

Chapter 4

Committee view

4.1 This chapter discusses the committee's view on the Bill.

4.2 The committee notes the concerns of submitters and witnesses that the Bill may risk Australia's protection obligations under international law, may lead to errors and introduce inefficiency. The committee acknowledges that a number of submitters and witnesses hold the view that it is not possible to design a non-statutory scheme that would be sufficient to address these concerns.

4.3 However, in light of the additional information provided by the department the committee is of the view that most concerns of submitters have now been addressed.

4.4 If the Bill is passed, the department would put in place administrative arrangements that largely mirror the current statutory process. The primary decision maker considering refugee claims would also consider complementary protection claims. Procedural fairness would be afforded with applicants given the opportunity to comment on country information used by the department and attend an interview where necessary. Applicants and their advisors would have clarity around the process and the assessment criteria with the department making publicly available guidance material and other supporting documentation.

4.5 Under the administrative arrangements proposed by the department, the assessment of whether or not Australia owes an individual protection would be made by the department following a rigorous and fair assessment process. The committee is satisfied that with these processes in place, Australia's obligations under international law would be upheld.

4.6 Once the department has assessed that an individual is owed protection, the minister would have the discretion under the Bill to determine what type of visa should be issued to that individual. Under this Bill, the minister would have the flexibility to deal appropriately with individual circumstances. That is, if the threat of harm is temporary, a temporary protection visa may be issued. The committee is of the view that greater flexibility is required in *how* Australia protects those who require complementary protection and that this Bill would provide that flexibility.

4.7 The committee also accept the statutory scheme for assessing complementary protection claims established by the previous government created another product for people smugglers to sell. The committee is of the view that this Bill takes that product off the shelves.

4.8 On balance, the committee believes that the Bill should be passed—subject to Recommendation 1—so as to give the Department of Immigration and Border Protection control over Australia's protection obligations

Recommendation 2

4.9 The committee recommends that the Bill be passed, but urges the government to seriously and urgently consider the preceding recommendation.

Senator the Hon Ian Macdonald

Chair