SUBMISSION OF

THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

TO

THE SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ON THE

MIGRATION LITIGATION REFORM BILL 2005

Human Rights and Equal Opportunity Commission

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A. Introduction

1. The Human Rights and Equal Opportunity Commission ('the Commission') has been invited by the Senate Legal and Constitutional Legislation Committee ('the Committee') to make submissions on the Migration Litigation Reform Bill 2005 ('the Bill').

2. The Commission welcomes the opportunity to make this submission and thanks the Committee for its invitation. As the Commission has observed previously before the Committee in relation to the provisions of the Migration Amendment (Judicial Review) Bill 2004,[1] ('the 2004 Bill') the Commission supports any measures to enhance the efficient management of migration cases consistently with the protection of human rights.

B. Overview of Commission's Submission

3. Measures intended to promote the efficient management and disposition of migration (and other) cases should not come at the cost of the fundamental rights of those people involved. There are a number of reforms proposed by the Bill that potentially undermine the rights of litigants in migration and other proceedings.

4. Litigants in migration matters are more likely than other litigants to be unfamiliar with the Australian legal system and speak English as a second language. They may also have a history of torture and/or trauma which may significantly impair their ability to manage their legal affairs. The imposition of strict or onerous procedural requirements may therefore place migration litigants at a particular disadvantage. Furthermore, the consequences of such disadvantage in the context of migration litigation are potentially very serious. Especially for persons who are seeking protection as a refugee, the failure of their claim by reason of procedural, rather than substantive, inadequacies may

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[1] Submissions dated 29 April 2004, see http://www.humanrights.gov.au/legal/submissions/migration_amendment.htm.

expose them to 'refoulement' (returning a person to a country where they face persecution) and so breach their human rights.

5. The Commission has previously expressed its concern that the current system for the disposition of claims relating to migration status may be in breach of Australia’s international obligations.[2] The Commission does not seek to repeat those submissions, but notes that the amendments proposed by the Bill do not address those concerns, although the opportunity is presented to do so.

C. The Human Rights and Equal Opportunity Commission

6. The Commission is a body constituted under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (‘the HREOC Act’). The Commission’s functions are set out in section 11 of the HREOC Act and include:

   - inquiring into acts or practices which may be inconsistent with, or contrary to, any human right;
   - promoting an understanding and acceptance of human rights in Australia;
   - undertaking research to promote human rights;
   - examining laws relating to human rights; and
   - advising the federal Attorney-General on laws and actions that are required to comply with Australia’s international human rights obligations.

7. ‘Human rights’ are defined for the purpose of the HREOC Act to include, relevantly for this submission, the rights and freedoms recognised in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).

[2] See, for example, the Commission’s submission of 21 November 2003 to the Migration Litigation Review: http://www.humanrights.gov.au/legal/submissions/migration.html. See also the Commission’s submissions as intervener in a range of litigation involving the *Migration Act 1958* (Cth): http://www.humanrights.gov.au/legal/intervention_info.html.

8. The Commission also notes that there are other international instruments which are relevant to the Committee's considerations, namely:

- The Universal Declaration of Human Rights (UDHR);
- The Convention relating to the Status of Refugees (1951) and Protocol relating to the Status of Refugees (1967) (together 'the Refugees Convention); and
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

D. Non-refoulement

9. Underlying the Commission's concerns in relation to some of the changes proposed by the Bill is the issue of 'non-refoulement'. As the Commission noted in its submissions to the Committee in relation to the 2004 Bill, the prohibition on 'refoulement' (returning a person to a country where they face persecution) is recognised as one of the most fundamental principles in international human rights law. It arises out of Australia's obligations under the Refugees Convention as well as the ICCPR, the CRC and the CAT.[3]

10. Any model of management and disposition of migration cases must contain adequate procedural safeguards to ensure that cases in which a person has a fear of persecution are justly decided. A system which fails to do so will create an unacceptably high risk of refoulement. Such refoulement would obviously have consequences of the highest significance for the individual involved. It would also place Australia in breach of its obligations under the Refugees Convention as well as ICCPR, the CRC and CAT.

[3] See paras 9-15 of the Commission's submission dated 29 April 2004.

E. Time Limits: Items 18, 30-33

11. The Commission submits that judicial review rights should not be denied absolutely on the basis of a failure to comply with time limits. Items 18 and 30-33 of the Bill seek to impose a time limit of 28 days from the date of actual notification of a migration decision within which a person must make an application for a remedy to the Federal Magistrates Court (FMC), Federal Court or High Court. This period may be extended by up to 56 days if the relevant court 'is satisfied that it is in the interests of the administration of justice to do so' and such application for extension is made within 84 days of the actual notification of the decision.

12. There is no provision for any further extension beyond this 84-day period in any circumstances: even where 'the interests of the administration of justice' may require an extension to be allowed.[4] The potential for unjust results is obvious. As the Federal Court has observed: 'absolute, one size fits all, time limits are capable of giving rise to injustice in particular cases'.[5]

13. The Commission repeats the submissions made to the Committee in relation to the provisions of the 2004 Bill that sought to introduce similar time limits (at [18]-[23]):

> It must be remembered that persons making claims under the *Migration Act* may have little familiarity with Australian legal processes, and may face linguistic and cultural barriers to effectively managing their application and advocating on their own behalf. This is particularly the case with asylum seekers who may be fleeing from torture and trauma.
>
> There is also the risk of non-compliance with procedural rules occurring through no fault of the asylum seeker, thereby denying them rights of review which may be essential to their protection from refoulement.
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> For example, in the matter of *Kucuk v Minister for Immigration & Multicultural Affairs*,[6] a facsimile was sent by detention centre staff to the wrong number resulting in the application being lodged out of time and being found to be incompetent. Another example would be where, through the inadvertence or

[4] The Commission does not comment on whether or not the time limits, in as far as they purport to apply to the High Court, are valid under the Constitution.
[5] *W281 v Minister for Immigration and Multicultural Affairs* [2002] FCA 419, [40].
[6] [2001] FCA 535.

incompetence of legal representatives, a person who has a valid claim to protection as a refugee is lead to believe that their application for judicial review has been filed, and only discovers that it has not after the time limit has expired. Such a person would be denied any right to seek judicial review.

That such as result could have been intended by the legislature was described by the Federal Court in *Salehi v Minister for Immigration and Multicultural and Indigenous Affairs*[7] as being 'unfair and irrational'. In *WAFE of 2002 v Miniser for Immigration and Multicultural and Indigenous Affairs*,[8] the Full Federal Court also expressed 'strong disquiet' over the 'manifestly unjust' operation of the absolute time limits existing in the *Migration Act*. The Court noted that such time limits have 'the potential to visit gross injustice upon persons who are in immigration detention' and that the time limit had done so in the case before them.

The Commission does not suggest that there be no time limits or that time limits be ignored. The Commission notes that courts have repeatedly held that it is a prima facie rule that proceedings commenced outside a prescribed period will not be entertained.[9] Time limits are not to be ignored and a Court will not grant an application for an extension of time unless it is positively satisfied that it is proper to do so.[10] Furthermore, the merits of the substantial application are to be taken into account when determining whether or not to grant an extension of time, such that clearly unmeritorious applications are likely to be denied an extension of time.[11]

Ultimately, however, there must be a discretion available to a court to grant an extension of time in appropriate (if only rare) cases to avoid injustice and, particularly in the context of protection visa decisions under the *Migration Act*, breaches of human rights.

14. The Commission notes that one specific effect of strict time limits is to prevent a party from remedying an application that incorrectly names the respondent where that defect is discovered out-of-time.[12] It is not difficult to see the potential for injustice that this raises in the case of unrepresented applicants, particular those who are unfamiliar with the Australian legal system and/or have a first language other than English.

15. The Commission nevertheless submits that the aim of discouraging out-of-time applications can still be achieved while avoiding potential injustice by framing a

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[7] [2001] FCA 995, [50].
[8] (2002) 70 ALD 57, 62-3 [36].
[9] *Lucic v Nolan* (1982) 45 ALR 411, 416; *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344, 348.
[10] *Ralkon Agricultural Co Pty Ltd v Aboriginal Development Commission* (1982) 43 ALR 535, 550; *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344, 348.
[11] *Lucic v Nolan* (1982) 45 ALR 411, 417; *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344, 349.
[12] See, for example, *Barzideh v Minister for Immigration and Multicultural Affairs* (1997) 72 FCR 337.

provisions in the following terms (taking as an example the proposed time limits on applications to the FMC (Item 18 of the Bill)):

477 Time limits on applications to the Federal Magistrates Court

(1) An application to the Federal Magistrates Court for a remedy to be granted in exercise of the court's original jurisdiction under section 476 in relation to a migration decision must be made to the court within 28 days of the actual (as opposed to deemed) notification of the decision.

(2) The Federal Magistrates Court may, by order, extend that 28 day period if the Federal Magistrates Court is satisfied that it is in the interests of the administration of justice to do so.

(3) For the purposes of subsection (2), in determining whether it is in the interests of the administration of justice to extend that 28 day time period, the Federal Magistrates Court must consider:

(a) the extent of the delay in bringing the application;
(b) the reason(s) for the delay in bringing the application;
(c) the prospects of success of the application referred to in subsection (1); and
(d) any other relevant circumstance.

(4) The person applying for an order under subsection (2) bears the onus of satisfying the Federal Magistrates Court that it is in the interests of the administration of justice to extend that 28 day time period.

16. Similar wording would be appropriate in relation to the time limits proposed for the Federal Court and the High Court. The Commission submits that items 18 and 30-33 of the Bill should be amended in the terms suggested.

17. Further arguments in support of retaining an appropriate level of judicial discretion to extend time limits are given in relation to Item 37 (see part F below), Items 7-9 (see part G below) and in the context of protecting the rights of children (see part I below).

F. Disclosure of Previous Applications: Item 37

18. Item 37 of the Bill provides that a person 'must not commence a proceeding' in relation to a tribunal decision in either the FMC, the Federal Court or the High Court 'unless the person, when commencing the proceeding, discloses to the court any judicial review proceeding already brought by the person in that or any other court in relation to that decision'.

19. The Commission acknowledges that it may assist courts to identify attempts by applicants to re-litigate matters if applicants are required to disclose previous applications for judicial review of the same migration decisions. However, the Commission is concerned about the manner in which the Bill seeks to impose this requirement, particularly when combined with the absolute time limits contemplated by the Bill.

20. Put simply, this Item may create another procedural trap for litigants. If an applicant fails to meet the formal requirements proposed, their application may subsequently be held to be invalid. However, such invalidity may only be discovered some time after the application has been lodged, by which time the strict time limits imposed for the commencement of proceedings may have passed. This is obviously a particular problem for unrepresented persons, especially those who unfamiliar with the legal system and for whom English is a second language.

21. An analogous situation arose in the matter of *Barzideh v Minister for Immigration and Ethnic Affairs*,[13] in which an applicant had failed to name the Minister as a party to the application. As the error was discovered only after the time limit for commencing applications had passed, it was not possible for a new application to be made naming the correct respondent. Hill J commented that he was 'constrained by the legislature to sit idly by while injustice is

[13] (1997) 72 FCR 337.

done'.[14]

22. This situation can be avoided by allowing courts the discretion to extend time in the manner suggested in paragraph 14 above. If a court has such discretion it will be able to extend time where it is in the interests of the administration of justice to do so, as may be the case where the failure to comply with procedural requirements is minor or inadvertent.

G. Powers of Summary Dismissal: Items 7-9.

23. Items 7-9 of the Bill give the FMC, Federal Court and High Court the power to give summary judgment for a party where an application or defence has no reasonable prospect of success. To have no reasonable prospect of success, it is not necessary for a proceeding to be either 'hopeless' or 'bound to fail'. These proposed provisions are of general application and are not limited to migration cases.

24. The Commission opposes the extension of the power of summary judgment. In the Commission's view, a power of summary dismissal should only be used sparingly, given the significant impact such decisions may have upon a person's rights. This is the approach that has been taken under the common law and should not be altered. As Barwick CJ observed in *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 (at 130):

> great care must be exercised to ensure that under the guise of achieving expeditious finality a plaintiff is not improperly deprived of his opportunity for the trial of his case…[15]

25. The present proposal potentially raises difficulties for unrepresented persons, particularly from non-English-speaking backgrounds, who may have difficulty in adequately formulating their case at an early stage of proceedings. The Federal Magistrates Court has acknowledged that '[a]pplicants cannot be

[14] Ibid 341.
[15] See also *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62, 91-92 (Dixon J).

reasonably be expected to present sound or comprehensive legal argument personally'.[16]

26. The changes proposed by the Bill are similar to those proposed by the Australian Law Reform Commission ('ALRC') in its review of the federal civil justice system.[17] The ALRC recommended that a court be able to give summary judgment against an applicant or respondent if:

- it considers that
    - the applicant has no real prospect of succeeding on the claim or issue; or
    - that respondent has no real prospect of successfully defending the claim or issue; and
- there is no other reason why the case or issue should be disposed of at trial.[18]

27. The Commission notes that the Government did not support this recommendation in its response to the report and it was not implemented at that time. Its response was as follows:

> The Government does not support amendment of the Federal Court of Australia Act 1976, as it considers that the existing provisions concerning summary judgments are adequate. The Federal Court has advised that it considers the current Federal Court Rules with regard to summary judgments to be adequate.[19]

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[16] Federal Magistrates Court, *Annual Report* 2002-03, 26.

[17] Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, ALRC 89 (2000).

[18] Ibid, Recommendation 94. This recommendation mirrors the test for summary judgment in rule 24.2 of the *Civil Procedure Rules 1999* (UK) that was introduced following the 'Woolf Inquiry': see Lord Woolf *Access to justice: Final report to the Lord Chancellor on the civil justice system in England and Wales* (1996), Chapter 12, [30]-[36], available at http://www.dca.gov.uk/civil/final/index.htm.

[19] Government Response to Recommendations of Australian Law Reform Commission Report Managing Justice: A review of the federal civil justice system (ALRC 89), available at http://www.alrc.gov.au/inquiries/title/alrc89/Government%20ResponseRTF.rtf, 41.

28. The Federal Court, in its submission to the ALRC, said the proposal was 'too general and does not give sufficient recognition to the gravity and difficulty of giving judgment against someone without a trial'.[20]

29. The Law Council of Australia submitted that

> it would be unjustified to seek to make more liberal the test for striking out or summarily dismissing a case or entering summary judgment against a defendant. This is because the current test is couched in terms which ask the question whether the case is fit to go to a full trial. Any test which is more liberal than that, poses the real danger that courts will be abdicating their proper role of adjudicating disputes by hearing both sides ... It is very difficult for that test to be relaxed, without the system overtly embracing the possibility of some meritorious cases or defences being ignored, in the interests of supposed systemic efficiency. That is the antithesis of individual justice.[21]

30. It is significant to note that the proposal contained in the present Bill does not contain the additional requirement upon the exercise of the power to give summary judgment contained in the ALRC proposal, namely that 'there is no other reason why the case or issue should be disposed of at trial'. It is unclear why this additional requirement has been omitted from the present Bill. The Commission submits that in the event that a court is to be given greater powers to give summary judgment, it is appropriate that it be required to consider other reasons why the case should be dispose of at trial, such as a public interest in the matter proceeding to trial or the potential that an applicant may face refoulement if their claim is summarily dismissed.

31. In addition to migration cases, the Commission notes that these provisions will also apply to cases brought before the FMC and Federal Court under the HREOC Act alleging unlawful discrimination contrary to the the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth). The Commission is concerned that an expanded power of summary

[20] ALRC, above n 17, [7.208].
[21] Ibid [7.207].

dismissal may have the effect of preventing people from pursuing remedies for breaches of their human rights as set out in those laws: for example, where they face difficulties in formulating their claim at an early stage in proceedings.

H. Deterring Unmeritorious Applications: Item 38

32. Item 38 of the Bill seeks to prevent the encouragement of migration litigation which has no reasonable prospect of success. It does so largely by exposing a person who 'encourages' such litigation to a costs order. While not supporting the encouragement of unmeritorious applications, the Commission opposes this aspect of the Bill.

33. The term 'encourage' is not defined. It is potentially a very broad one, and may include notions of 'suggestion' or 'providing assistance'.[22]

34. The Commission is concerned that the impact of this proposed change may be to discourage people from providing advice and representation to people involved in migration litigation. For persons seeking asylum, this may prevent them from effectively pursuing valid claims they may have to Australia's protection. Laws governing visas applications and migration litigation are far from simple and the Commission submits that effective advice and representation is essential in ensuring that applicants are able to make and pursue valid claims.

35. The Commission further notes that the absence of effective advice and representation may work counter to the stated aims of the Bill: rather than promoting the efficient resolution of migration litigation, such a development may result in the bringing of unmeritorious claims and/or the bringing of claims in a fashion that requires greater time on the part of the court to resolve them. The Bills Digest in relation to the present Bill suggests that Parliament consider

[22] See, for example, *Comcare v Mather* (1995) 56 FCR 456, 462 in which Kiefel J stated, in the employment context: 'In my view, "encouragement" is not to be taken as of narrow meaning and limited to some positive action and in specific terms which might lead the employee to undertake a particular activity or attend at a particular place… To be said to have, expressly or impliedly, induced or encouraged an undertaking or presence at some location could refer to, by way of example only, requirements, suggestions, recognition of practices, fostering of participation, or providing assistance and may include the exercise of discretion or choice on the part of the employee.'

whether this proposal 'would discourage lawyers and/or migration agents offering advice to potential applicants, leading to more unrepresented (and potentially less meritorious) applications' (p 6).

36. The Bill, in effect, requires lawyers and migration agents, amongst others, to withhold assistance for a person seeking to commence migration litigation where the lawyer or migration agent is of the view that the litigation has no reasonable prospect of success. The Commission is of the view that it is inappropriate for assistance to be withheld on such a basis for a number of reasons. First, it places advisers in a quasi 'gatekeeper' role, using them as a means for limiting the ability of applicants to commence and continue migration litigation. While advisers should obviously advise clients as to prospects of success, it is ultimately a matter for the court to determine the merits of an application. The fact that a person may appear to have an unmeritorious case is not, in the view of the Commission, sufficient reason to deny them legal advice and representation. Second, it may assist a court to properly consider and dispose of a matter (including by way of summary dismissal) if it is properly framed from the outset with the assistance of competent advice and representation.

37. The Commission further notes that there may be a number of reasons for the commencement and continuation of unmeritorious litigation, such as ignorance of the law or an inability to properly frame an application, and this might be dealt with by addressing the cause rather concentrating solely on the effect. The Commission made the following submission in relation to the 2004 Bill (at [29]):

> … an alternative measure which might both reduce the number of unmeritorious claims brought before the Courts and also enhance the protection of human rights would be to increase the availability of legal advice, assistance and representation available to individuals involved in migration litigation.[23]

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[23] Other structural features of the current system may also play a part in the prevalence of unmeritorious applications. The Commission drew attention to one of those features in its submission to the Committee in relation to the 2004 Bill (at [30]):

> … risk of refoulement contrary to the ICCPR, the CRC or CAT is not presently a sufficient basis for a claim for a protection visa under the Migration Act, unless the breach of rights

38. The Australian Law Reform Commission has noted:

> 7.131 The Commission's survey of Federal Court cases found that 31% of sampled migration cases involved an unrepresented litigant. The other party, the Minister for Immigration and Multicultural Affairs, is a repeat player represented by practitioners experienced in the area. Some judges have commented that many unrepresented applicants have little understanding of the nature of judicial review. Justice Wilcox commented on an applicant who was unrepresented, in detention, unable to read English and who could not read the Refugee Review Tribunal's decision (in English and not translated).
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> > The number of applications filed in the New South Wales District Registry for judicial review of decisions of the Refugee Review Tribunal is running this year at a rate more than twice that of last year. It is the experience of my colleagues, as well as myself, that a large proportion of these matters are commenced by a stereotyped form of application that is uninformative and bears little relationship to what the applicant says at the hearing. It seems the filing of an application for review has become an almost routine reaction to the receipt of an adverse decision from the Tribunal.
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> He went on to say
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> > The solution is not to deny a right of judicial review. Experience shows a small proportion of cases have merit, in the sense the Court is satisfied the Tribunal fell into an error of law or failed to observe proper procedures or the like. In my view, the better course is to establish a system whereby people whose applications are refused have assured access to proper interpretation services and independent legal advice. If that were done, the number of applications for judicial review would substantially decrease. Those that proceeded would be better focussed and the grounds of review more helpfully stated. If applicants cannot afford legal advice, as is ordinarily the case, it ought to be provided out of public funds. The cost of doing this would be considerably less than the costs incurred by the Minister under the present system, in instructing a solicitor (and usually briefing counsel) to resist all applications, a substantial number of which have no merit and are ill-prepared. That is to say nothing about the desirability of relieving the Court from the burden of finding hearing dates for cases that should not be in the list at all. [Mbuaby Paulo Muaby v MIMA [1998] 1093 FCA 20 August 1998][24]

39. The Commission notes that courts already have a discretion to award costs against lawyers where they commence or maintain proceedings which have no or substantially no prospects of success and there exists an ulterior purpose,

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feared also gives rise to Australia's protection obligations under the Refugees Convention. This may mean that 'unmeritorious' claims for a protection visa are brought for want of another basis for seeking protection. The introduction of a system for dealing with claims in relation to refoulement under the ICCPR, the CRC and CAT may relieve some of the pressure on the system caused by those cases being brought as protection visa applications.

[24] ALRC, above n17.

abuse of process or serious dereliction of duty.[25] Legal practitioners also 'have a duty to the court to ensure that the court's process is not abused and used for improper or ulterior purposes'.[26] The Commission submits that it is therefore unnecessary and, for the reasons above, inappropriate and potentially counter-productive, to seek to extend the power to award costs against persons 'encouraging' the commencement or continuation of migration litigation in the manner contemplated by the Bill.

I. Rights of Children

40. The Commission notes finally that the present provisions fail to take into account the vulnerabilities of children who may be involved in migration litigation. It is conceivable, for example, that the guardian of a child who is seeking protection as a refugee may miss a strict deadline, fail to meet a strict procedural requirement or wrongly name the respondent. The result of this may be to deny that child the ability to pursue their claim through no fault of their own. This emphasises the need for a court to retain discretion to allow the commencement or amendment of proceedings outside the time limit proposed by Items 18 and 30-33, to ensure their ability to do justice.

41. The Commission raised its concerns with the Committee previously in the context of the 2004 Bill (at [24]-[27]):

> Special consideration should be given to the rights of children seeking protection visas under the *Migration Act*.
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> One of the overarching requirements of the CRC is that in all actions concerning children (defined as being persons under the age of 18), the 'best interests' of the child shall be a primary consideration (article 3(1)).
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> Article 22 of the CRC makes specific provision for children asylum seekers. It provides:
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> 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with

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[25] See, for example, *Da Sousa v Minister of State for Immigration, Local Government and Ethnic Affairs* (1993) 114 ALR 708 (1993); *White Industries (Qld) Pty Ltd v Flower & Hart (a firm)* (1998) 156 ALR 169, 231.

[26] *White Industries (Qld) Pty Ltd v Flower & Hart (a firm)* (1998) 156 ALR 169, 231.

> applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

The Commission submits that the rights of children are of particular relevance when considering procedural requirements such as time limits. The vulnerability of children seeking asylum, particularly those who are unaccompanied, may require special flexibility in relation to rules and procedures. Any measure which denies children review rights on the basis of a failure to comply with specific provisions of the *Migration Act* should be very carefully scrutinised to ensure that it does not breach article 22 of the CRC and allows for a proper consideration of the best interests of the child, consistent with article 3(1).

Human Rights and Equal Opportunity Commission

6 April 2005