

ADDITIONAL COMMENTS

LABOR SENATORS

1.1 Whilst Labor Senators are prepared to support the Bill if the Committee's majority report recommendation is followed, they remain concerned about the constitutional validity of the Bill.

1.2 The Bill would seek to apply a time limit (up to 84 days) to applications for judicial review of decisions that may suffer from jurisdictional error. Importantly, it would seek to apply such a time limit to the High Court. As noted in the majority report, there was comment by Justice Callinan in *Plaintiff S157* that a time limit may be applied to applications for judicial review in the High Court, although it would need to be sufficiently long such that the right to appeal was more than illusory. Whilst this may suggest that time limits can be applied to appeals before the High Court, Labor Senators note that these comments were made by a single judge in *obiter*. Furthermore, the case of *Plaintiff S157* did not consider the possibility of applying time limits to decisions that suffer from serious jurisdictional error. Given the very wide scope of 'purported decision' in the Bill, Labor Senators are concerned that where a decision suffers serious jurisdictional error, the High Court may find that imposing a time limit on such an appeal would act as a prohibition on the High Court's powers of review under section 75 of the Constitution.

1.3 Whilst Labor Senators support the recommendation of the majority report, that in relation to applications to the High Court the time limit run from actual notification (as opposed to deemed, as provided in the Bill), they remain concerned that there could still be circumstances where a party may have received actual notification but may still not be aware of their need to appeal (for example, where they do not speak English).

1.4 Labor Senators are disappointed that this Bill was introduced before the findings of the Migration Litigation Review were released. Access to this review would have been helpful in assessing the need and appropriateness of the Bill.

Senator the Hon. Nick Bolkus
Deputy Chair

Senator Joseph Ludwig

Senator Linda Kirk

