Migration Institute of Australia

Administrative Review Tribunal and Other Legislation Amendment Bill 2025

Legal and Constitutional Affairs Legislation Committee

Migration Institute of Australia

The Migration Institute of Australia (MIA) is the premier professional association representing migration professionals in Australia, being initially established as the Australian Migration Consultants Association in 1987, before changing its name to the MIA in 1992. Through its public profile the MIA advocates the value of migration, thereby supporting the wider migration advice profession, migrants and prospective migrants to Australia. The MIA represents its members through regular government liaison, advocacy, public speaking and media engagements. The MIA supports its members through its separate but interrelated sections: professional support; education; membership; communications; media; business development and marketing.

The MIA operates as a company limited by guarantee under the Corporations Act 2001 and complies with all Australian Securities and Investments Commission (ASIC) requirements. The MIA is not empowered under its Constitution to pay dividends. The MIA and its elected office bearers are guided by the legal framework set out in the Corporations Act 2001, the MIA Constitution and Rules, the Corporate Governance Statement and Board Charter.

MIA members hold a further responsibility to their clients and the Australian community to abide by ethical professional conduct and to act in a manner which at all times enhances the integrity of the migration advice profession and the Institute. MIA members are bound by both statutory Code of Conduct of the Office of the Migration Agents Registration Authority which sets the profession's standards of behaviour and the MIA Members' Code of Ethics and Practice.

Statement of Recognition

The Migration Institute of Australia acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

30 September 2025

Dear Committee Secretary

The Migration Institute of Australia (MIA) welcomes the opportunity to present this submission to the Senate Legal and Constitutional Affairs Committee enquiry on the important issue of the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025* (the Bill).

On behalf of its members, the MIA strongly objects to the changes that will be made to the Administrative Review Tribunal Act 2024 by this amending Bill.

The MIA argues that the passing of this Bill would erode justice, fairness and accessibility within the migration review processes.

The MIA urges the Legal and Constitutional Committee to reject the contents of this Bill and to instead direct that measures be adopted that address caseload pressures, without diminishing the fairness, accessibility and the integrity of the ART system.

Peter van Vliet

Chief Executive Officer

Migration Institute of Australia

Recommendations

Recommendation 1

The Migration Institute of Australia recommends that the Legal and Constitutional Affairs Committee rejects the contents of the Administrative Review Tribunal and Other Legislation Amendment Bill 2025, on the basis that it undermines procedural fairness, access to justice and public confidence in the Tribunal.

Recommendation 2

The Migration Institute of Australia recommends that the right to an oral hearing be preserved for all Administrative Review Tribunal appellants, to safeguard the fairness, accessibility and the integrity of the Administrative Review Tribunal process.

Recommendation 3

The Migration Institute of Australia recommends that the Legal and Constitutional Affairs Committee supports non-legislative reforms and administrative improvements, rather than the pursuit of legislative change to address temporary caseload surges.

Introduction

1. The Migration Institute of Australia (MIA) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee enquiry into the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025* (the Bill).

2. This Bill seeks to expand the Administrative Review Tribunal's (ART) ability to determine certain categories of matters *on the papers* and a broad regulation based power that could be used to extend mandatory paper-based reviews to additional visa categories.

3. The MIA is committed to supporting the ART as it fulfils its statutory objectives under Section 9 of the ART Act, to provide a mechanism of review that is fair and just, as well as efficient, accessible and trusted.

4. While the MIA recognises the government's desire to increase the efficiency of the ART's operation and address rising caseloads, the MIA strongly opposes the amendments to subsection 106 of the ART Act by this Bill.

5. The MIA submits that these amendments would significantly undermine justice, fairness and accessibility in the migration review system and is contrary to the statutory objectives of the ART under section 9 of the *Administrative Review Tribunal Act 2024* (*ART Act*).

Mandatory requirement to decide certain cases *on the papers*

6. The subsection 106 amendment to the ART Act by this Bill mandates that all student visa refusal reviews be decided without oral hearings and *on the papers*, as a response to the significant surge in student visa review applications in the past 18 months.

7. This student visa surge is highly likely to be temporary, with anecdotal evidence suggesting that the level of student visa refusals is already in decline.

8. The current surge merely reflects policy changes designed to improve the integrity of the student visa program, as well as some COVID related backlog.

9. Enshrining permanent legislative reform to address temporary caseload surges is a disproportionate response to the current situation.

10. Mandating paper only processes will have a disproportionate impact on specific cohorts of appellants, many of whom often face language barriers and are more fluent orally than in writing. Expecting appellants to argue their cases in writing alone will particularly disadvantage this cohort.

11. Many appellants will be required to seek professional assistance from Registered Migration Agents and legal practitioners to prepare their review cases, if they are to have any chance of a fair and just outcome.

12. This will subject these appellants to additional costs for the preparation of formal written submissions, in addition to the already hefty ART application fees. This reduces their accessibility to the ART and further entrenches disadvantage within this group.

13. Many student visa refusals involve discretionary judgments, particularly around g*enuine student* intentions, which often hinge on matters related to credibility and personal circumstances. These matters are not readily resolved without the benefit of oral evidence and questioning.

14. The ART's high set aside rate of 47% in student visa refusals[1], suggests systemic challenges in primary decision making. Removing oral hearings would prevent affected appellants from properly challenging adverse decisions.

15. Appellants denied an oral hearing may be more likely to seek judicial review, increasing pressure on the courts and undermining the Bill's stated efficiency objective.

16. While efficiency is an objective of Section 9 of the ART Act, it also requires that decisions be fair and just. Increased efficiency cannot come at the expense of due consideration of review appellants' issues and rights.

Broader discretion to extend the amendments to other visa categories

17. The Bill also introduces a broad discretion for the ART to determine matters *on the papers* **without consent** and allows for expansion to other visa categories by regulation.

[1] Cited in the Migration Jurisdictional Area caseload summary 14 October 2024 to 31 May 2025, https://www.art.gov.au/sites/default/files/2024-12/ART_Migration_Caseload_2024-25

18. The MIA submits that this would remove key procedural safeguards, noting that the ART Act already permits paper based decisions ***where parties consent*** or where a decision is favourable to the applicant.

19. Removing the requirement for consent or objection strips away essential protections for vulnerable appellants. Granting broad regulatory discretion risks incremental and politically driven expansion of paper based determinations.

20. The previous Immigration Assessment Authority (IAA) model is instructive in this matter. The IAA's reliance on *on the papers* decision making led to significant findings of denial of procedural fairness and an increased recourse to judicial review as appellants sought more equitable relief.

21. During consultations with the Attorney General's Department over the contents of this Bill, comparisons were presented of state and territory tribunals that have adopted paper based decision making.

22. However, federal migration review decisions are far more significant and life impacting, often determining rights to remain in Australia, study, work and the ability to maintain family unity. This higher threshold demands stronger procedural protections.

23. Fair and considered oral hearings are central to maintaining confidence and public trust in the administrative review system. Mandating against the opportunity for appellants to be heard in the Tribunal would damage these perceptions.

Alternatives to legislative reform

24. The MIA recognises the government's legitimate concern with efficiency but submits that non-legislative measures offer more effective and equitable solutions to addressing these backlogs.

25. The high student visa refusal set aside rate[2] suggests that addressing systemic challenges in primary decision making could reduce the burden on the ART.

[2]The set aside rate is 47% as cited in the Migration Jurisdictional Area caseload summary 14 October 2024 to 31 May 2025, https://www.art.gov.au/sites/default/files/2024-12/ART_Migration_Caseload_2024-25

26. Reducing unnecessary refusals could be facilitated through measures such as the increased use of Requests for Information (RFIs)[3] rather than outright refusals in the first instance.

27. Efficiency gains could be achieved without eroding fairness, by strengthening the Tribunal's triage processes through increased registrar and support staff resourcing.

28. The current *early decision request* process could be formalised, allowing appellants to request and provide consent to their application being decided *on the papers* at the time of application for merit review.

Conclusion

29. Fairness, justice and public trust must remain paramount in the ART's decision making. While the efficiency objective is understandable, employing the mechanisms in this Bill for improving efficiency are flawed.

30. This Bill prioritises efficiency over justice, equity and trust in Australia's migration review system.

31. For these reasons, the MIA urges the Legal and Constitutional Affairs Committee to reject the Bill in its current from and to instead direct the Attorney General's Department to pursue administrative and non-legislative reforms that address caseload pressures, while upholding the core values of fairness, accessibility and the integrity of the ART system.

[3] Often visa applications, especially in the student caseload, will be refused without notice based on minor issues, such as a single missing document or decision-maker misunderstanding. Requests for further information or documents in these cases could prevent outright refusals in the first instant.