



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 further comments in response to the evidence given at the public hearing on 31 January 2007.

As the Committee will be aware, the Tribunals responded to Questions on Notice on 8 February 2007. The Tribunals do not propose to comment further on those matters.

Having reviewed and considered the proof Hansard, the Tribunals wish to reiterate that the cases that come before the Tribunals frequently involve complex issues and a diverse range of applicants who are recognised by the Tribunals' Members as often being in difficult or vulnerable circumstances.

In the Tribunals' view, the amendments do not seek to redefine or limit the notion of a "fair" review nor are they inconsistent with the common law rules of natural justice. It should be noted that the scheme for consideration of reviews under the *Migration Act 1958* is inquisitorial and includes an obligation, subject to limited exceptions, on the Tribunals to invite applicants to appear at an oral "hearing" to give evidence and present arguments relating to the issues arising in a review.

One point that I sought to make in my written submission of 24 January 2007, is that it is important not to underestimate or devalue the significance of hearings in the review process. In my experience hearings are the most appropriate and effective way of eliciting and understanding an applicant's case and communicating concerns and issues in the review.

Where an applicant has an experienced representative, the responses to written invitations are usually detailed and comprehensive. In other cases, the responses to written invitations can be very limited. At hearings, Members are able to assess the

applicant's understanding by the responses given and are able to ask further questions to draw out the applicant's claims and evidence.

As with the common law rules of procedural fairness, the amendments will permit the Tribunals to put adverse information which is relevant to the decision under review to an applicant in a manner which is considered most appropriate in the particular circumstances of a case. In some circumstances, the most appropriate way may be to invite comments in writing. In other circumstances, the most appropriate way may be to invite comments at hearing.

The amendments contain safeguards to ensure that fairness is afforded to applicants whether the relevant information is provided orally or in writing. The Tribunals' exercise of this discretion and other discretions such as those relating to adjournment of proceedings will remain subject to judicial supervision.

The Tribunals endeavour to ensure a consistent and fair approach by Members through the provision of written directions and guidance to Members and through the ongoing professional development of Members. The Tribunals have published directions and guidelines in relation to the general conduct of reviews, on the use of interpreters, the role of representatives, on the assessment of credibility and on the taking of evidence from children. The Tribunals also provide extensive guidance to Members in relation to the conduct of reviews and legal issues through the Tribunals' Procedural Guide and Legal Issues Papers, extracts from which were provided with the replies to the Questions on Notice.

Finally, the Tribunals note that tape recordings of hearings are made available to all applicants. As indicated in the evidence given by others to the Committee, applicants and their representatives may make further submissions and provide further evidence to the Tribunals to consider up until the time decisions are notified to applicants.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Steve Karas', written in a cursive style.

Steve Karas
Principal Member

15 February 2007