



IMMIGRATION (AMENDMENT) BILL 2011

Joint Submissions of the Law Society and Bar Association

The Joint Working Group on CAT notes the discussion of the Bills Committee on the 28-day timeframe for torture claimants to return their completed torture claim forms required under the proposed section 37Y. In response to the Administration's view that the 28-day timeframe is reasonable, we make the following submissions.

The Director of Immigration has advised the DLS and assigned lawyers from TCAS that all that is required is a simple statement of fact as to the relevant events. However, CAT claims are not as simple as that, and require the following action by the assigned lawyer who is conscientiously carrying out his work:

- A close examination of the entire Immigration record
- The obtaining, if possible, of *specific* and up-to-date information and evidence from the country of origin, including witness statements or affirmations of support;
- The collation of up to date general country information from reliable sources;
- The obtaining, if possible, of information from the UNHCR, in cases where a claim for recognition of refugee status has been made (see *Prabakar*, where the CFA said that this information will be highly relevant to the CAT claim);
- The obtaining of medical reports on physical/mental sequelae (if applicable)

Once this information is obtained, then the Questionnaire can be completed and lodged.

We have received information from practitioners the Director has, in some cases, rejected requests for extensions of time, even where compelling reasons have been put forward. In some instances, the Director has then proceeded to make a decision on the basis of virtually little or no information.

The pressure on lawyers to lodge Questionnaires within the 28 days is therefore constant, and repeated. It is incumbent, of course, on any assigned lawyer to prepare a case fully, and resist

the pressure to lodge a Questionnaire without the benefit of full instructions, full examination of relevant papers, and collection of evidence.

We consider it dangerous to design a system which encourages the lodgment of documents which are under-prepared and incomplete.

We urge the Bills Committee to reject the Administration's assertions that 28 days provides lawyers with adequate time to prepare their client's questionnaire. The data provided by the Duty Lawyer Service clearly indicates the average time to process a Questionnaire is 48 days, thus some applications under the scheme necessarily take longer and others a shorter period of time.

Administratively, it would be sensible to provide a timeframe which is workable and in our view the 28 day period is clearly insufficient for average claims. The minimum should be at least 48 days but given the complexities of many claims a more realistic period should be allocated, namely 90 days.

There is no compelling reason why in designing the system the minimum period should be adopted as the time frame and in consequence leave the Applicant and his legal advisers to the vagaries of the Director's discretion. The unfavourable exercise of discretion by the Director may then unnecessarily generate satellite litigation in the Courts.

The Law Society of Hong Kong and The Hong Kong Bar Association

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