

29 April 2004

H16  
JM;rp

Ms Louise Gell  
Secretary  
Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Gell

**Inquiry into the Migration Amendment (Judicial Review) Bill 2004**

Thank you for your letter of 5th April 2004, addressed to the President. The provisions of the Migration Amendment (Judicial Review) Bill 2004 have been considered by the Society's Administrative Law Committee.

The Society is pleased to offer the following comments:

1. The object of discouraging unmeritorious appeals is clearly proper.
2. The High Court has already said that the 28 day time limit is or may be inadequate in some circumstances having regard to access to justice issues.
3. The proposed limited extension of time is apparently directed to this concern.
4. "Notification of the decision" under the legislation is usually "deemed" notification.
5. A situation may arise in which time will run against a meritorious claimant who does not have actual knowledge of the decision.
6. This is presently not an insurmountable access to justice issue because there are effectively no actual time limits as a result of the decision of the High Court in S. 157/2002.
7. By the time an application is able to be made to the Federal Magistrates Court, the Federal Court or the High Court the applicant will normally have some understanding of the importance of time limits.

8. There may still, in some cases, be eligible and meritorious claimants who will not have actual notice of the decision and will be denied access to justice. This is an important issue for the Law Society.

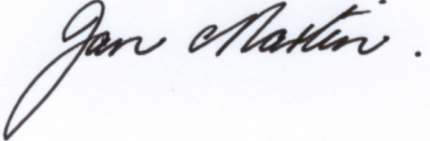
The Society therefore asks whether the legislation could, without compromising its purpose, include provision for time to run from actual notice in appropriate cases.

This would be consistent with the stated object of the Amendment. Obviously there would be no reason why a stringent onus of proving failure to receive actual notice should not be imposed upon claimants.

The Society is also conscious of the fact that in some meritorious cases an eligible applicant will be denied justice because of time limits. It is unfortunate that some general discretion cannot be preserved to accommodate this situation.

We trust that you will find these comments useful.

Yours sincerely

A handwritten signature in black ink that reads "Jan Martin." The signature is written in a cursive style with a period at the end.

Jan Martin  
**EXECUTIVE DIRECTOR**