



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

28 September, 2009

Re: Migration Amendment (Complementary Protection) Bill 2009

Dear Sir/Madam,

I write on behalf of the Social Issues Executive of the Sydney Anglican Church and thank the Committee for the opportunity to comment on this important Bill. The Social Issues Executive is an advisory group on social issues and matters of public policy within the Anglican Church in the Diocese of Sydney.

We wish to express our support for the Migration Amendment (Complementary Protection) Bill 2009. We support the Bill based on principles of procedural fairness and efficiency, as well as the morality of our treatment of asylum seekers.

Our interest in Australia's treatment of asylum seekers is not simply an academic one. Many members of the Anglican Church in Sydney are actively involved in supporting refugees from their time in detention centres, through to when they move into the community and attempt to rebuild their lives. ANGLICARE, Sydney also is a major provider of re-settlement services to refugees. The motivation for these endeavours springs from our Christian belief in the value of all human life, and from Jesus' teaching that we are to 'love our neighbour'. This concern for human dignity is also reflected in many of the human rights declarations and treaties to which Australia is a signatory.

It is over 50 years since Australia ratified the Refugee Convention relating to the status of refugees. In doing so, Australia joined with the international community in support of the principles enshrined in this foundational document. "It is true that the 1951 Convention's concept of the refugee does not encompass the whole picture of forced migration. Nevertheless it is representative and symbolic of the commitment of the international community to the individual as having dignity and worth and deserving respect."¹

The drafters of the 1951 Convention could not have foreseen the constellation of world events and human rights abuses that give rise to the flight of people in many parts of the world today. As a result, some people may not be recognized under the convention definition of refugee and consequently face returning to situations of grave danger.

¹ Goodwin-Gill, Guy S. Foreword [online]. University of New South Wales Law Journal, v.23, no.3, 2000: viii-x.

The current system in Australia for people in need of protection but who are not recognized under the refugee determination process, is in our view overly complicated and procedurally unfair. It opens up the real possibility of an individual being returned to a country where they could face torture or even death. This is inconsistent with Australian ideals of justice and the value we place on human life.

We note that previous inquiries have recommended that complementary protection be included as a basis for granting protection visas and this inquiry seems to be unnecessarily revisiting the same ground.

In 2004 in response to a recommendation to adopt a system of Complementary Protection, the government members (at the time) of the Senate Select Committee on Ministerial Discretion in Migration Matters made the following comment:

Government members do not support this recommendation. Australia already makes a substantial contribution to providing resettlement to 12,000 people annually through its refugee and humanitarian program. Australia does not, nor has it ever, refouled a refugee. The current process meets Australia's international obligations and establishing a form of complementary protection would again blow-out Australia's migration program and give less discretion to help genuine refugees languishing in camps around the world.²

There is no doubt that the international community faces great challenges in responding to the needs of the millions of refugees worldwide and no single country can be responsible for solving these complex problems. But it is worth remembering that it is developing countries that carry the greatest burden of providing refuge for those seeking help. Developed countries such as Australia need to distinguish between our broader migration policies and that of our international responsibility towards asylum seekers. We must not be satisfied that we are doing 'enough' if there remains a prospect that some people are being returned to situations where they would face genuine harm.

Public opinion about the 'genuineness' of asylum seekers' claims, sadly is often polarized and most Australians are not well placed to judge what constitutes a genuine claim for protection. But by almost any community standard, the plea for protection from torture or physical harm, even death, would have public support, indeed there is probably already an expectation that the system currently guarantees protection in such circumstances.

But tragically the absence of a system of complementary protection can mean that some people are returned to situations where they are tortured and harmed. Others have extensively documented the specific problems of the current system when individuals who fall outside the definition of the Refugee Convention seek protection.³ But in essence, the process lacks common sense and relies too heavily on

² http://www.aph.gov.au/Senate/committee/minmig_ctte/report/d01.htm

³ Field, N. (2008), Playing God with sanctuary,
http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=103 and also see

The International Refugee and Migration Law Project – research on Complementary Protection
http://www.gtcentre.unsw.edu.au/projects_partners/projects/irml/index.asp#ComplementaryProtection

the executive discretion power, which has been shown can vary according to the subjective perspective of the Minister of the day⁴. This is not a satisfactory basis for making such important determinations and represents a denial of justice.

It is important that governments find ways to deal with such anomalies and the Complementary Protection Bill provides a better way than the current system for dealing with these individuals, for it seems both administratively more efficient, procedurally fair and predictable and ultimately more humane. Just as international human rights law has had to evolve and expand, so too does Australia's domestic law need to keep in step with our international commitment and legal obligations to protect people who face the very real prospect of harm.

We urge the committee to support the Migration Amendment (Complementary Protection) Bill 2009 and hope that it will have a speedy passage through parliament.

Thank you once again for the opportunity to make this submission.

Yours sincerely,

Lisa Watts

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on behalf of the Social Issues Executive
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⁴ A point made by Dr Sharman Stone in her media release dated 17 June, 2009 where she highlights the significant differences between the use of executive discretion by different ministers <http://www.liberal.org.au/news.php?id=3323>