

Complementary Protection

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Who is this Infosheet for?

This Infosheet provides an overview of Australia's complementary protection laws, which are relevant to anyone applying for a Protection Visa. On 24 March 2012, complementary protection was introduced into Australian migration law. The Department of Home Affairs (DHA) and the Immigration Assessment Authority (IAA) or Administrative Appeals Tribunal (AAT) must now consider the Refugee Convention along with obligations from other international human rights conventions when they decide whether to grant you a Protection Visa.

IMPORTANT

- **If the DHA decides you are not a refugee, you may still be granted a Protection Visa if you are owed complementary protection. These laws help protect people who do not fit the definition of a refugee but who would otherwise face significant harm if they are returned to their home countries.**
- **You do not have to apply for complementary protection. The DHA (and AAT/IAA) will automatically consider whether these laws apply to you when assessing your Protection Visa application.**

What is complementary protection?

Complementary protection means that a person:

- is not found to be a refugee under the Refugee Convention; but
- cannot be returned to their country of origin because there is a real risk that they will face significant harm there.

Australia has signed international human rights conventions (called treaties) which mean that Australia must not return a person to their home country if there is a real risk that the person will suffer significant harm if they are removed from Australia.

The obligations not to return people to a situation where they may suffer significant harm are called *non-refoulement* obligations.

What international conventions can be considered for my case?

Australia's obligation not to return a person to a situation where they may suffer significant harm arises from these two international treaties which Australia has ratified:

- *International Covenant on Civil and Political Rights (ICCPR) and Second Optional Protocol (Aiming at the Abolition of the Death Penalty)*
- *Convention Against Torture (CAT)*
- *Convention on the Rights of the Child (CRC)*

The introduction of complementary protection means that Australia's obligations under these treaties as well as the Refugee Convention can be considered by the DHA and the AAT/IAA when they decide whether or not a person meets criteria for a Protection visa.

What is significant harm?

You are owed complementary protection if there are strong reasons to believe you will face significant harm if you are returned home. Under complementary protection, significant harm must be one of the following:

- **Arbitrary deprivation of life**
 - You cannot be returned home if it means you will likely be killed without legal or moral justification.
- **Death penalty**
 - You cannot be returned home if you will likely face the death penalty for a crime in your home country.
- **Torture**
 - You cannot be returned home if you will likely face an act that causes you severe physical or mental pain and suffering, and this pain and suffering will be intentionally inflicted on you including to get a confession, to get information or to intimidate you.
- **Harsh or severe treatment or punishment**
 - You cannot be returned home if you will likely face severe pain and suffering, whether physical or mental, and it could be considered cruel or inhuman.
- **Degrading treatment or punishment**
 - You cannot be returned home if you will likely face an act that causes extreme humiliation to you that is unreasonable and degrading.

What does this mean for my visa application?

Before the law changed, complementary protection was not a basis upon which a Protection Visa could be granted, although the Minister did consider these international agreements when deciding whether or not to intervene in individual cases. Since the law changed in 2012, Australia's obligations under these international treaties are now automatically considered as part of your Protection Visa application.

Do I need to make a separate application for complementary protection?

You do not need to make a separate application for complementary protection.

When you apply for a Protection Visa the decision maker will first consider whether you are a refugee under the Refugee Convention. If you are found to be a refugee then you can be granted a Protection Visa, subject to health, character and security checks. It will not be necessary for the decision maker to consider complementary protection.

If you are found not to be a refugee under the Refugee Convention, the decision maker will then go on to consider whether you are owed complementary protection. If they decide that complementary protection does apply then you can be granted a Protection visa, subject to health, character and security checks.

What if I applied for a Protection Visa before 24 March 2012?

I applied before 24 March 2012 and my case is at DHA

If you applied for a Protection Visa, and the DHA did not make a decision about your case before 24 March 2012, then the case officer must consider whether complementary protection applies to your case before they make their decision.

I applied before 24 March 2012 and my case is at the AAT/IAA

If your case is at the AAT/IAA and a decision was not made before 24 March 2012, then the AAT/IAA must consider whether complementary protection applies to your case before they make a decision.

I applied before 24 March 2012 and my case is at court

If your case is at court for judicial review, the court cannot consider whether complementary protection applies in your case. The court can only consider the law that applied at the time of the original AAT/IAA decision. The court cannot consider whether complementary protection applies to you.

If your case is successful at court then it will be sent back to the AAT/IAA for reconsideration. The AAT/IAA will then be able to consider complementary protection when making its decision.

I applied before 24 March 2012 and have asked the Minister to intervene in my case

The Minister has certain guidelines to determine whether or not to intervene in your case. See our **'HRLP Infosheet - Ministerial Intervention'** for more information about these guidelines and about applying to the Minister.

These guidelines already include Australia's complementary protection obligations. If your case is with the Minister then you can ask the Minister to consider complementary protection when assessing your case.

What visa will I receive if I am entitled to complementary protection?

If you are entitled to complementary protection and arrived in Australia by plane, you will receive a Protection Visa. This is the same visa you would be granted if you were found to be a refugee.

If you arrived in Australia by boat, then you will only be eligible for a 3 year Temporary Protection Visa (TPV) or a 5 year Safe Haven Enterprise Visa (SHEV). The decision-maker will consider complementary protection when deciding whether to grant you a TPV or SHEV. If you arrived in

Australia by boat, see our **'HRLP Infosheet – Visa Refusal and the IAA (Fast Track)'** and **'HRLP Infosheet – RSD Process Guide'** for more information on the processes that apply to you.

All three kinds of visas (Protection, TPV & SHEV) will give you access to social security, Medicare, English classes, and work and study rights.

Disclaimer: This fact sheet provides general information to people seeking asylum in Australia through the onshore protection visa application process according to the law in July 2021. This fact sheet is not legal advice. You should not rely on this fact sheet to make decisions about your immigration matter. We strongly recommend that you get independent advice from a qualified legal practitioner or a registered migration agent. For information please visit: <https://www.mara.gov.au>.

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