

Attachment A

Administrative Review Tribunal and Other Legislation Amendment Bill 2025 – summary of provisions

Amendments to the ART Act

Part 1 of Schedule 1 to the Bill would amend the *Administrative Review Tribunal Act 2024* (ART Act) to expand the circumstances in which the Tribunal may exercise its discretion to make a decision without holding an oral hearing. The following table explains this in further detail.

Effect of proposed amendments	Explanation	Relevant item of the Bill
Scope of the new discretion		
<p>The Bill would amend the ART Act to enable the Tribunal to make a decision without holding an oral hearing if the following conditions are met:</p> <ul style="list-style-type: none"> – it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties – it appears to the Tribunal that it is reasonable in the circumstances to make its decision in the proceeding without holding a hearing, and – the Tribunal has given the parties to the proceeding (other than a non-participating party) a reasonable opportunity to make submissions to the Tribunal in relation to the Tribunal making its decision without holding the hearing of the proceeding, and the Tribunal has taken into account any submissions received. 	<p>The new discretion would give the Tribunal additional flexibility in relation to the procedures to be followed in a proceeding. It would enable the Tribunal to dispense with a hearing in circumstances where the Tribunal considers it would be appropriate. This would support the objective of the Tribunal resolving matters as quickly and with as little formality as a proper consideration of the matter permits, especially given the time and resources required to conduct a substantive hearing.</p> <p>The new discretion is conditioned by appropriate safeguards, including a requirement for the Tribunal to seek and consider submissions from the parties on whether the Tribunal should make its decision without holding a hearing. In exercising the new discretion, the Tribunal would continue to be required to act in accordance with its existing procedural fairness obligations (such as the requirement imposed by paragraphs 55(1)(a) and (c) of the ART Act).</p>	<p>Part 1 of Schedule 1</p> <p>Items 1 to 3 (inserting new subsections 106(6) and (7) of the ART Act).</p>
Matters to which the discretion would apply		
<p>The new discretion would be available across the Tribunal’s entire caseload.</p> <p>However, it would not be available in reviews conducted on the papers under the Migration Act (because the Tribunal <u>must</u> conduct its review without oral hearings in those cases).</p>	<p>The new discretion would form part of the Tribunal’s standard powers and procedures, and would therefore be available in all cases to which those standard powers and procedures apply.</p>	<p>Item 2 (see the legislative note under new subsection 106(1)).</p>

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Effect of proposed amendments	Explanation	Relevant item of the Bill
Application of amendments to cases on hand		
<p>The new discretion will be available to applications made to the Tribunal:</p> <ul style="list-style-type: none"> – after the commencement of the Bill, and – before the commencement of the Bill, where the Tribunal has not yet made its decision. <p>The Bill includes targeted transitional arrangements, and enables regulations to be made to deal with additional transitional arrangements.</p>	<p>This ensures the Tribunal’s new discretion could be used in relation to the applications it has on hand when the Bill commences. It is appropriate for the discretion to be available in existing cases, as there are safeguards in relation to the exercise of the new discretion (e.g. a requirement that the Tribunal consults parties before deciding to dispense with an oral hearing).</p>	Item 4.

Amendments to the Migration Act

Part 2 of Schedule 1 to the Bill would amend the *Migration Act 1958* (Migration Act) to require the Tribunal to make decisions in relation to certain kinds of applications on the papers, without conducting a hearing. The following table explains the features of the proposed ‘on the papers’ process.

Feature of new process	Explanation	Relevant item of the Bill
Types of applications to be reviewed on the papers		
<p><u>In scope:</u></p> <p>The requirement to review an application on the papers would apply in relation to applications for reviews of decisions to refuse a student visa.</p> <p>The requirement would apply in relation to applications for review of decisions relating to a ‘temporary visa’ of a kind prescribed in regulations.</p>	<p>This enables the Tribunal to conduct reviews of its student visa refusal caseload on the papers. This covers all kinds of ‘student visas’ provided for in the <i>Migration Regulations 1994</i>.</p> <p>This provides flexibility for the Governor-General to prescribe additional kinds of applications relating to temporary visas (including refusals or cancellations) as being subject to the requirement for review to be conducted on the papers. There may be other kinds of temporary visas which would be appropriate for the Government to bring into the on the papers process in future.</p> <p>Additional visa types would be specified by regulation (rather than primary legislation), as individual visa types are provided for in the <i>Migration Regulations 1994</i>. This is appropriate to ensure that the visa types specified can be kept in alignment with future changes to the Migration Regulations.</p>	<p>Part 2 of Schedule 1</p> <p>Item 16 (inserting new section 367C)</p>

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Feature of new process	Explanation	Relevant item of the Bill
<p><u>Out of scope:</u></p> <p>The requirement would <i>not</i> apply to reviews of:</p> <ul style="list-style-type: none"> – decisions relating to permanent visas, or – ‘reviewable protection decisions’ (within the meaning of the Migration Act). 	<p>The requirement would not apply to permanent or protection visas. Given the potential significance or complexity of these decisions, it is appropriate that the ART exercise a discretion about whether to hear these matters on the papers, having regard to the circumstances of the particular case.</p>	
<p><u>Exemptions</u></p> <p>An exception would apply to applications which the President refers to be reviewed by the Tribunal’s Guidance and Appeals Panel (GAP).</p> <p>Regulations can be made to prescribe additional exemptions in relation to applications that would otherwise be required to be reviewed on the papers. If an exemption applies, the matter would be reviewed in accordance with the Tribunal’s standard powers and procedures for reviewable migration decisions.</p>	<p>If an application is referred to the GAP, it is appropriate for the GAP’s standard procedures to apply. Referrals to the GAP are expected to be very rare.</p> <p>Enabling regulations to prescribe exemptions gives the Government flexibility to identify particular types of applications in relation to which it is appropriate that the ART have a discretion as to whether to hear the matter on the papers.</p>	
Steps in the review procedure		
<p>Applications which are required to be reviewed on the papers would be subject to a new, bespoke review procedure. The review would be conducted entirely on the basis of written materials, without the Tribunal holding an oral hearing. The review procedure includes the following key steps.</p>	<p>The steps in the new review procedure will be comprehensively set out in a new Division 4A of Part 5 of the Migration Act. New Division 4A will operate instead of existing Division 4 (which deals with the conduct of review for reviewable migration and protection decisions).</p>	
<p><u>Invitation for submissions and evidence</u></p> <p>The Tribunal would be required to invite an applicant to give the Tribunal written submissions and evidence on certain issues relating to the review, namely:</p> <ul style="list-style-type: none"> – if the applicant’s visa was refused because they failed to satisfy a criterion for the visa – whether they satisfy that criterion – if the applicant’s visa was refused because a provision of the Migration Act or Migration Regulations prevented the grant of the visa – whether that provisions does or does not prevent the grant of the visa. <p>Regulations could be made to prescribe additional issues which must be covered by an invitation.</p>	<p>In the absence of the Tribunal holding an oral hearing, this step ensures that an applicant has an opportunity to present their case to the Tribunal in relation to the key issues under review in writing. An applicant will have the opportunity to explain, in writing, why they should be granted the visa that had been refused.</p> <p>The regulation-making power gives the Government flexibility to expand the scope of invitations to cover additional issues that may be relevant to a review – for example, by requiring that <i>in all cases</i> an applicant must address a particular matter in their written submissions.</p>	<p>Item 16 (inserting new section 367F)</p>

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Feature of new process	Explanation	Relevant item of the Bill
There would be standard requirements for the manner in which invitations must be given in writing (consistent with existing requirements under the Migration Act for giving documents).		
<u>Dismissal for non-response to an invitation</u> If an applicant does not respond to an invitation to give written submissions and evidence within the response period (as prescribed in regulations), the Tribunal <i>must</i> dismiss the application.	It is appropriate to require the Tribunal to dismiss an application where the applicant does not engage in the review process by responding to an invitation under subsection @3671(F). This promotes the efficient use of Tribunal resources, so that the Tribunal can dismiss – rather than continue to follow up on – applications where the applicant does not engage with the Tribunal or progress their matter.	Item 16 (inserting new section 367M)
<u>Adverse information</u> The Tribunal must give the applicant, and invite their comment on, certain kinds of ‘adverse information’ which would be the reason, or part of the reason, for affirming the decision under review.	This requirement is equivalent to the existing obligation under section 359A of the Migration Act which applies to reviews of all migration decisions. An applicant will be given the same kinds of ‘adverse information’ as they would be given under the existing settings. Currently, the Tribunal can discharge the obligation to give this information and invite comment on it either in writing or in a hearing. For applications to be reviewed on the papers, the Tribunal must discharge this obligation in writing.	Item 16 (inserting new section 367G)
<u>Making a decision</u> The Tribunal must make its decision after considering the documents, information and other materials given to the Tribunal, and without holding an oral hearing or the applicant otherwise appearing before the Tribunal. The Tribunal must not make its decision until any deadlines for providing information to the Tribunal have expired.	This requirement ensures that, in making its decision, the Tribunal must take into account any materials the applicant has given the Tribunal (e.g. in response to an invitation to provide written submissions or evidence, or in response to an invitation to comment on ‘adverse information’). This makes it clear that the Tribunal’s decision is to be based wholly on the written materials given to the Tribunal.	Item 16 (inserting new section 367N)
<u>Miscellaneous matters</u> The review procedure would also deal with a range of other matters, such as: <ul style="list-style-type: none"> – retaining the ability for applicants to request certain documents from the Department of Home Affairs – enabling the Tribunal to be reconstituted in certain circumstances, and – enabling the Tribunal to combine multiple applications for review by the same person. 	These matters replicate existing powers or procedures available in reviews of migration decisions, in some cases with minor modifications to reflect that decisions will be made without oral hearings.	Item 16 (inserting new sections 367J, 367K, and 367L)

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Feature of new process	Explanation	Relevant item of the Bill
Natural justice hearing rule		
<p>Section 55 of the ART Act – which sets out the Tribunal’s procedural fairness obligations — would not apply to reviews on the papers.</p> <p>Instead, the provisions setting out the requirements for the review procedure explained above would constitute an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters the provisions deal with. The requirements codify how the Tribunal must give an applicant an opportunity to present their case in relation to certain matters, and how the Tribunal must provide information to the applicant, before proceeding to a decision without holding a hearing. Common law procedural fairness would not operate in relation to the matters covered by the review procedure.</p>	<p>Providing that the review steps are an ‘exhaustive statement’ of the requirements of the natural justice hearing is appropriate because it provides certainty about the steps the Tribunal needs to follow to give the applicant an opportunity to present their case.</p> <p>The exhaustive statement of the natural justice hearing rule would not apply to all aspects of Tribunal review in every case.</p> <ul style="list-style-type: none"> – In particular, it only deals with the Tribunal’s requirements to give an applicant the opportunity to present their case on the particular matters covered by an invitation to provide written submissions – i.e. why the applicant satisfies the <i>particular criterion</i> which formed the basis for the visa being refused by the original decision-maker. – This means that the exhaustive statement does not cover circumstances in which the Tribunal considers that a decision should be affirmed by reference to a <i>different</i> criterion (for example, if a visa was refused by the primary decision-maker because the applicant failed to satisfy the ‘genuine temporary entrant’ criterion, but the Tribunal proposes to affirm the decision because the applicant fails to satisfy the separate ‘enrolment’ criterion). – In this circumstance, the new provisions would not ‘codify’ the procedure for putting the applicant on notice, and giving them an opportunity to give submissions on, issues relating to the different criteria. The Tribunal’s obligations to do so would apply as a matter of common law. The Tribunal would have flexibility as to the steps it takes to meet any such obligations, by inviting submissions via engagement with the applicant in other ways, such as by further correspondence or by issuing a direction for an applicant to provide certain information. This enables the Tribunal to deal with issues relating to different criteria as efficiently as possible, depending on the circumstances and the nature of the different issue arising during the review. 	<p>Item 16 (inserting new section 376D)</p>

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Feature of new process	Explanation	Relevant item of the Bill
Interaction with the ART Act and Migration Act		
Certain provisions of the ART Act and the Migration Act which deal with the conduct of oral hearings would be 'switched off' for applications to be reviewed on the papers.	<p>Given that reviews will be conducted entirely on the papers, it is necessary to switch off the operation of provisions of the ART Act and Migration Act which deal with the conduct of oral hearings, or which are premised on the assumption that oral hearings take place.</p> <p>Apart from the specified provisions, the ART Act and Migration Act will continue to operate as they otherwise would for reviews of reviewable migration decisions. For example, the Tribunal could continue to rely on its existing power under section 79 of the ART Act to order applicants to provide certain documents or information to the Tribunal.</p>	Item 16 (inserting new section 367D)
Application of amendments to cases on hand		
<p>The new review procedure will apply to applications made to the Tribunal:</p> <ul style="list-style-type: none"> – after the commencement of the Bill, and – before the commencement of the Bill, where the Tribunal has not yet been constituted for the purposes of the proceeding. <p>The Bill provides for targeted transitional arrangements, and enables regulations to be made to deal with additional transitional arrangements.</p>	This ensures the Tribunal can apply the new review procedure to the existing student visa refusal applications that it will have on hand when the Bill commences. This will enable the Tribunal to achieve efficiencies in the processing of its existing caseload, as well as future applications.	Item 21
Minor consequential amendments to the Migration Act		
The Bill makes a number of minor and technical amendments to other provisions of the Migration Act, to reflect the introduction of the new review procedure.	Minor, technical amendments are necessary to reflect the introduction of new provisions dealing with the new review procedure for applications to be reviewed on the papers.	Items 5, 6, 7, 9, 17, 18, 19 and 20
Minor amendments to existing section 362A		
The Bill makes minor amendments to existing section 362A, which enables an applicant to request that the Department gives the applicant access to any written material given or produced to the Tribunal for the purposes of a review	The amendments to existing section 362A ensure the provision reflects modern drafting practices and is expressed as clearly as possible. The amendments are not intended to alter the substantive operation of the provision.	Items 10, 11, 12, 13, 14 and 15