RACS REFUGEE ADVICE & CASEWORK SERVICE

23 January 2014

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

By email: legcon.sen@aph.gov.au

Dear Committee Secretary

Migration Amendment (Regaining Control over Australia's Protection Obligations) Bill 2013 - Submission by the Refugee Advice & Casework Service (Aust) Inc.

The Refugee Advice & Casework Service (**RACS**) is a community legal centre that provides free legal advice and assistance to people seeking refugee status in Australia. It is a specialised refugee legal centre and has been assisting asylum-seekers on a not-for-profit basis since 1988.

RACS welcomes the opportunity to provide comment on the content and potential impact of the *Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill* 2013 (the **Bill**).

RACS is concerned by the Bill's proposed repeal of the complementary protection provisions from the *Migration Act 1958* (Cth) (the **Act**). RACS understands the proposed changes will mean a return to the pre-existing framework, which relied on the intervention powers of the Minister under section 417 of the Act. We consider this would be a significant backward step in the development of efficient, fair, and accountable protection mechanisms in Australia.

RACS strongly urges against the introduction of the Bill on the following grounds:

1. The introduction of complementary protection was a response to a recognised deficiency in the pre-existing protection framework.

2. Australia's international obligations are better identified and met through statutory processes for the assessment and determination of complementary protection claims.
3. The existing complementary protection regime is preferable to reliance on the Minister's exercise of discretionary powers because it is more effective, efficient and accountable.
4. The embedding of complementary protection in legislation affords affected individuals a greater degree of procedural fairness.
5. Evidence does not indicate that the complementary protection provisions have given rise to unintended consequences or been misused in a way which warrants their repeal.
6. The alternative administrative arrangements which would replace complementary protection have not been properly explained or put forward for public scrutiny.

We address each of these grounds below. In this submission, we draw on our extensive experience as refugee lawyers and asylum seeker advocates. Having operated in the Australian migration law sector for over two decades, RACS appreciates the impact that legislative and policy reform has both on our clients and on the administration of the protection framework more generally. Our perspective incorporates our experiences in representing people who have sought protection under the existing complementary protection provisions as well as and under the pre-existing Ministerial intervention regime.

1. Complementary protection provisions address recognised deficiencies of Ministerial intervention.

Complementary protection was introduced by the *Migration Amendment (Complementary Protection) Bill 2011* (the **Complementary Protection Bill**) as a response to the recognised failings of the pre-existing protection framework. In his second reading speech for the Complementary Protection Bill, the then Minister for Immigration stated:

> This bill amends the Migration Act to eliminate a significant administrative deficiency in the visa application process … The amendments in this bill are important and necessary to address inefficiencies in the current protection framework.[1]

[1] Commonwealth, Parliamentary Debates, House of Representatives, 25 May 2011, 4513 (Chris Bowen)

These inadequacies and the adverse consequences created under the previous regime were also addressed in the evidence submitted to Senate Legal and Constitutional Reference Committee's consideration of the Minister's powers under section 417.[2] As noted in the Explanatory Memorandum for the Complementary Protection Bill, the need for complementary protection provisions had been clearly identified by a number of Parliamentary inquiries and the Human Rights Commission, as well as in the international context, by the United Nations Committee Against Torture, the United Nations Human Rights Committee, and the Executive Committee of the United Nations High Commissioner for Refugees.[3]

The repeal of the complementary provisions is being proposed without any alternative replacement being put forward other than a return to the pre-existing flawed processes which those provisions were designed to overcome. It is therefore reasonable to expect that the same deficiencies which previously existed will again return to the assessment and determination of Australian's protections obligations. In RACS' view, this would be an unfortunate outcome which overlooks the identified need for improvement in the process and administration of these claims.

2. Compliance with Australia's international obligations is better achieved by having complementary protection dealt with under statute

Australia's international non-refoulement obligations are best identified and met by having a statutory process for the assessment of complementary protection claims. This is because a statutory regime incorporates international obligations into domestic law and establishes a mechanism for the determination of enforceable rights which are subject to the rule of law.

The complementary protection provisions specifically incorporate into Australia's domestic law, obligations which arise under the following international instruments:

- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (**CAT**);
- The International Convention on Civil and Political Rights (**ICCPR**); and
- The Convention on the Rights of the Child (**CRC**).

[2] Senate Standing Committees on Legal and Constitutional Affairs, Commonwealth, *A Sanctuary under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes,* (June 2000).
[3] Explanatory Memorandum, Migration Amendment (Complementary Protection) Bill 2011 (Cth), 3.

These instruments require signatory states to ensure a person is not returned to a country in which they will face the risk of being tortured, killed or subject to cruel, inhuman or degrading treatment of punishment. That this obligation is absolute and cannot be derogated from under international law underscores the importance of this commitment.

The Minister's discretionary powers do not explicitly incorporate the non-refoulement obligations of these treaties into domestic law and are ill-equipped to ensure that instances giving rise to these obligations are properly identified and complied with. This is because the non-compellable and non-reviewable nature of the Minister's intervention power runs counter to the nature of the obligations contained in the relevant treaties.

Firstly, the Minister's power under section 417 is discretionary and does not establish any duty of the Minister to consider whether or not afford a person protection on complementary protection grounds. In practice, this means the Minister can refuse even to consider a request for protection. Before exercising the discretionary power, the Minister must think it is in the 'public interest' to do so. Again, there is no duty under section 417 for the Minister to explain why the provision of protection is considered to come within or fall outside the public interest. This is at odds with the absolute requirement under international law not to return a person to a country where they are at risk of being significantly harmed. It also opens the space for that requirement to be undermined according to prevailing political whims. This renders the Minister's discretionary powers an unsuitable mechanism for implementing obligations which require a positive legal duty to ensure a person is not exposed to harm.

Second, the absence of avenues for the review of the Minister's exercise of power highlights the inappropriateness of relying on it to ensure Australia's compliance with its international obligations. Having no scope for review undermines the transparency of the decision-making process and limits the extent to which compliance with the non-refoulement obligation can be properly monitored. Given the high number of requests already brought under section 417, it is important that there be procedural safeguards to ensure that cases enlivening Australia's commitments are brought before the Minister and that there is quality in the decision-making in respect of those requests. Policy guidelines are insufficient in this regard.

Overall, the existing complementary protection regime has strengthened Australia's compliance with its international obligations by ensuring those obligations are clearly

and fully incorporated into domestic legislation. In RACS' submission, the repeal of complementary protection and a return to the pre-existing regime relying on Ministerial discretion undermines this advancement and heightens the risk that people will be returned to situations of harm contrary to the international laws Australia has committed to. The Minister's non-compellable, non-reviewable discretionary power is unsuitable as a means of upholding Australia's obligations to protect applicants from serious human rights abuses to which they may be subject in their country of origin. The importance of the rights sought to be protected by the existing complementary protection regime warrants a systematic procedure of assessment and review.

The proposed Bill also risks Australia violating international obligations under the ICCPR and CRC which require the best interests of the child and family unit to be protected.[4] Under the existing provisions, a grant of protection to a person on complementary grounds will also be extended to that person's family. This guarantee will be removed under the proposed amendments and will be left as a matter to be decided by the Minister at his discretion. For the reasons outlined above, the Minister's discretionary powers are inadequate for ensuring compliance with international obligations.

3. The existing complementary protection provisions are more efficient and effective than relying on the Minister's exercise of discretionary powers

In RACS' experience, the complementary protection provisions in the Act have improved the effectiveness and efficiency of Australia's protection framework. The existing single, integrated protection application process is more effective in ensuring that all people seeking protection have their claims assessed not only in accordance with the Refugee Convention but also under the non-refoulement obligations arising under the CAT, ICCPR and CRC. By enabling decision-makers to consider these claims at the outset of the application process, the time and cost associated with the determination of these claims has also been significantly reduced.

Under the previous regime – which appears would be reinstated if the Bill comes into effect – people who were at risk of serious human rights abuses but unable to fall within the ambit of the Refugee Convention faced a long and uncertain process in seeking Australia's

[4] *International Convention on Civil and Political Rights* (ICCPR) art 17, 23; *Convention on the Rights of the Child* art 3, 9, 10, 16, 20, 22.

protection. Removing complementary protection will again mean that a person is not eligible for a protection visa where the risks of harm they face are for reasons not related to their race, religion, nationality, political opinion or membership of a particular social group. In RACS' experience, examples of this include women at risk of rape and domestic violence; young girls who are likely to have their genitals mutilated according to custom; young men under threat of extortion or revenge; and women at risk of 'honour killing'.

Under the proposed amendments, people in these scenarios will again be forced to apply for a protection visa and endure the entire assessment and review process before being able to appeal to the Minister under section 417. This is because the power the Minister has under section 417 is only engaged after a decision has been made by the Refugee Review Tribunal (**RRT**). A return to the previous protection framework will mean that for clients seeking to engage Australia's complementary *non-refoulement* obligations, RACS will need to assist with firstly lodging a protection visa application and representing the applicant at each stage of assessment and review until they have been refused at the RRT so that a request to the Minister can then be lodged. In our experience, further information and subsequent letters to the Minister are also often warranted. This process was unnecessarily circuitous and time-consuming. Clients RACS assisted with making section 417 requests under the previous regime waited up to six years for a final determination in their case by the Minister. A return to this processing model is therefore undesirable in our view.

The Human Rights Commission reflected on this absurdity in 2009 when it recommended a statutory process for complementary protection, stating that reliance on the Minister's discretion:

> is particularly inefficient as it requires people who fear harm if returned to their country of nationality, but who do not fall within the definition of refugee, to frame their claim as one for refugee status so that their real claim can be assessed at the end of that process. This means that resources are expended and costs incurred in assessing claims that may be unmeritorious as refugee claims, but are compelling as claims for the protection of human rights.[5]

Requiring a person to proceed through an application process for a visa they are not likely to be eligible for also gives rise to serious mental health implications. This was identified by the then Minister for Immigration Chris Bowen in his second reading speech for the CP Bill:

[5] Australian Human Rights Commission, Submission to Senate*, Inquiry into the Migration Amendment (Complementary Protection) Bill 2009*, 30 September 2009, [14]. Accessed at http://www.humanrights.gov.au/inquiry-migration-amendment-complementary-protection-bill-2009

> It is about the implications of being rejected at each level – by the department, by the tribunal – and the anguish that causes, in the hope that your case will eventually get to a minister and that the minister will eventually intervene …why put people through the situation whereby they must go through that continual rejection under the law before they can even get to a ministerial intervention?.[6]

RACS' experience accords with this concern. Clients experiencing a series of consecutive refusal decisions frequently have their resilience and sense of hope worn down and replaced by depression and anxiety disorders and other mental health concerns. The introduction of complementary protection into the Act addressed this issue and the related problems of delay and inefficiency. It did this by introducing a direct and integrated pathway for raising protection claims which fall outside the scope of the Refugee Convention but still within Australia's non-refoulement obligations. The proposed Bill would undo this improvement and the benefits it achieved.

The effectiveness of the proposed Bill is undermined by the risk it poses that people needing protection from serious human rights abuses will not be detected and as a result will be returned to situations of significant harm. In RACS' experience and observation, the absence of any formalised or systematic mechanism for identifying applicants in this situation meant that complementary protection claims were previously often unseen and not considered. The inclusion of complementary protection as part of the criteria for a protection visa, largely resolved this risk by ensuring that every representative and decision considers an applicant's claims against the complementary protection criteria as a matter of course.

The likely costs associated with the proposed Bill will also undermine the efficiency and effectiveness of the protection framework. These costs arise primarily from the unnecessary delay and administrative backlogging associated with requests to the Minister. RACS acknowledges that the systematic consideration of complementary protection claims under the existing provisions of the Act also involves financial costs. However, these appear unlikely to match the financial costs associated with a return to the Minister's discretion and in any case are outweighed by the increased efficiency and effectiveness of having complementary protection embedded in the protection visa application process.

[6] Commonwealth, Parliamentary Debates, House of Representatives, 25 May 2011, 4513 (Chris Bowen).

Access to justice issues hinder the Bill's effectiveness

RACS is also concerned that the proposed Bill also proceeds on an assumption that people needing protection on complementary grounds will be able to properly access the Ministerial protection framework. In our experience, this is often not the case. For instance, under the previous regime, RACS was often unable to assist clients in making a request to the Minister under section 417 because that work was outside the scope of the IAAAS immigration assistance scheme and therefore unfunded. We understand this is the case for other legal aid asylum seeker service providers. Asylum seekers are often in an extremely vulnerable and disadvantaged position due to their experiences of torture and trauma, and cultural, language, financial and educational barriers. In our experience, many asylum seekers do not have the resources or capacity to put forward their own claims and requests for protection to the Minister. They frequently do not have the funds to be able to obtain professional assistance in drafting and submitting the request on their behalf and are unable to prepare their own submission to the Minister particularly given the significant language and educational barriers they face.

By removing the embedded consideration of complementary protection claims which currently takes place as part of the normal visa application process, the proposed Bill undermines access to legal assistance and places an unfair onus on people relying on complementary grounds to represent themselves. The risks of exploitation and disadvantage this can pose for asylum seekers have been recognised[7] and are addressed below under heading 4.

Limiting people's ability to access to the protection assessment process also undermines Australia's capacity to comply with its non-refoulement obligations. RACS is concerned the proposed Bill will reinstate the situation of unmet legal need which previously existed for people seeking protection on complementary grounds. This significantly limits the effectiveness of Australia's overall protection framework and raises serious access to justice issues.

[7] Senate Select Committee on Ministerial Discretion in Migration Matters, Commonwealth, *Report* (2004) [5.26], [5.54]. Accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/minmig/report/~/media/wopapub/senate/committee/minmig_ctte/report/a01_pdf.ashx.

4. The complementary protection provisions uphold important principles of procedural fairness

The existing complementary protection scheme affords applicants a greater opportunity to have their claims assessed and determined in accordance with the principles of procedural fairness than a return to Ministerial discretion would allow. Having the consideration of complementary protection grounds embedded in the statutory application process ensures decisions are made on the basis of established rules that are known and applied according to the rule of law. The existing rights to a hearing and to seek a review of a decision are fundamental tenants of Australia's legal system and critical in this regard.

Maintaining the right to a fair hearing

Under the existing provisions, applicants have a right to be heard and have any adverse information put to them so that they can respond to those concerns. In our experience, the language and educational barriers often faced by asylum seekers make the oral hearing (at the primary and review phases) very important. Most applicants are unlikely to be able to adequately represent their claims in writing. An oral hearing is an important safeguard which makes it more likely that a decision-maker will obtain all relevant information required to determine the risks a person will face if returned to their home country. In our experience under the previous regime, applicants were rarely given an opportunity to make oral submissions to the Ministerial Intervention Unit. The proposed Bill would again remove the right to a hearing. Further, it would deny applicants the opportunity to know, and respond to, the reasons for a decision being made against them. It is troubling that in exercising the power under section 417, the Minister is only required to report to Parliament to explain the reasons for choosing to exercise the power but not when a decision is made not to intervene in favour of the applicant. The right to a hearing promotes fairness in decision making and guards against impartiality and inconsistency. The Bill's proposed repeal of this right will undermine the accountability of executive decision-making, the efficacy of the protection framework and fundamental tenants of the rule of law.

Maintaining the right to seek review

Accountability will also be undermined by the effective removal of the right to seek review of a decision which is proposed by the Bill. Currently, the single protection visa application process ensures people seeking complementary protection are able to access the same transparent and reviewable decision-making framework as those seeking protection under the Refugee Convention. This entails a right to merits review at the RRT and judicial review of a decision suffering from a jurisdictional error. None of these avenues of review are available under the Ministerial request process under section 417. This is a vital safeguard

which is of equal importance to all applicants seeking protection – whether on complementary protection grounds or under the Refugee Convention. In RACS' view the denial of rights of review to those seeking protection under the obligations arising under the CAT/ICCPR/CRC is a distinction which cannot be justified.

An opportunity for judicial review is important for ensuring consistency in decision-making and the development of refined principles appropriate to this area of law. RACS notes the comments of the Department in its submission to this Inquiry dated 13 January 2013 which state that this Bill is needed because of the interpretation the Judiciary had given to the meaning of the complementary provisions. A complete repeal of these provisions on this basis is disproportionate and unnecessary. A robust democracy requires that each level of Government be able to exercise its functions without being inappropriately interfered with by another arm of Government. The judicial arm of Government provides an important function in the oversight of executive exercises of power. This is particularly relevant in the context of the proposed changes which seek to re-establish a process which was removed amongst allegations the Minister's power was being misused to achieve political goals. Maintaining a right of review for complementary protection claims guards against the real risk of political interference, favouritism and arbitrariness in the exercise of the Minister's discretion. If the Parliament is concerned by the scope of the Courts' interpretation of Australia's complementary protection obligations, there are less drastic options for legislative reform than a complete repeal of complementary protection from the Act. The repeal of the complementary protection provisions involve removing the right to seek merits and judicial review and will reinstate the pre-existing opaque decision making process which severely disadvantaged applicants seeking protection on complementary protection grounds. RACS opposes the changes proposed by the Bill on this basis.

Other disadvantages created by a lack of transparency

There are additional unintended disadvantages that will arise should the Ministerial process under section 417 be reinstated. Firstly, the lack of readily available information about the Ministerial intervention powers and the opaque process it entails poses the danger that people seeking protection will be exploited or misled to their detriment. RACS is aware of the risks of exploitation and disadvantage that asylum seekers in this situation can face when either unscrupulous agents or well-intended but uninformed members of the public seek to assist with a request to the Minister. In this regard, we acknowledge the findings of the 2004

Senate Select Committee on Ministerial Discretion in Migration Matters.[8] The Senate report highlighted:

> The risk of exploitation that non-citizens face is not only symptomatic of their general vulnerability but also reveals some of the problems peculiar to the area of ministerial discretion. The opaque nature of the ministerial discretionary system itself compounds this disadvantage and leaves people open to operators peddling misleading information, whether this is about the chances of success or their supposed personal connections with the minister. Mr Lombard stated that it is 'largely the absence of any explanatory material and any openness in the system that means that clients are very much prey to people who are not honest agents.[9]

RACS is concerned that the repeal of the complementary protection provisions will therefore reinstate this risk of manipulation and disadvantage for people seeking protection on complementary grounds.

The lack of transparency which existed under the previous Ministerial regime also made it difficult for asylum-seeker representatives to give clear advice regarding the prospects of a case. This, in turn, can affect the efficiency of how a case is dealt with and determined. The policy guidelines introduced to assist applicants address the criteria considered by the Minister under the previous ministerial process, were instructive but not binding. In receiving a decision from the Minister's office, it would not be clear which circumstances of the case were considered to fall within or outside these considerations. The absence of any formal process, or established principles and the lack of any reasons being given for a Ministerial decision meant that advocates were often only able to give very general advice on whether a client's circumstances would result in an exercise of the Minister's powers under section 417. This resulted in more applicants seeking the intervention of the Minister, which subsequently increased the backlog of cases requiring assessment and determination by the Minister. A return to this situation would be unfortunate.

5. Evidence does not show that the complementary protection provisions have been misused

The Minister's concerns that the complementary protection regime is open to widespread abuse and supports the people smuggling trade[10] are not justified. RACS is concerned these comments are misleading and inaccurately portray the impact of the complementary

[8] Ibid.
[9] Ibid [5.23].
[10] Commonwealth, Parliamentary Debates, House of Representatives, 11 December 2013, 2345 (Scott Morrison).

protection provisions. The small number of protection visas which have been granted on complementary protection grounds since its introduction in fact paints a very different picture from the political rhetoric being used in support of the Bill. As at September 2013, less than 5% of the onshore protection visas granted were on complementary protection grounds.[11] In most of these cases, the applicant was found to be at risk of being persecuted, but for reasons other than their race, religion, nationality, political opinion or membership of a particular social group.[12] Examples have included:

- A woman who was found to be at risk of significant harm from her husband who had previously stabbed strangled, harassed and raped her, leading to her being hospitalised for six months. Her fears and the absence of state protection in this situation were not for a Refugee Convention reason so her claim was only able to succeed under the complementary protection provisions.[13]
- A young boy who had suffered long term domestic violence from his alcoholic father. The likelihood of this treatment being ongoing as found to put him at risk of being subjected to cruel or inhuman treatment or punishment if returned.[14]
- A man who had been attacked and tortured for his refusal to pay a paramilitary group which was targeting him with ongoing extortion demands. It was found the harm feared by this man was not for a convention reason but constituted arbitrary deprivation of life, torture, or cruel or inhuman treatment or punishment.[15]

For these people, the grant of permanent protection in Australia keeps them safe from situations of torture and other human rights abuses which threaten their life and security. These are exactly the type of cases the complementary protection provisions were intended to benefit. It is difficult to reconcile this evidence with the views expressed by the Minister for why complementary protection should be removed from the Act. Considering the situations of harm faced by the people who have been successfully granted complementary protection,

[11] Senate Legal and Constitutional Affairs Legislation Committee, *Estimates,* 19 November 2013, 61.
[12] See published successful complementary protection cases at Kaldor Centre.
13 1208795 [2012] RRTA 899 (18 September 2012). Accessed at http://www.austlii.edu.au/au/cases/cth/RRTA/2012/899.html.
[14] 1216120 [2013] RRTA 359 (17 May 2013). Accessed at http://www.austlii.edu.au/au/cases/cth/RRTA/2013/359.html
[15] 1215413 [2013] RRTA 346 (24 May 2013). Accessed at http://www.austlii.edu.au/au/cases/cth/RRTA/2013/346.html

it is also difficult to understand why, as the Department suggests,[16] they should not be as entitled to permanent protection as those falling within the Refugee Convention

The Department's claim that the complementary protection provisions should be repealed because it has benefited 'several persons involved in serious crimes'[17] is misleading. The Act's requirement that character and security checks (which include criminal checks) before a protection visa can be lawfully granted are intended to guard against unsuitable persons being allowed to remain in the community. The Department's comments in its submission to this Inquiry appear confused in this regard. The Department acknowledges that the character provisions in the Act allow a visa to be refused where a person has engaged in criminal conduct, but go on to state that the complementary protection criterion could be met 'in circumstances which arguably do not engage Australia's non-refoulement obligations under international law'. This is difficult to understand because the satisfaction of the complementary protection criterion would only take place where Australia's non-refoulement obligations *have* been engaged.

In RACS' view, the operation of the complementary protection provisions is aligned with the purpose for which they were intended. It has not opened the floodgates for dubious claims and has provided important protection to persons at risk of serious human rights violations if returned to their home country. These important gains are worth recognition. Discussion of law and policy relating to asylum seekers often suffers from a lack of clear and accurate reporting. This undermines the development of fair and appropriate measures. It would be unfortunate in RACS' view if the misleading comments put forward in support of the proposed Bill had this effect.

6. The alternative administrative arrangements which would replace complementary protection have not been properly explained

RACS is concerned that the process which would replace complementary protection under the proposed Bill has not been fully explained or put forward for public debate or scrutiny. The Explanatory Memorandum for the Bill explains that the proposed amendments would mean Australia's non-refoulement obligations 'will be considered through an administrative

[16] Department of Immigration and Border Protection, Submission to the Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Migration Amendment (Regainging Control Over Australia's Protection Obligations) Bill 2013*, January 2014, 3.
[17] Ibid 5.

process, as was the case prior to March 2012'.[18] However, the Department's submissions to this Inquiry distinguish the proposed amendments from the pre-existing ministerial intervention framework: 'the new administrative process will be more transparent and efficient in its consideration of complementary protection claims and will include the development of a more effective decision making model'. Yet the specific mechanisms or points of difference between the pre-existing regime and the proposed amendments have not been clarified. This makes it difficult to accurately assess the proposed amendments or make useful comments on the impact of how they would operate. In this regard, RACS agrees with the following comments made by Associate Professor Matthew Groves in his submission to this Inquiry:

> If the [proposed] administrative process is superior to an existing legislative one, it should be easy to explain why that is so to the Senate and the public prior the repeal of the legislative regime. Unless and until that is done, there is no basis upon which the Senate can scrutinise the soundness of this key assumption of the Bill.
>
> Providing information about the proposed new arrangements would not be onerous. One can fairly assume that the Department of Immigration and Border Protection has drafted administrative procedures. How else could it have informed the Minister that those processes would be simpler and more effective? If so, why has it not been released?

In circumstances where an entire legislative process is sought to be repealed from the Act, it is appropriate that the measures designed to replace that process are more fully explained than has been the case for the proposed Bill. RACS would welcome an opportunity to address these alternative administrative arrangements once those details are made available. This is needed for the Bill can be properly debated and voted on by Parliament.

7. Conclusion

The complementary protection provisions which would be repealed under the proposed Bill have significantly enhanced Australia's protection framework. The provisions provide a transparent, reviewable process which ensures all people making an application for protection who are unable to meet the definition of a refugee will nevertheless have their claims assessed to determine whether they are at risk of suffering significant human rights violations if returned to their home country. Addressing complementary protection under statute is appropriate and improves Australia's ability to comply with its non-refoulement obligations under the CAT, ICCPR and CRC. The Minister's non-compellable, non-reviewable discretionary power - which may be reinstated if the proposed Bill comes into

[18] Explanatory Memorandum, Migration Amendment (Regaining Control over Australia's Protection Obligations) Bill 2013, 1.

effect - is unsuitable as a means of upholding these international obligations. The complementary protection provisions have addressed the serious problems of delay and inefficiency which marred the pre-existing ministerial intervention regime. Complementary protection under the Act affords applicants a fairer process by providing a greater opportunity for claims to be assessed and determined in accordance with the principles of procedural fairness. In RACS' experience, these factors have improved the overall effectiveness of the protection framework and Australia's compliance with its international law obligations. RACS is concerned that the arguments being put forward for the Bill are misleading and not supported by evidence regarding the operation of the complementary protection provisions. RACS is also concerned that the alternative arrangements which are proposed to replace complementary protection under the Act have not been properly explained. For all these reasons, RACS urges strongly against the repeal of complementary protection as proposed by the Bill.

*****

To discuss the contents of this submission, please contact us on (02) 9114 1600.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

Tanya Jackson-Vaughan
Executive Director

Principal Solicitor