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Refugee Protection and State Security in Australia: Piecing Together Protective Regimes – *Peter Billings*

The principle of non-refoulement – the prohibition on returning a person to a place where they have a well-founded fear of persecution or are at real risk of significant harm – is the cornerstone of refugee and complementary protection. In the Australian context, the *Migration Act 1958* (Cth) provides the framework for considering protection claims. However, domestic law is neither congruent nor conformable with international legal principles. Since legislative reforms passed in 2014 this disconnect has become pronounced because: (1) legislative qualifications upon refugee and complementary protection extend beyond those limited exceptions contemplated in international law; (2) the level of satisfaction required to enliven certain qualifications is too low; (3) risk assessments are insufficiently rigorous and opaque; and (4) the statutory scheme regulating the process of refugee status determination permits broad grounds of exclusion to be considered before any assessment of whether protection (non-refoulement) obligations are engaged. These features of domestic law place refugees at risk of future harm. 222

Characterising Migration Directions as Legislative Instruments: Implications for Judicial Review – *Christopher Chiam*

Section 499 of the *Migration Act 1958* (Cth) allows the Minister to issue binding "Directions" to decision makers. This article argues that these Directions should be properly characterised as legislative instruments in spite of previous case law to the contrary. The definition of a legislative instrument was amended in 2015, and despite suggestions that

this was merely a cosmetic change, I argue that it had a substantive effect. As a result, the reasoning in previous cases that held that these instruments were not legislative needs to be reconsidered. This then raises questions as to whether this characterisation has implications for the enforceability or interpretation of these Directions. 234

Planning and Soft Law – *Greg Weeks and Linda Pearson*

Complex regulatory systems are particularly in need of regulation capable of maintaining both high standards and consistency in decision-making. Soft law is frequently the mechanism of choice to achieve these ends, since it can be made and altered with relative ease but is nonetheless treated as though it were hard and enforceable "law". The law around environmental planning decisions, although subject to detailed legislative control, makes extensive and predominantly effective use of soft law. However, the use of soft law always carries some risk and this is generally imposed asymmetrically upon individuals rather than public bodies. This article considers these issues, taking account of several relevant cases. 252

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