

Factsheet

COMPLEMENTARY PROTECTION

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Complementary protection enables asylum seekers who do not meet the refugee definition but nevertheless face real and serious dangers to claim protection on the basis of human rights law. Complementary protection has operated under Australian law since 2012.

What is complementary protection?

A refugee is someone with a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group. However, someone may be at risk of serious human rights violations in their country of origin but not satisfy the definition of a refugee. This may occur, for example, if the harm they face is not linked to one of the five Refugee Convention grounds.

International human rights law precludes countries from sending people to places where they face a real risk of being arbitrarily deprived of their life, tortured, or exposed to other cruel, inhuman or degrading treatment or punishment, among other things. In this way, human rights law 'complements' protection under the Refugee Convention, hence the name 'complementary protection'.

Since 24 March 2012, Australian law has enabled asylum seekers to claim complementary protection if they do not meet the refugee definition. This is reflected in section 36(2A) of the [Migration Act 1958 \(Cth\)](#). Specifically, it provides that Australia is not permitted to remove people to places where they face a real risk of one or more of the following:

- arbitrary deprivation of life
- the death penalty
- torture
- cruel or inhuman treatment or punishment
- degrading treatment or punishment.

Section 36(2B) sets out three exceptions, stating that there is no 'real risk' of significant harm if a person can safely relocate to another part of the country; if an authority within the country can provide protection; or if the risk is faced by the population generally and not by the non-citizen personally.

Section 36(2C) sets out exclusion clauses. These render a person ineligible for complementary protection if there are serious reasons for considering that they have:

- committed a crime against peace, a war crime or a crime against humanity;
- committed a serious non-political crime before entering Australia; or
- been guilty of acts contrary to the purposes and principles of the United Nations.

These grounds for exclusion also apply to Convention refugees. However, Australia's *Migration Act* goes even further by denying protection to anyone whom the Minister considers, on reasonable grounds, to be:

- a danger to Australia's security; or
- having been convicted by a final judgment of a particularly serious crime (including a crime that consists of the commission of a serious Australian offence or serious foreign offence), is a danger to the Australian community.

Why do we have complementary protection in Australia?

Complementary protection was introduced by the [*Migration Amendment \(Complementary Protection\) Act 2011 \(Cth\)*](#) to give effect to certain of Australia's international obligations under the [*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*](#), the [*International Covenant on Civil and Political Rights*](#) and the [*Convention on the Rights of the Child*](#).

The introduction of complementary protection also aligned Australian law with comparable provisions in the European Union, Canada, the United States, New Zealand, Hong Kong and Mexico, among others, as well as the expanded refugee categories in the regional refugee systems of Latin America and Africa.

Complementary protection introduced greater efficiency, transparency and accountability into Australia's protection regime. Prior to its introduction, Australia was unable to guarantee that people who did not meet the refugee definition in the Refugee Convention, but who nonetheless faced serious human rights abuses if returned to their country of origin or habitual residence, would be granted protection.

This was because the only way to have claims based on a fear of return to torture, a threat to life, or a risk of cruel, inhuman or degrading treatment or punishment assessed was via the non-compellable and non-reviewable 'public interest' power of the Immigration Minister under section 417 of the Migration Act. This is also known as Ministerial discretion, and can be a lengthy and inefficient process.

See also a summary of Australian and New Zealand [decisions on complementary protection cases](#).