

Attachment B

Administrative Review Tribunal (Miscellaneous Measures) Bill 2024 - Requirements for a valid application under the *Migration Act 1958 (Cth)*

	<u>Current state – pre reform</u>	<u>Under ART (C&T No. 1) Act</u>	<u>Under Miscellaneous Measures</u>	<u>Description</u>
Information to be included	347 (1) An application for review of a Part 5 - reviewable decision must: (a) be made in the approved form;	347 (2) The application must: (a) include the prescribed information (if any); and (b) be accompanied by the prescribed documents (if any)	347 (2) The application must be made, and any prescribed information or prescribed documents must be provided: 	<p>The requirements for information that must be included for making a valid application for merits review in CT1 and Misc Measures are the same.</p> <p>Before the reform, applicants could only make a valid application by using the prescribed form. CT1 changed these requirements, instead allowing applicants to make an application by providing certain information or documents, rather than needing to complete a form. This provides more flexibility for parties applying to the Tribunal.</p>

<p>Fees</p>	<p>347 (1) An application for review of a Part 5 - reviewable decision must:</p> <p>...</p> <p>(c) be accompanied by the prescribed fee (if any).</p>	<p>347 (2) The application must:</p> <p>...</p> <p>(c) be accompanied by the prescribed fee (if any)</p>	<p>347 (3) Any prescribed fee must be paid:</p> <p>(a) for an application for review of a reviewable migration decision—within the period specified in subsection 347(2); or</p> <p>(b) for an application for review of a reviewable protection decision—within the prescribed period (which may end after the review of the decision).</p>	<p>The wording “must be accompanied by the prescribed fee” means that the fee must be paid within the time limit for making the application: see Fees Administrative Appeals Tribunal (aat.gov.au) which makes clear it must be paid <u>within the time limit for making the application</u>.</p> <p>The amendment in Misc Measures includes the same requirement but more clearly explains that the fee must be paid in the time limit for making the application for reviewable <u>migration</u> decisions. <u>This does not change the current requirements</u>.</p> <p>Paragraph (3)(b) is included to ensure that it is clear that protection applicants <u>do not have to pay the fee</u> to have a valid review application. The regulations (which have recently been amended to align with the ART reform) provide that the fee does not become payable until the Tribunal’s consideration <i>ins</i> conclude. They prescribe that protection applicants must pay the fee within 7 days of being notified of the Tribunal’s decision, and only if the refusal of a protection visa is affirmed.</p>
--------------------	---	--	--	---

<p>Timeframes</p>	<p>347 (1) An application for review of a Part 5 - reviewable decision must:</p> <p>...</p> <p>(b) be given to the Tribunal within the prescribed period, being a period ending not later than:</p> <p>(i) if the Part 5 - reviewable decision is covered by subsection 338(2), (3), (3A), (4) or (7A)--28 days after the notification of the decision; or</p> <p>(ii) if the Part 5 - reviewable decision is covered by subsection 338(5), (6), (7) or (8)--70 days after the notification of the decision; or</p> <p>(iii) if the Part 5 - reviewable decision is covered by subsection 338(9) -- the number of days prescribed, in respect of the kind of decision in question prescribed for the purposes of that subsection, after the notification of the decision;</p>	<p>347 (3) An application must be made:</p> <p>(a) if the applicant is in immigration detention on the day the applicant is notified of the decision—within 7 days after the day the applicant is notified of the decision; or</p> <p>(b) otherwise—within 28 days after the day the applicant is notified of the decision.</p>	<p>347 (2) The application must be made...:</p> <p>(a) if the applicant is in immigration detention on the day the applicant is notified of the decision—within 7 days after the day the applicant is notified of the decision; or</p> <p>(b) otherwise—within 28 days after the day the applicant is notified of the decision.</p>	<p>The amendment in CT1 was intended to harmonise timeframes to apply for review to either 7 or 28 days.</p> <p>The timeframes in Misc Measures are identical to those in CT1.</p>
--------------------------	---	---	---	--

<p>Requirements for an application to be valid</p>	<p>348 Tribunal to review Part 5-reviewable decisions</p> <p>(1) Subject to subsection (2), if an application is properly made under section 347 for review of a Part 5 - reviewable decision, the Tribunal must review the decision.</p> <p>.</p>	<p>348 ART to review reviewable migration decisions and reviewable protection decisions</p> <p>(1) If an application to the ART for review of a reviewable migration decision or a reviewable protection decision is properly made under sections 347 and 347A, the ART must review the decision.</p> <p><i>Note: The ART has no jurisdiction to review a decision if the application for review is not properly made.</i></p>	<p>348 ART to review reviewable migration decisions and reviewable protection decisions</p> <p>(1) If an application to the ART for review of a reviewable migration decision or a reviewable protection decision is properly made under sections 347 and 347A, the ART must review the decision.</p> <p>(2) If such an application is not properly made, the ART must not review the decision.</p> <p>(3) An application under sections 347 and 347A is properly made if, and only if:</p> <p>(a) the application is made within the period specified in subsection 347(2); and</p> <p>(b) any information and any documents prescribed under subsection 347(2) for the application are provided within the period specified in that subsection; and</p> <p>(c) for an application for review of a reviewable migration decision—any fee prescribed under subsection 347(3) for the application is paid</p>	<p>The AAT has a clear pathway to deal with applications that have not been properly made by making a no jurisdiction finding. This is due to the use of “must” in relation to application requirements in s 347(1) and the words in s 348(1), stating the tribunal must review applications that are properly made, which means no power is conferred on the Tribunal to hear a review application that is not properly made. This is consistent with CT1 and Misc Measures.</p> <p>The Misc Measures amendment adds clarity by:</p> <ul style="list-style-type: none"> - converting the existing note that the Tribunal lacks jurisdiction to consider improperly made applications to an operative provision, and - listing the requirements for an application to be properly made in a single place.
---	---	---	---	---

			<p>within the period specified in subsection 347(2); and</p> <p>(d) for an application covered by section 347A—the application is made by a person permitted by that section to make the application.</p>	
<p>Interaction with the Tribunal’s Act</p>	<p><i>Administrative Appeals Tribunal Act 1975</i></p> <p>24Z Scope of operation of this Part</p> <p>(1) Except for the provisions specified in subsection (2), this Part does not apply in relation to a proceeding in the Migration and Refugee Division.</p> <p><i>Note 1: For the conduct of proceedings in the Migration and Refugee Division, see Parts 5 and 7 of the Migration Act 1958.</i></p> <p><i>Note 2: Enactments that authorise the making of applications for review to the Tribunal can add to, exclude or modify the operation of this Part.</i></p> <p>(2) The following provisions of this Part apply in relation to a proceeding in the Migration and Refugee Division:</p>	<p><i>Administrative Review Tribunal Act 2024</i></p> <p>336P Interaction with the ART Act</p> <p>(1) Subject to section 357A of this Act, the ART Act applies in relation to a review by the ART of reviewable migration decisions and reviewable protection decisions unless this Part expressly provides otherwise.</p> <p>(2) The following provisions of the ART Act do not apply in relation to the review by the ART of reviewable migration decisions or reviewable protection decisions:</p> <p>[list of provisions]</p> <p><i>Note: Other provisions of this Part turn off or otherwise modify the operation of other provisions of the ART Act.</i></p>	<p><i>Administrative Review Tribunal Act 2024</i></p> <p>336P Interaction with the ART Act</p> <p>(1) Subject to section 357A of this Act, the ART Act applies in relation to a review by the ART of reviewable migration decisions and reviewable protection decisions unless this Part expressly provides otherwise.</p> <p>(2) The following provisions of the ART Act do not apply in relation to the review by the ART of reviewable migration decisions or reviewable protection decisions:</p> <p>[list of provisions, with the following additions]</p> <p>(ia) section 97 (Tribunal must dismiss application if decision is not reviewable decision);</p>	<p>Section 24Z of the AAT Act has not been replicated in the ART Act. The effect of this is that the ART Bill will apply in relation to migration and protection matters, except where its provisions are explicitly displaced or modified by the Migration Act.</p> <p>Sections 347, 348 and 348A of the Migration Act exhaustively set out the requirements to make an application, and how the Tribunal must deal with applications that are properly and improperly made.</p> <p>The ART Act provisions – which provide the Tribunal with explicit powers to dismiss a matter where it does not have jurisdiction to review a matter, and when fees have not been paid, do not need to apply in addition to the Migration Act arrangements. They are displaced to avoid confusion.</p>

	(a) section 25; (b) section 42.		(ib) section 98 (Tribunal may dismiss application if fee is not paid); <i>Note: Other provisions of this Part turn off or otherwise modify the operation of other provisions of the ART Act.</i>	
--	------------------------------------	--	---	--