

## **Additional Comments by Senator Andrew Bartlett**

1.1 My assessment of the evidence provided to the Committee is that the legislation puts efficiency above fairness and justice. It appears to increase the risk of an unfair process and an incorrect outcome in determining refugee or migration cases. It is true that promptness is generally of benefit to appellants, as well as to the Tribunal and the Department. However, this should not occur at the risk of an unjust outcome.

1.2 The mantra of 'improving efficiency' has been used a number of times over the past decade to justify a series of amendments to the Migration Act put forward by the current government. In most cases, the impact has also been to constrain the rights of applicants and appellants. In most cases, the consequences have been more delays and appeals. I believe it is time more attention was paid to improvements at the primary decision making level, rather than cutting off avenues of procedural fairness. Statistics given to the Committee and contained in the Annual Report of the Migration Review Tribunal show that over 50% of primary decisions made at Departmental level are overturned at the MRT. It is obvious that the Department's processes are seriously lacking if they are getting it wrong so regularly. It is also time to review the Migration Act with an aim to reducing the complexity and red tape involved in the multitude of visa categories.

1.3 A good point that all witnesses make is that every new amendment to the Migration Act opens up new avenues of legal challenge and is likely to clog up the courts even more. This is because the proposed amendments will create a new series of tests that will have to be assessed. This is a pattern in common with many of the past amendments that have been put forward by the government with the stated intent of improving 'efficiency', but which have led instead to more appeals and greater delays.

1.4 Having an oral hearing without a written follow up can mean applicants and their representatives do not know exactly what the issues are that need addressing. These things can be easily missed at a hearing, particularly given language barriers and, in the case of refugee claims, the traumatic nature of some of the issues being examined. The advantage of the current process is that, while it may be more time consuming, it is very clear what the pivotal issues are.

1.5 I do not believe sufficient evidence was provided to the Committee to make yet another change to the Migration Act, which has already been subjected to a multitude of amendments over recent years.

**Andrew Bartlett**

**Queensland Democrat Senator**