

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

16 October 2024

Administrative Review Tribunal (Miscellaneous Measures) Bill 2024 to the Legal and Constitutional Affairs Legislation Committee

Response to Questions on Notice – Public hearing 2 October 2024.

Dear Committee Secretary

Please find below responses by the Migration Institute of Australia (MIA) to questions taken on notice at the public hearing by the Committee on 2 October 2024.

Question 1: Senator Scarr: "To the extent an application has to be made, how extensive is the material required to be lodged in the first instance to make that initial application?"

1. The amount of information and supporting documentation required has been reduced under the new Administrative Review Tribunal (ART) compared to the previous Administrative Appeals Tribunal (AAT). Previously, a lengthy application form, completed in English and submitted either online or in hard copy, was required, along with various supporting documents where available. As extensively discussed during the hearing, the Miller case highlighted certain flaws in these previous requirements.
2. In consideration of the Miller case, the ART Case and Tribunal Initiatives (CTI) have adapted their procedures to provide greater flexibility for applicants seeking review, thereby mitigating situations akin to those in Miller. While the initial application process may now be less burdensome, the comprehensive preparation required for appeal remains largely consistent across both the ART and AAT systems.
3. As noted during the public hearing, the MIA shares concerns with other industry stakeholders regarding the accessibility of the process for applicants who may face disadvantages due to language barriers, literacy, financial constraints, or mental health issues. Although the new ART procedures have not yet been

extensively tested in practice, they appear to address some of these accessibility concerns at the preliminary application stage.

Question 2: Senator Shoebridge: "This law seems to be in part aimed at reversing the High Court's beneficial decision in Miller, making certain aspects mandatory and potentially constraining the tribunal's discretion. Is that your interpretation?"

4. The MIA considers that extensive references to the Miller case in this context may detract from the substantive issues at hand. There has been no alteration in the new legislation to the seven-day mandatory lodgement requirement for non-citizens in immigration detention, nor to the fundamental language of the Migration Act. Evidence provided by the Attorney-General's Department indicates that the ART process has been designed to address issues identified in the Miller case by introducing more flexible application requirements at the outset, thus avoiding the procedural pitfalls highlighted in that case.
5. The ART website specifies that applicants may submit additional documents or information at any stage during the review. The information required at the time of application has been simplified to include: full name, address, contact details, a description of the decision (and date if known), and one additional personal detail such as date of birth, country of birth, nationality, or passport details.
6. Applicants may complete an application form either online or in hard copy, if they prefer.
7. Given the reduced complexity of the required information, it is highly unlikely that applicants would encounter procedural challenges similar to those in the Miller case.
8. The application time limit and fee requirements remain mandatory, except where alternative arrangements exist for protection applicants. This was not changed by the Miller precedent.
9. The MIA does not concur with Senator Shoebridge's interpretation that the new provisions unduly constrain the Tribunal's discretion in the absence of the Miller precedent.

If further information, please feel free to contact Bronwyn Markey at

Helen Duncan
Chief Executive Officer