



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

Ms Jackie Morris
Committee Secretary
Senate Committee on Legal and Constitutional Affairs
Department of the Senate
Parliament House
Email: legcon.sen@aph.gov.au

Dear Ms Morris

**INQUIRY BY THE SENATE LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE INTO THE MIGRATION AMENDMENT
(REVIEW PROVISIONS) BILL 2006**

Thank you for the opportunity to provide comments on the Migration Amendment (Review Provisions) Bill 2006.

The Tribunals consider that the proposed amendments will benefit applicants for review and enhance the ability of the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) to meet their statutory obligations to provide reviews that are fair, just, economical, informal and quick.

The Tribunals' experience with the operation of the current provisions is that having to repeat to an applicant in writing what has been dealt with comprehensively at a hearing is often inappropriate and unnecessary in determining a review in a fair, just, economical, informal and quick manner. In many cases, this information is uncontested information which had been provided by the applicant to the department and which had been set out in the delegate's reasons, such as the date of the visa application or the applicant's nationality as evidenced by his or her passport.

In conducting merits reviews, the Tribunals should be able to put adverse information to applicants in a way that is most appropriate given the nature of the information and the circumstances of individual applicants and their cases. Providing the Tribunals with the discretion to decide to do so orally or in writing or both will better enable the Tribunals to meet their statutory obligations. The absence of a discretion to provide adverse information to an applicant orally or in writing has led to cases being prolonged, including for applicants in detention. There is often a duplication of effort for members and for applicants and their representatives, leading to unnecessary costs, and increased stress and inconvenience to applicants.

Under sections 360 and 425 of the Migration Act, the Tribunals are obliged to invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review (“the hearing”). Hearings have been and should continue to be an important component of the review process. A hearing allows the applicant to directly communicate with the decision maker and put his or her case forward. A hearing allows evidence to be taken under oath or affirmation. In conducting a hearing, there is an obligation upon the Tribunals to raise with an applicant any issues or concerns with the evidence or the case being presented.

Given the limited English language skills of a significant proportion of applicants, the opportunity to explain and comment on adverse information is best achieved at a hearing in the presence of an interpreter. Applicants have had time to prepare for the hearing, and at the hearing issues and concerns can be fully explained and explored by both the Tribunal and the applicant. In 2005-06, 66 % of MRT cases and 90% of RRT cases were conducted with the assistance of an interpreter.

The inclusion in the Bill of requirements for the Tribunal to provide at a hearing clear particulars; to ensure as far as reasonably practical that the applicant understands the relevance of the information, and the consequences of the information being relied upon; and to consider reasonable requests for additional time to comment, are appropriate safeguards aimed at ensuring that any invitation to comment on adverse information is done in a fair and just manner. The Tribunals will continue to be able to issue invitations in writing in accordance with sections 359A and 424A, where it is appropriate to do so after a hearing has been held.

In summary, the Tribunals view the proposed amendments as positive improvements to the merits review process. There would be no diminution of procedural fairness. On the contrary, applicants would benefit from enhancements to the way in which hearings are conducted and the Tribunals would be able to more effectively and fairly discharge their statutory obligation by dealing with matters in the most appropriate manner based on the circumstances of an individual case.

The Tribunals welcome the opportunity to comment further on the proposed amendments in evidence to the Committee on the 31st of January.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Karas', with a stylized flourish at the end.

Steve Karas
Principal Member

24 January 2007