



Coalition Against Trafficking in Women Australia  
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VIC 3068

Senate Legal and Constitutional Affairs Committee  
C/O Sophie Dunstone, Committee Secretary  
PO Box 6100  
Parliament House  
Canberra ACT 2600

16 January 2014

Dear Sir / Madam,

**Inquiry into the Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013**

The Coalition Against Trafficking in Women Australia (CATWA) is the Australian branch of CATW International, a Non-Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. It works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women.

We write to express our concern at the proposed changes to the Migration Act outlined in the Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013. CATWA considers the re-assignment of complementary protection from a statutory category to a Ministerial administrative process to be highly problematic for the protection of women's human rights.

The proposed changes are especially harmful to women because persecution on the basis of gender has not traditionally been considered grounds for refugee status and protection (Crawley 2000; McKay 2003; Randall 2002). Women and girls who are victims of gendered

cultural practices, such as female genital mutilation, ‘honour’ killings, and forced/arranged marriage, are thereby left exposed by the proposed changes to the Act, which repeal the very protection category designed to address such harms. The removal of the current complementary protection system goes against a growing international trend to recognise and make allowances for the specific difficulties and types of discrimination that women encounter in applying for refugee status.

CATWA maintains that in order for the Commonwealth Government to uphold its *non-refoulement* obligations under international law, the process for assessing claims that do not easily meet the criteria in the Refugee Convention should remain statutory. That is, cases of this nature must be assessed and determined by an independent panel based on statutory guidelines, rather than determined by a non-reviewable decision based on the unspecified and undefined criteria of an individual.

Furthermore, there is no evidence provided that the existing system of complementary protection is being abused in Australia, as publicly claimed by the current Immigration Minister. Indeed, very few protection visas are granted on the basis of complementary protection, with a total of only 55 having been granted from the introduction of the statutory regime for complementary protection in 2012 until the last official statistics available from the Department of Immigration and Border Protection in November 2013 (ARKCIRL, 2013).

The harms that befall women and girls who are sent back to their home country and suffer such practices are extreme and often life-threatening. This should warrant the concern of Australian policymakers and legislators. We would be happy to provide members of the Committee with further information on both the tendency of Western legal systems to exclude gender-based persecution from understandings of the Refugee Convention, and on the extent of the harms that women face if they are returned to their countries of origin.

We hope that the Committee will give these matters the most earnest consideration and seek our advice should more information be required.

Sincerely,

Drs Kaye Quek and Meagan Tyler

(on behalf of the Coalition Against Trafficking in Women Australia)

## References

Andrew and Renata Kaldor Centre for International Refugee Law (ARKCIRL) (2013) *Complementary Protection*. Sydney: The University of New South Wales. 6<sup>th</sup> December. [http://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/cp\\_submission\\_to\\_jt\\_cttee\\_hr\\_6.12.13.pdf](http://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/cp_submission_to_jt_cttee_hr_6.12.13.pdf)

Crawley, H. (2000) Gender, Persecution and the Concept of Politics in the Asylum Determination Process. *Forced Migration Review*, v9(1): 17-20.

McKay, L. (2003) Women Asylum Seekers in Australia: Discrimination and the Migration Legislation Amendment Act [No 6] 2001 (CTH). *Melbourne Journal of International Law*, v4: 439-466.

Randall, M. (2002) Refugee Law and State Accountability for Violence Against Women: A comparative analysis of legal approaches to recognizing asylum claims based on gender persecution. *Harvard Women's Law Journal*, v25: 281-318.