



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Secretary

Mr John Lynch
Registrar
Refugee Review Tribunal
Locked Bag A3
SYDNEY SOUTH NSW 1235

Dear Mr Lynch

I am writing to you under subsection 423(2) of the *Migration Act 1958* (the Act) regarding consideration by the Refugee Review Tribunal of the "seven day rule" which applies to the criterion contained in sub-regulation 866.215(1) of the Migration Regulations 1994.

There has recently been a small number of cases in which the Tribunal's decision in relation to whether to consider the application of the seven day rule has been challenged in the Court. These cases raise the question of the extent of the Tribunal's jurisdiction to consider the application of the seven day rule and related waiver power when considering a review application.

In order to clarify this issue, the Department earlier this year sought legal advice from the Australian Government Solicitor. That advice is now to hand and indicates that:

- if the Tribunal finds that the applicant is not owed protection obligations by Australia, it is not necessary for the Tribunal to consider other criteria for the visa, including whether or not the applicant has requested the Tribunal to consider the seven day rule and/or waiver;
- if the Tribunal finds that the applicant is owed protection obligations by Australia, the Tribunal need only address the question of the seven day rule and/or the waiver if the applicant requests the Tribunal to consider those issues; and
- if the Tribunal finds that the applicant is owed protection and the applicant does not request the Tribunal to consider the seven day rule and/or waiver, the Tribunal is not legally obliged to deal with those issues, but may do so if it so chooses.

The Department has in place detailed guidelines for decision-makers to administer the seven day rule and waiver in an efficient and consistent manner. I have attached a copy of those guidelines for your information.

In the interests of efficiency and to enable the Tribunal to focus on protection issues, I ask that the Tribunal:

- not make findings on the seven day rule and/or the waiver in cases where the Tribunal considers that protection obligations are not owed;
- leave for Department consideration, issues of the seven day rule and/or waiver in cases where the Tribunal considers that protection obligations are owed, but has received no request from the review applicant for these issues to be decided by the Tribunal; and
- apply the seven day rule and waiver provisions consistent with the Department's guidelines for primary decision makers in cases where the Tribunal is obliged to consider these issues – ie cases where the Tribunal considers that protection obligations are owed and the review applicant has specifically requested the RRT to address these matters.

Should you have any queries on this matter, please contact Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch on (02) 6264 4677.

Yours sincerely

W J Farmer
11 May 2005