



Mr Peter Hallahan
Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan,

MIGRATION AMENDMENT (COMPLEMENTARY PROTECTION) BILL 2009

The Law Council is pleased to comment on the provisions of the *Migration Amendment (Complementary Protection) Bill 2009* (the Bill).

The Law Council welcomes the Bill as a positive step towards greater implementation of Australia's international human rights obligations. The Law Council notes that Australia has such obligations in relation to non-refoulement (or non-return) of persons in certain circumstances under instruments such as the Refugee Convention; the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT).¹

The *Migration Act 1958* (the Act) currently implements non-refoulement obligations under the Refugee Convention through provisions relating to protection visas which explicitly refer to that Convention. The Government currently relies on the exercise of Ministerial discretion under s 417 of the Act as the mechanism to meet its non-refoulement obligations under other international instruments.² The Law Council has previously made submissions about the inadequacy of complete reliance on Ministerial discretion and has called for legislative incorporation of other non-refoulement obligations through a Complementary Protection scheme.³

¹ See *Submission to the Inquiry into the Operation of Australia's Refugee and Humanitarian Program*, June 1999 at www.lawcouncil.asn.au

² See Senate Legal and Constitutional Affairs Reference Committee, *A Sanctuary under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*, June 2000 and Senate Select Committee *Ministerial Discretion in Migration Matters*, June 2004

³ See *Submission to the Inquiry into the Operation of Australia's Refugee and Humanitarian Program*, June 1999; *Submission to the Inquiry into the Migration Amendment (Judicial Review) Bill 2004*, May 2004; *Submission to the Inquiry into the Administration and Operation of the Migration Act 1958*, Sep 2005 at www.lawcouncil.asn.au

The Law Council welcomes the incorporation of other non-refoulement obligations in the Act so that persons who may be subject to death, torture or cruel, inhuman or degrading treatment on return to another country can use the same scheme as persons meeting the non-refoulement criteria under the Refugee Convention. These criteria relate to persecution on grounds of race, religion, nationality, social group or political opinion.⁴

A Complementary Protection scheme should ensure that people can avoid the lengthy delays, uncertainty and lack of transparency associated with the current scheme for the exercise of Ministerial discretion in matters relating to non-refoulement obligations other than those arising under the Refugee Convention. Such discretion can currently only be exercised following rejection of applications for protection visas based on the criteria relating to the Refugee Convention by the Department of Immigration and Multicultural Affairs and a tribunal.⁵

The Law Council has consistently advocated for greater legislative implementation of Australia's international human rights obligations in a number of contexts including submissions in relation to CAT, the ICCPR and the National Human Rights Consultation.⁶

The Law Council also has a policy of absolute opposition to the Death Penalty.⁷ The Law Council supports the legislative implementation of the non-refoulement obligations under the ICCPR as a means of reinforcing the Australian Government's opposition to the death penalty. These obligations include the obligation to consider the risk that a person's rights under Article 6 in relation to the right to life might be violated if they are returned to another country.

The Law Council is aware that other organisations such as the Refugee Council of Australia have examined the possible operation of some of the provisions in the Bill in greater detail and encourages the Committee to closely examine such provisions in order to ensure that the Bill effectively implements Australia's international human rights obligations in relation to non-refoulement.

Yours sincerely,

Bill Grant
Secretary-General

29 September 2009

⁴ See note 2

⁵ See note 2

⁶ See *Submission on the Optional Protocol to the UN Convention Against Torture*, July 2008; *Submission on Australia's Response to the Concluding Observations of the UN Committee Against Torture*, September 2008; *Shadow Report to Australia's Common Core Document*, August 2008 and *Submission to the National Consultation on Human Rights*, May 2009 available at www.lawcouncil.asn.au

⁷ See *Policy Statement, The Death Penalty*, September 2007 at www.lawcouncil.asn.au