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30 September 2025

Ms Monika Sheppard

A/g Committee Secretary

Senate Legal and Constitutional Affairs Legislation Committee

via email: LegCon.Sen@aph.gov.au

Dear Ms Sheppard

**Inquiry into the Administrative Review Tribunal and Other Legislation Amendment
Bill 2025**

Thank you for your invitation to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee regarding the Administrative Review Tribunal and Other Legislation Amendment Bill 2025 (the Bill).

The purpose of the Office of the Commonwealth Ombudsman (**the Office**) is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly; and
- influence systemic improvement in government administration.

One way the Office achieves its purpose is by influencing government agencies to be accountable, lawful, fair, transparent, and responsive. The Commonwealth Ombudsman is also the National Student Ombudsman and the Overseas Students Ombudsman.

My comments therefore have regard to merits review by the Administrative Review Tribunal (the Tribunal) of student visa decisions made by the Department of Home Affairs (the Department) under the *Migration Act 1958*.

I draw the Committee's attention to relevant findings of both the Commonwealth Ombudsman's 2024 report *Learning from merits review—best practice*

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*principles for agency engagement with merits review*¹ (the report) and Ms Christine Nixon AO APM's March 2023 *Rapid Review into the Exploitation of Australia's Visa System*² (the Nixon Review).

The Commonwealth Ombudsman's report did not observe a clearly defined agency-wide vision for learning from merits review by the Department³. This is supported by the fact that 47 per cent of student visa cases within the Tribunal's Migration Jurisdictional Area were set aside (in favour of the student). Only 22 per cent were affirmed. Further, student visas comprise around 67 per cent of the Tribunal's Migration Jurisdictional Area caseload⁴. As the report states: "by making well-reasoned and defensible decisions for those made under the Migration Act and, where applicable, clearly communicating reasons for decisions to applicants, the Department of Home Affairs can ensure that the administrative burden of undertaking reviews of decisions made under the Migration Act do not unnecessarily shift to the Tribunal."

Finding 6 of the Nixon Review was that merits review should be proportional to the visa stream and some cohorts, including students, should be conducted 'on the papers'. The Bill appears to reflect this, however Finding 3 also found that consideration must be given to regulating onshore and offshore education agents used by Australian education providers. While the Bill does not address this, our Office's experience as the Overseas Students Ombudsman strongly suggests that strengthening regulation of education providers and of education agents is desirable to address potential exploitation of the visa system. I also note that in 2024, the Australian National Audit Office found that the Department's regulation of migration agents was not effective⁵.

Part 2 of the Bill would amend the Migration Act to require the Tribunal to make decisions on applications to refuse a student visa 'on the papers', with some exceptions.

¹ Office of the Commonwealth Ombudsman, [Learning from Merits Review](#). The Department agreed to all recommendations and suggestions.

² Ms Christine Nixon AO, APM, [Rapid Review into the Exploitation of Australia's Visa System](#).

³ Learning from Merits Review, paragraph 1.21.

⁴ [Administrative Review Tribunal caseload report](#), Migration (by subclass), 14 October to 31 May 2025, and active cases as at 31 July 2025, accessed on 26 September 2025.

⁵ [Auditor-General Report No. 26 of 2023–24](#), Department of Home Affairs' Regulation of Migration Agents, accessed on 26 September 2025. The Department agreed to all recommendations.

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An oral hearing cannot be held. From a student's perspective, it would be fair and appropriate for the Tribunal to have discretion to have an oral hearing:

- Interpretation services for Tribunal oral hearings are paid for by the Tribunal, but translation services for documents are not.
- Students are generally young and may be unlikely to persuasively argue their case in a written submission, given the complexity of the Migration Act, without professional assistance which they may find prohibitively expensive⁶. To a certain extent this does apply to oral hearings, however in those cases a Tribunal member is able to ask questions of a student (if representing themselves).
- It appears the Bill applies to on-shore and offshore applications, and to renewals and initial applications. A student who is already in Australia and who is seeking the renewal of their visa is likely to have invested considerable time and resources in pursuing their education, and it would seem particularly unfair to deny a student in such a position the opportunity to have an oral hearing.

If you have any further questions, please contact [REDACTED],
Senior Assistant Ombudsman, Policy and Assurance on [REDACTED].

Yours sincerely

[REDACTED]

Sarah Bendall
Acting Commonwealth Ombudsman

⁶ A significant proportion of parties represent themselves. See: Administrative Appeals Tribunal, [Annual Report 2023-24](#), Chapter 2, Powers and Processes.