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26 April 2002

Mr Noel Gregory
Acting Secretary
Legal and Constitutional Legislation Committee
Australian Senate
Parliament House
Canberra ACT 2600

By facsimile: 6277 5794

Dear Acting Secretary,

re: **Provisions of the Migration Legislation Amendment (Procedural Fairness) Bill 2002 and of the Migration Legislation Amendment Bill (No 1) 2002**

I refer to your letter of 25 March 2002, inviting Liberty Victoria to make a submission in relation to the Committee's inquiries on the above legislation.

We have had the benefit of seeing the submission dated 2 April 2002 from the NSW Council for Civil Liberties. Liberty Victoria fully supports the content of that submission and the sentiments which it expresses.

Like the NSW Council, Liberty Victoria believes the rule of law is the foundation of our civil society. The *Tampa* litigation, in which Liberty Victoria became involved, demonstrated all too powerfully how vital it is that Government be held accountable at law in proceedings before an independent judiciary.

According to the explanatory memorandum to the Migration Legislation Amendment (Procedural Fairness) Bill 2002, the "codes of procedure" introduced by the *Migration Reform Act 1992* were intended –

"to enable decision-makers and tribunals to deal with visa applications, visa cancellations and applications for merits review fairly, efficiently and quickly. It was also intended that these codes would eliminate the legal uncertainties that flow from the non-codified common law principles of natural justice while retaining fair, efficient and legally certain decision-making procedures."

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As the NSW Council's submission points out, there is, and always will be, a tension between the objectives of speed and efficiency, on the one hand, and the requirements of procedural fairness on the other. While Liberty Victoria accepts that visa applicants and visa holders have an interest in speedy disposition of questions concerning the grant or cancellation of visas, there is no warrant for abrogating the fundamental common law safeguards of procedural fairness.

If the Government, and the Parliament, are genuinely committed to procedural fairness in this context, then there should be no shrinking from the rigour of independent judicial review of compliance with its requirements. The legislation should be rejected.

Yours sincerely,



Chris Maxwell
President