognise human rights abuses in Sri Lanka, we question whether individuals from Sri Lanka have already been returned to, and will be returned to, situations where there is a real risk that they will be subject to significant harm.

AFGHANISTAN

A large proportion of individuals that appear to have successfully accessed visas under complementary protection provisions appear to be Hazara Shias from Afghanistan.[5]

While the Australian armed forces have been present in Afghanistan since 2001, there has been a failure to recognise those seeking protection.

In the case of *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33,

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SZQRB was an ethnic Hazara of Shia Muslim faith from Afghanistan. He arrived in Australia by boat in May 2010 and was detained on Christmas Island. SZQRB was found not be a refugee by a delegate of the Minister and an Independent Merits Reviewer. In February 2012, SZQRB was granted a subclass 449 visa an a bridging visa allowing release from detention.

As Prabha Nandagopal, lawyer at the Australian Human Rights Commission noted:

> 'In March 2012 the Department of Immigration and Citizenship completed an International Treaties Obligations Assessment (ITOA) and found that if SZQRB were removed to Afghanistan, Australia would not be in breach of its *non-refoulement* obligations under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).
>
> In August 2012, SZQRB was detained and received a notice from the Department that he would be removed from Australia on 23 September 2012.
>
> On 21 September the Minister made a decision that he would not consider, or further consider, the exercise of any of his personal non-compellable public interest powers under the *Migration Act 1958* (Cth), irrespective of whether there was factual or legal error in the decisions of the Independent Merits Reviewer or the Department.
>
> SZQRB filed an application seeking judicial review of the Minister's decision not to exercise his non-compellable public interest powers.'[6]

The Court noted that:

> 'Section 36(2A), which addresses "significant harm", and is the touchstone of s 36(2)(aa), includes as significant harm that the non-citizen will be arbitrarily deprived of his or her life or be subjected to the death penalty, or torture or cruel or inhuman treatment or punishment.
> It was not suggested that the ITOA was not properly focussed upon the issue that needed to be resolved. In addressing that issue, the ITOA stated:
>
> ... there is a real risk that they will be arbitrarily deprived of life, will have the death penalty carried out on him or her or be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
>
> **Departmental policy is that this should be interpreted as meaning that the necessary chance of the harm occurring is balance of**

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> **probabilities, but that this should not be construed too narrowly in cases which are very close to that threshold. That is, the possibility must be more likely than not**, which is a higher threshold than the real chance test used in the Refugees Convention under Australian law.
>
> SZQRB contended that the reference to Departmental policy was a gloss on the standard of proof required by the CAT and ICCPR. The gloss, it was claimed, does not recognise the law in Australia "about the assessment of Australia's *non refoulement* obligations under both CAT and the ICCPR".
>
> The proper test, SZQRB contended, is whether there is a real risk that if SZQRB were to be returned to Afghanistan he would be arbitrarily deprived of his life. The question of "real chance" is, of course, the test to be applied on an application for a protection visa under s 36(2)(a) when considering whether the applicant has a well-founded fear that the applicant will face persecution for a Convention reason if returned to the applicant's country of nationality: *Chan v Minister for Immigration and Ethnic Affairs* [1989] HCA 62; (1989) 169 CLR 379 per McHugh J at 429 and Mason CJ at 389, Dawson J at 398, and Toohey J at 407.'[7]

The Court held that 'the test for s 36(2)(a) and as stated by SZQRB **– is there a real chance that SZQRB will suffer significant harm** (as that is defined in s 36(2A)) were he to be returned to Afghanistan.

That being the case, **the ITOA applied the wrong tes**t in considering SZQRB's entitlement for Australia's protection obligations under the CAT and ICCPR as defined in s 36(2)(aa) and s 36(2A). The ITOA assessed SZQRB's claims as against whether it was "more likely than not" that SZQRB would suffer significant harm, which was not the appropriate standard. **The "Departmental policy**", if the ITOA was right to describe it that way, **was not in accordance with Australian law**.'[8]

This case was decided in March 2013.

The ALA submits that there is a clear need for the courts to provide added clarity on these issues. While the recent date of the case not only suggests that departmental policy until less than 12 months ago was 'not in accordance with Australian law', the case also illustrates the importance of independent review in light of decisions of complementary protection.

Allowing for ministerial intervention only is insufficient. As in the case above, the

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Minister chose not to exercise his discretionary powers, regardless of whether the ITAO assessment was incorrect or not.

If the Bill is passed, it is likely that there will be innumerable cases such as *SZQRB*, but which will instead evade independent review, independent scrutiny, public reporting and consideration of complex legal issues.

In addition, grave miscarriages of justice will occur for individuals who may be forcibly returned and suffer significant harm or death.

Human Rights Watch singled out Australia's treatment of Afghan civilians in its *World Report 2014,* citing that:

> 'Afghans arriving in other countries often faced increasing hostility, including draconian new policies in Australia.'[9]

Following the Vietnam war, recognition was had to the thousands of displaced persons and persecuted minorities in Vietnam and Cambodia. These included the Hmong minority, many of whom later sought refuge in the United States.

In Australia, as Rachel Stevens writes:

> 'Initially, the Fraser government resettled only a small number of Vietnamese refugees. By the end of 1977 - 2½ years after the end of the Vietnam War - 2753 refugees and 979 boat people had been resettled. Yet at this time the government estimated that 5600 Vietnamese refugees were emigrating every month.
>
> During the 1977 federal election campaign, six boats carrying Vietnamese asylum seekers arrived in one day. In the political frenzy that followed, the Fraser government tried to reassure voters that they were tough on border enforcement…
>
> After re-election, the Fraser government changed its refugee policy. It realised that by increasing the formal refugee program, this would dissuade desperate asylum seekers from taking to rickety fishing boats in an attempt to reach Australia. This policy - increasing the refugee intake to reduce unauthorised immigration - was effective.'[10]

While it has been argued that the decisions of the Fraser government were more rational than compassionate, that is a debate that we do not enter in this

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submission.

Rather, we highlight the discrepancy in treatment of the protection program following the Vietnam War, and following the 'War on Terror' in Afghanistan.

As a contrast, Australia, having been involved in the conflict in Afghanistan, is now proposing to scrap an essential component of the protection visa regime that has extended, to a large part, to ethnic minorities at risk of significant harm in Afghanistan.

SRI LANKA

We raise concern that the termination of 'significant harm' protections, will have a prejudicial effect on individuals whom originate from countries well known for human rights abuses, to which Australia is currently turning a blind eye.

Human Rights Watch noted in its '*World Report 2014'* that:

> *Australia… has been* ***increasingly unwilling to publicly raise human rights abuses in countries with which it has strong trade or security ties****, fearing that doing so would harm its relations with Asian governments.*

Australia's reticence to advocate against human rights abuses committed by the Sri Lankan government is well documented.

Human Rights Watch, in its *World Report 2014* notes specifically that:

> 'Despite calls for a boycott over lack of war crimes accountability in Sri Lanka, Australia sent a high-level delegation to the Commonwealth Heads of Government Meeting (CHOGM) in Colombo in November 2013. Prime Minister Abbott and Foreign Minister Julie Bishop repeatedly sidestepped or downplayed the importance of accountability and respect for human rights.
>
> Most egregiously, Abbott, addressing allegations of torture by Sri Lankan security forces, defended the Sri Lankan government, saying "We accept that sometimes, in difficult circumstances, difficult things happen."
>
> This rationalization of torture, which was endemic during the war years and continues to be a serious problem in Sri Lanka today, seems to have been motivated in part by the goal of enlisting Sri Lanka's support in preventing asylum seekers from leaving Sri Lanka for Australia, and, on the same visit, Abbott announced a gift of two patrol boats to the Sri Lankan navy to

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> combat people smuggling. The Australian government was seemingly oblivious to the role Sri Lankan government abuses play in prompting outflows of ethnic Tamil asylum seekers.'[11]

In 2012, Sri Lanka ranked second in the top five source countries for asylum seekers who arrived by boat and made asylum applications in Australia.[12]

In October 2013, the Australian Human Rights Commission noted in its *Asylum seekers, refugees and human rights snapshot report* that:

> 'Of particular concern is the introduction of an 'enhanced screening process' for all unauthorised maritime arrivals from Sri Lanka. The Commission considers that this process does not constitute a fair asylum procedure and risks excluding those with legitimate claims for protection.
>
> The Commission is concerned that the enhanced screening process may not contain sufficient safeguards to protect people from being removed to a country where they face a real risk of significant harm (*refoulement*).' [13]

The Australian Human Rights Commission also noted that between 27 October 2012 and 12 August 2013, the Department of Immigration conducted 3,195 screening interviews and **returned 1,070 people from Australia to Sri Lanka** as a consequence.[14] **This amounts to a third of persons returned without adequate legal representation or access to independent review.**

The Commission noted that:

> 'The Commission is also concerned that persons who are 'screened out' are not given a written record of the reasons for the decision, nor do they have access to independent review of such decisions.
>
> It is particularly problematic that unaccompanied minors who arrive unauthorised by boat from Sri Lanka are subject to the enhanced screening process and may not receive adequate support through the process.141 As at 5 September 2013 two unaccompanied minors had been screened out and returned to Sri Lanka.
>
> UNHCR has labelled the enhanced screening process 'unfair and unreliable'. This accelerated form of processing without access to independent merits review is particularly troubling given that **in 2011–12 the Refugee Review Tribunal (RRT) overturned 81.6% of primary decisions by the Department and 86.9% of Sri Lankan asylum seekers arriving by boat were determined to be refugees.**'[15]

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The case of *1214918* [2013] RRTA 650 (18 September 2013), involved a Sri Lankan national, who applied for a protection visa (Subclass 866), which requires that an individual be found to engage Australia's protection obligations are a refugee as defined by the Refugees Convention, or to meet the complementary protection criteria in the *Migration Act 1958*.

In this case, the Tribunal was not satisfied that there was a real risk that the individual would be subjected to significant harm as defined by s36(2)(aa) and also determined that the individual was not a person in respect of whom Australia had protection obligations under the Refugees Convention (s 36(2)(a) of the *Migration Act* 1958).

In this case, the Tribunal noted the sources which are taken into account in decision making in addition to the applicant's presentation of evidence:

> 'In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and **any country information assessment prepared by the Department of Foreign Affairs and Trade** expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.'[16]

The Tribunal also noted that 'the applicant's representative submitted that DFAT does not monitor court processes or outcomes and that this would reasonably account for their not receiving any allegations of mistreatment. The representative submitted that DFAT appeared dismissive of reports of human rights abuses by agencies such as Human Rights Watch.'[17]

In *1214918* [2013] RRTA 650 (18 September 2013), the Tribunal appears to have relied heavily upon country information prepared by DFAT in its decision.

A significant contrast between the Australian government's approach, and that of the international community, can be seen in comments made by the UN High Commissioner for Human Rights, Navi Pillay, and also the actions of the British Foreign and Commonwealth Office.

The UN High Commissioner on human rights, Navi Pillay, visited Sri Lanka in August 2013 and noted that:

> 'This type of surveillance and harassment [harassment and intimidation of

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> human rights defenders] appears to be getting worse in Sri Lanka, which is a country where critical voices are quite often attacked or even permanently silenced. Utterly unacceptable at any time, it is particularly extraordinary for such treatment to be meted out during a visit by a UN High Commissioner for Human Rights. I wish to stress that the United Nations takes the issue of reprisals against people because they have talked to UN officials as an extremely serious matter, and I will be reporting those that take place in connection with this visit to the Human Rights Council.
>
> I urge the Government of Sri Lanka to issue immediate orders to halt this treatment of human rights defenders and journalists who face this kind of harassment and intimidation on a regular basis. More than 30 journalists are believed to have been killed since 2005, and several more – including the cartoonist Prageeth Ekneligoda – have disappeared. Many others have fled the country… Freedom of expression is under a sustained assault in Sri Lanka.
>
> The war may have ended, but in the meantime democracy has been undermined and the rule of law eroded…The controversial impeachment of the Chief Justice earlier this year, and apparent politicization of senior judicial appointments, have shaken confidence in the independence of the judiciary.
>
> I am deeply concerned that Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction.'[18]

The British Foreign and Commonwealth Office noted in December 2013 that:

> 'During his CHOGM visit, British Prime Minister David Cameron said that the UK would be forced to use its position in the UN Human Rights Council to support the call by the UN High Commissioner for Human Rights to establish an independent international investigation, if Sri Lanka failed to set up a credible, transparent and independent domestic process by March 2014.'[19]

Other members of the British Parliament have actively sought dialogue with human rights defenders in Sri Lanka, as reported by the British Foreign and Commonwealth Office:

> 'Foreign Secretary William Hague called on Sri Lanka to end the culture of impunity on violence against women during an event addressing civil

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> society, members of the Sri Lankan government, campaigners and the media on preventing sexual violence in conflict. The Foreign Secretary and Minister for Sri Lanka and the Commonwealth Hugo Swire met a wide range of Sri Lankan civil society actors and human rights defenders, including media activists, families of the disappeared, those working on torture prevention, and women's rights activists.'[20]

The approach of the Australian government appears to retain a unique position, especially when compared with other leading global actors, in its failure to acknowledge of human rights abuses in Sri Lanka.

Whether this bias would extend in individual cases is yet to be seen, however Sri Lanka alone has been treated as an 'origin country' to the screening process that has deported approximately a third of arrivals.

DISAPPOINTMENT IN CONSULTATION

It is with disappointment that we note that there appears to be a lack of genuine commitment on the part of the Australian government to effective consultation on amendments to migration policy.

We note the short time period given for responses, not only to the current Bill, but also regarding:

- the *Migration Amendment Bill* 2013 [Provisions] (Cth); and
- Inquiry into Australia's Humanitarian Program, conducted by the Department of Immigration and Border Protection, with a small window provided for public submissions.

Given the short time periods provided, combined with the Australian government's human rights record on this issue, we question whether the Australian government is committed to implementing any recommendations that run counter to current policy.

It is important that such inquiries do not occur simply as a 'tick the box' mechanism.

There must be a government commitment to explore the issues that are systemic to Australia's maritime policy, which are currently piecemeal, highly politically reactive, and breaching international obligations.

CONCLUSION

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We submit, in the firmest terms, that decision making on issues regarding complementary protection must continue to have access to independent review.

Especially given current assessments of Australia's human rights record on asylum seekers, now, more than ever, it is important for the Courts to continue to retain oversight of government actions, and for decisions to be reviewed accordingly.

We note also, that we recently provided a submission to the Committee on the *Migration Amendment Bill* 2013 [Provisions] (Cth). We note again, our concerns regarding the unmitigated decision making power of ASIO in its assessments of individuals, noting again that individuals must have access to effective and independent review of decisions made.

We remain deeply concerned at the systematic and methodical legislative winding back of Australia's protection obligations.

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[7] *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33 at [239 – 242].
[8] Ibid at [246],[247].
[9] Human Rights Watch, above n 2, at 288.
[10] Rachel Stevens, 'No, the Fraser era was not a golden age for asylum seekers,' 2 February 2012. Accessed 23 January 2014 at http://www.smh.com.au/federal-politics/political-opinion/no-the-fraser-era-was-not-a-golden-age-for-asylum-seekers-20120201-1qtce.html
[11] Human Rights Watch, above n 2, at 296 -7.

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[15] Ibid.
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