

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

Submission by National Legal Aid

## National Legal Aid Submission

NLA welcomes the opportunity to provide a submission to the Inquiry into the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025 (ART Bill)*. We have been meaningfully engaging with the Attorney General's Department on the policy changes in the ART Bill and provide our key recommendations and reasonings below.

### Key recommendations:

1. National Legal Aid (NLA) **does not** support the current form of the ART Bill which amends the *Administrative Tribunal Act 2024 (ART Act)* and the *Migration Act 1958 (Migration Act)*. We do not believe that there are adequate safeguards in place to protect the rights to oral hearing for applicants to the ART, including the known vulnerable cohort of student visa applicants.
2. NLA does not support the proposed functions of the ART Bill to:
  - expand the circumstances in which the ART Tribunal (**Tribunal**) may make a decision without holding an oral hearing. The Bill would amend section 106 of the ART Act to insert that the Tribunal may make its decision in the proceeding without holding the hearing of the proceeding.
  - require the Tribunal to make decisions on the papers in a specified category of cases – specifically, in relation to applications for reviews of decisions to refuse a student visa. Applications which are required to be reviewed on the papers would be subject to a new, bespoke review procedure set out in new Division 4A of Part 5 of the Migration Act. The review would be conducted entirely on the basis of written materials, without the Tribunal holding an oral hearing.
3. We consider that there is an attempt to outline initial limitation of legislation to student visas only. However, we do not believe that this is a suitable solution to the backlog of student visa matters and recognise that this is against the spirit of Administrative Review Tribunal legislation, for fairness and consistency of legislation across all cohorts.

### Summary of reasons:

The proposed changes will not increase efficiency and address the backlog of student visa matters in the Tribunal:

- There are existing powers for Tribunal members under s106 of the ART Act to make decisions on papers when the outcome is positive. They also have powers to decide on the papers where a party fails to comply with an order of the Tribunal or attend a case event. The Tribunal therefore has the power to make most student visa decisions on the papers already. Tribunal members should be trained and encouraged to use their powers to make positive decisions on the papers and use their existing case management powers.
- Since the commencement of the ART, nearly 50% of student visa decisions under review were set aside or remitted to the Department with the direction that they met the criteria for a student visa. This means that efficiencies could be investigated through reviewing and improving decision

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making in the Department of Home Affairs (**DHA**) in the first instance to ensure that the correct and preferable decision is made at the earliest possible opportunity.

- The migration legal system needs to be considered holistically. If applicants are not provided an opportunity to be heard orally, the ART may be less likely to accept that applicants satisfy the criteria for a student visa, and applicants may be less likely to accept the outcome of the ART's decision. This may increase applications for judicial review in the Federal Circuit and Family Court of Australia (**FCFCoA**). We have seen this evidenced by the increase in review applications to the ART because of DHA making quick decisions on the papers without providing applicants an interview.
- We have also seen this in decisions made on the papers by the former Immigration Assessment Authority (**IAA**). Applicants were much more likely to appeal the decision of the IAA to the FCFCoA which created a large backlog in the Court and delays in some cases of more than seven years. The Court was also more likely to find legal error in matters that had been decided on the papers. In FY 23/24 the FCFCoA remitted over 40% of matters back to the IAA to make another decision in accordance with the law.<sup>1</sup>
- In 2022/23, NLA supported the trial of paper only decision making through the Independent Expert Review program to assist with the backlog of NDIS matters in the Administrative Appeals Tribunal. This included legal assistance prior to paper review. This trial was ended after nine months as it was not found to be an efficient way to clear the backlog of cases.
- The ART has been in operation for less than a year and is currently undergoing significant change to implement consistent practice and national systems and identify staffing and resourcing needs. These changes may be contributing to inefficiencies and backlog. Once embedded, there are likely to be improvements in efficiencies that more effectively address the backlog than this proposal.
- Legal assistance also has the capacity to create efficiencies, through providing early advice on potential outcomes and full legal representation to assist the Tribunal in its decision making. Funding for legal assistance services to provide permanent protection visa legal assistance ended in July this year. We recommend continuing funding for this program to increase efficiency in the ART.

The Australian Government proposal to pursue legalisation contradicts the key principles of the ART legislation and access to justice in administrative law. This includes:

- Establishment of Administrative Review Council, with a key purpose of the council to harmonise legislation, including between administrative law and migration law. There should be a consistent approach across all visa types and matters.
- Decisions on paper without a right to a hearing is also not consistent with NLA's extensive experience in state and territory tribunals where the right to a hearing is available.
- NLA raises concerns that to make paper only decisions will result in the prevention of access to justice. We are also concerned that the scope is proposed to widen beyond student visas only. This is a major risk for the most disadvantaged people in Australia and legal rights to appeal.
- It is noted that the ART legislation has been in operation for less than a year. It would be preferable to allow for a longer operational time and then review the legislation in its entirety

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<sup>1</sup> AAT Annual Report 2023-24 available here: [Transparency Portal](#)

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identify any needed improvements or changes, rather than making amendments without appropriate time to review and consider what might be most appropriate.

Our previous submissions to ART legislation and guidelines provided our concerns on the lack of trauma-informed approaches in the ART which are applicable to this proposed legislative change and may lead to highly vulnerable people being at risk and not receiving assistance. Student visa matters often include people experiencing domestic and family violence and/or exploitation in the workplace and other factors that contribute to vulnerability. Issues raised previously include:

- The widescale changes from the Administrative Appeals Tribunal to the ART Practice Directions. The removal of procedural guidance across a range of issues and the removal of the Guidelines on Vulnerable Persons and Guidelines on Gender are likely to have significant impacts on vulnerable people applying for reviews. The ART should consider a person-centred and trauma informed approach to assess needs and risks across a range of areas.
  - People with disability appearing in all matters, not just NDIS matters, need to be considered in all matters in terms of needs and reasonable adjustments to ensure accessibility.
  - The lack of guidance regarding facilitated referrals including warm referrals for particularly vulnerable individuals is of ongoing concern, as is the lack of provisions regarding facilitated access to documents to legal assistance services without the need for the lawyer to be on record as the applicant's representative or committed to assisting at hearing.
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## About National legal Aid

### Who are we?

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions in Australia. The legal aid commissions are independent statutory bodies that provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

### National Legal Aid (NLA) STRATEGIC PLAN 2025-2030

#### Vision

All people experiencing disadvantage have access to legal assistance and fair justice outcomes that contribute to a safe, thriving families and communities

#### About us

NLA is made up of 8 statewide Legal Aids who provide legal assistance to Australians experiencing disadvantage. The Legal Aids receive \$1.79 billion under the National Access to Justice Partnership to deliver family law and national civil law legal assistance

Each year under the NAJP we deliver:

- 32,000 family law legal representation grants
- Respect@Work, domestic & family violence, migration & income support legal assistance
- Non-legal supports such as social supports and law reform work.

72% of representation grants are handled by private lawyers.

Clients receiving legal representation include:

- 24% First Nations people
- 25% people with disabilities
- 100% under the poverty line


#### Purpose

- Establish a national legal aid system that is sustainable and responsive to the needs of local communities.
- Use our expertise and leadership to improve legal assistance and drive law reform.
- Foster trusted partnerships with government, community, and legal assistance providers.


#### Goals

1. Ensure people facing disadvantage obtain legal representation by increasing core funding from all levels of government	4. Advocate for people experiencing disadvantage in civil law strategic areas including income and child support, disability, migration and disaster
2. Advocate for the safety and well-being of families and children within the legal and justice systems	5. Establish a nationwide evidence base to demonstrate legal need and the impact of legal assistance for disadvantaged clients
3. Implement Closing the Gap including delivering culturally safe services, supporting more First Nations services, & partnering with First Nations legal assistance partners on justice issues	6. Ensure safe and sustainable working conditions and culture to attract and retain a strong and engaged legal aid workforce


#### How we work



Putting clients at the centre of trauma informed practice



In partnership with others



Informed by evidence

