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30 April 2004

The Secretary  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
Canberra  
ACT 2600

Att Mr Peter Gibbons

Dear Secretary,

### **Migration Amendment (Judicial Review) Bill 2004**

Thank you for the opportunity to make a submission on this legislative proposal.

Australian Lawyers for Human Rights Inc (ALHR) is a national network of 900 lawyers across Australia. We have extensive experience and expertise in law and legal practice, with a particular focus on international human rights standards and their application in Australia. Our members practice in migration matters, and administrative and judicial review matters, and are well versed in human rights and issues of procedural fairness.

We have read the submission to the Committee from the Public Interest Law Clearing House (Vic) and the Victorian Bar. We endorse that submission and recommend it to the Committee.

By way of supplementing the arguments made in that submission we bring the following to your attention:

1. By setting an absolute limit on the period for judicial review, and thereby depriving people who may be refugees from the opportunity to have their status recognised, Australia risks violating not only the refoulement obligations under the *Refugee Convention*, but also the more extensive refoulement obligations under the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention Against Torture*

(CAT). Australia's conduct under the ICCPR and CAT is subject to United Nations scrutiny through complaints and reporting mechanisms.

2. The proposed amendments – in setting a time limit and deeming notification of an adverse decision – will cause the detention of people held without charge to become 'arbitrary detention, in violation of Article 9(1) of the ICCPR.
3. The same amendments will limit access to the courts for people held without charge in detention, in violation of Article 9(4) of the ICCPR.

For these reasons, in addition to those in the submission from the PILCH and the Victorian Bar, we support the recommendations made in the submission.

We welcome the opportunity to provide oral submissions to the Committee in order to these matters further. Please do not hesitate to contact us if we can assist further.

Yours sincerely,

***By email***

Simon Rice OAM  
President  
Australian Lawyers for Human Rights