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The Secretary
Senate Legal and Constitutional Committee
Suite S1.108
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary

Migration Legislation Amendment (Procedural Fairness) Bill 2002
Migration Legislation Amendment Bill (No. 1) 2002

Australian Lawyers for Human Rights (ALHR) is a network of Australian lawyers committed to promoting awareness of and adherence to human rights in Australia.

We apologise for the delay in making our submission. However, we do observe that the time provided for public consultation on these Bills was inadequate due, we understand, to the very short reporting date given to the Committee by the referring Minister.

ALHR's concern about both Bills is the exclusion of the operation of common law natural justice provisions from migration decisions.

Migration Legislation Amendment Bill (No. 1) 2002

The *Migration Legislation Amendment Bill* (No. 1) 2002 provides that a special purpose visa ceases to be in effect at a specified time if the Minister makes a declaration that it is undesirable for the non-citizen to travel to, enter and remain in Australia. That provision confirms that the rules of natural justice do not apply to the making of such a declaration.

Migration Legislation Amendment (Procedural Fairness) Bill 2002

Codes of procedure were introduced by the *Migration Reform Act* 1992 to enable decision-makers and tribunals to deal with visa issues fairly, efficiently and quickly. In *Re MIMA; Ex parte Miah* [2001] HCA 22 the High Court held that the code of procedure in Subdivision AB of Division 3 of Part 2 of the Act did not exclude common law natural justice requirements. The majority considered that such exclusion would require a clear legislative intention and that there was no such clear intention in the Act.

The *Migration Legislation Amendment (Procedural Fairness) Bill* 2002 sets out the clear legislative intention that specified codes of procedure in the Act are an exhaustive statement of the requirements of the natural justice hearing rule. The amendments in the Bill apply to the codes of procedure in the Act relating to:

- visa applications
- visa cancellations under sections 109, 116 or 128 of the Act
- the revocation of certain visa cancellations
- review of decisions by the Migration Review Tribunal and the Refugee Review Tribunal.

Submission

ALHR supports fair, fast decision making in immigration decisions. The exclusion of common law natural justice requirements from this complex area of decision making is unnecessary in order to achieve this outcome, and abrogates the Government's responsibility to accord procedural fairness. The common law requirements are sufficiently flexible to be able to respond to both the needs of applicants, and the requirements of speed and efficiency, on a case-by-case basis.

Minister Ruddock told the House in his second reading speech that the *Migration Legislation Amendment (Procedural Fairness) Bill* would address "concerns about the growing cost and incidence of migration litigation and the associated delays in removal of non-citizens with no right to remain in Australia". Frequent changes to the *Migration Act* over the past few years have in fact significantly reduced the role of the courts in reviewing immigration decisions.

An immigration policy which features strong measures to deter asylum-seekers need not, and should not, at the same time erode the best practice of Australian administrative law. A balance must be struck. These Bills swing the balance yet further in favour of the Government and a presumption against the claims of asylum-seekers. Insufficient regard is had to the needs and entitlements of asylum-seekers, who must be treated as genuine until proven conclusively not to be so.

I hope that these observations are of assistance. ALHR welcomes the opportunity to appear before the Committee.

Yours sincerely,

Simon Rice
President
Australian Lawyers for Human Rights