

REFUGEE COUNCIL OF AUSTRALIA

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17 MAY 2004

12 May 2004

Ms Louise Gell
Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Dear Ms Gell,

Re: Migration Legislation Amendment (Judicial Review) Bill 2004

The Refugee Council has also been approached by the Refugee and Immigration Legal Centre (RILC) with a request that we endorse their submission to the current inquiry. This we willingly do, considering the submission to contain an informed and comprehensive analysis of the issues.

We concur with RILC's assessment that:

- the proposed strict, non-extendable time limit of 84 days to seek judicial review would result in substantial unfairness and injustice in some cases where individuals are denied the right to appeal; and that it has the potential to frustrate its own objective, by encouraging the lodgement of 'protective' appeals;
- The proposed requirement of only deemed notification for High Court appeals would merely compound the potential for substantial unfairness and injustice resulting from non-extendable time limits. Actual notification should be required as well as a residual discretion to extend the time limits for seeking review;
- The proposed bar on judicial review of primary decisions would again cause quite unwarranted unfairness and injustice to some individuals;

... and agree with RILC that a residual judicial discretion to extend statutory time limits for seeking judicial review should be preserved.

In closing, we quote from Chief Justice James Spigelman's 1998 Ethnic Affairs Oration:

The right to participate in legal decisions, on the basis of equality before the law, must be real right, not merely a theoretical one.

Yours sincerely,

David Bitel
President