



Immigration Advice  
and Rights Centre

1 October 2025

Senate Legal and Constitutional Affairs Legislation Committee  
Parliament House Canberra  
ACT 2600

Dear Committee Secretary,

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

Thank you for the opportunity to provide a submission in relation to the Administrative Review Tribunal and Other Legislation Amendment Bill 2025 (**Bill**).

### Background

The Immigration Advice and Rights Centre (**IARC**) is a specialist community legal centre providing free legal advice, assistance and education in all areas of immigration, refugee and citizenship law. IARC has a focus on assisting people experiencing vulnerability, including victim-survivors of domestic, family and sexual violence (**DFSV**), workers with or without a valid visa experiencing workplace exploitation, and asylum seekers and refugees.

IARC has significant experience advising and representing people at the Administrative Review Tribunal (**ART**) and its predecessor the Administrative Appeals Tribunal, including in:

- Family visa matters (e.g. Partner, Child and Orphan relative visas) – especially where there has been DFSV;
- Student visa and employer sponsored visa matters – where there has been workplace exploitation;
- Visitor visas – where there has been family separation for a substantial period of time; and
- Protection visa matters.

IARC understands that there are two core components to the proposed Bill, namely:

1. Amending s 106 of the *Administrative Review Tribunal Act 2024* (Cth) (**ART Act**) to expand the ability for the ART to make decisions on the papers for matters where:
  - a. it appears to the Tribunal that:
    - i. the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding; and
    - ii. it is reasonable in the circumstances to make its decision in the proceeding without holding the hearing of the proceeding;
  - b. the Tribunal has given the participating parties to the proceeding 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.



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2. Amending the *Migration Act 1958* (Cth) (**Migration Act**) so that decisions about Student visa applications and other temporary visas must be made on the papers at the ART, unless certain narrow exemptions apply.

### Summary of concerns

IARC is concerned that these amendments will disproportionately impact vulnerable clients, including those experiencing DFSV and workplace exploitation. These clients will not have an opportunity to be heard in relation to matters that may be relevant to their application or to the referral of the matter for Ministerial Intervention under s 351 of the Migration Act. In our experience, people generally present with vulnerabilities when they have an opportunity to speak to someone (i.e. a decision-maker or a lawyer).

IARC is also concerned that these amendments will not address the current backlog at the ART and, instead, push the backlog to the Federal Circuit and Family Court of Australia because without the opportunity of a hearing, applicants may be less likely to accept the outcome of the ART's decision. Amendments to s 106 of the ART Act could also raise additional grounds for judicial review.

We also note that the ART already has powers to make decisions on the papers under the existing s 106 of the ART Act. We respectfully submit that training should be provided to members at the ART to encourage them to use these existing powers. Efficiencies could also be found at the ART by greater investment in case management systems and processes that promote faster processing of applications without compromising other core objectives of the ART, such as being fair and accessible.

It has also been demonstrated, most recently through the Protection visa backlog funding, that funding free legal assistance can address large caseloads and backlogs at the ART. Free legal assistance ensures that people experiencing disadvantage can address issues in their case, assisting decision makers in making the correct and preferable decision more quickly. Further, frank and credible legal advice ensures that people do not pursue unmeritorious cases and also breaks the business model of unscrupulous migration agents who lodge unmeritorious applications to prey on the vulnerabilities of temporary visa holders.

### Recommendation

IARC **does not support** the passing of the Bill. We consider that the Bill sacrifices the objectives of being fair and accessible for alleged efficiency. We also consider that greater efficiency could be found by improving systems and processes at the ART, and by continuing funding to legal assistance service providers under the Protection visa backlog funding.

However, in the event that the Bill is to be passed, we make the following recommendations:

- Temporary visa subclasses with permanent visa pathways should be expressly excluded from the amendments to the Migration Act, including:
  - Subclass 300 – Prospective Marriage visa;
  - Subclass 309 – Partner (Provisional) visa;
  - Subclass 820 – Partner (Temporary) visa;
  - Subclass 445 – Dependent Child visa;
  - Subclass 482 – Temporary Skill Shortage/Skills in Demand visa;
  - Subclass 494 – Skilled Employer Sponsored Regional visa.

Many clients IARC advises on these visas have been subject to workplace exploitation and/or DFSV.



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- The proposed amendments under the addition of Division 4A be amended to give the ART discretion and flexibility, where vulnerabilities or other hardship has prevented an applicant from engaging with the Tribunal. These include:
  - Amending s 367M to a discretion of the ART, such that the ART may dismiss an application, rather than must dismiss application, if an applicant does not respond to the within the prescribed time, and
  - Amending the directive under s 367N that the ART must make a decision without holding a hearing to include a discretion that the ART may invite an applicant to a hearing.
- An evaluation should be conducted after 12-months to assess the efficacy of the changes.
- The Protection visa backlog funding to community legal centres and legal aids be continued in the upcoming MYEFO, to ensure that applications for review at the ART can be dealt with efficiently and effectively.
- Additional resourcing be provided to the ART to improve case management systems and support – so that matters can be dealt with fairly and expeditiously.

### Vulnerable clients

Last financial year, IARC assisted more than **2,000 people** experiencing disadvantage across Australia, including:

- 735+ women and children who are victim-survivors of DFSV;
- 120+ workers with or without a valid visa that have been subject to workplace exploitation; and
- 400+ people seeking asylum with Protection visa matters before the ART and FCFCOA.

Further, at least **1 in 5 of our clients** had relied on incorrect immigration advice provided by unscrupulous migration agents, or individuals pretending to be agents or lawyers.

Many of our clients had a visa refused or cancelled by the Department of Home Affairs and were requesting advice/representation at the ART because they did not understand the process, or their situation had significantly changed since they applied for the visa (e.g. they had since experienced DFSV, had an Australian citizen child to a violent partner, or experienced workplace exploitation). We also had clients presenting at IARC with letters from the ART and the Department requesting further information – but they were either unable to understand the information being requested or the reasons for requesting that information. Additionally, a significant portion of clients did not receive their own correspondence from the ART, and correspondence instead goes to a migration agent or perpetrator of DFSV, who does not pass on that information to the client. Consequently, these clients were unable to respond to hearing invitations or requests for information within the given timeframes.

Further, in IARC's experience, certain vulnerabilities only become apparent at a hearing and/or when the person has an opportunity to access free legal assistance. Moving to decisions based on the papers without appropriate legal support will mean that many applicants will not have an opportunity for vulnerabilities to be appropriately addressed by the ART.

### Case Study – Jen

Jen came to Australia with her family to work on a Skills in Demand (sc 482) visa with an Australian employer. For years, Jen endured horrific treatment from her employer, including unwanted touching and comments about her appearance. She was worried that if she said anything, she would not be able to get the permanent residency her employer had promised through the Employer Nomination Scheme (sc 186) visa.



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Towards the end of Jen's visa, her employer nominated her for permanent residency through the Employer Nomination Scheme (sc 186) visa. While she was waiting for her visa to be granted, she had a breakdown at work and had to be admitted to hospital. During this time, her employer withdrew her nomination, which meant that the visa was refused by the Department.

Jen appealed the matter to the ART. She attended a hearing at the ART and made her case to the ART. Whilst the ART confirmed she was not eligible for the Employer Nomination Scheme (sc 186) visa because of the withdrawal of the nomination – the ART would refer her for Ministerial Intervention.

*If the Bill is passed without access to legal support, it risks clients such as Jen not having an opportunity to be heard due to the amendments to s 106 of the ART Act.*

#### Case study – Maria

Maria arrived in Australia on a Working Holiday visa after she had finished studying in her home country. While in Australia, she fell in love with an Australian citizen and they decided to move in together to start a family. Towards the end of her second Working Holiday visa, they applied for a Partner visa to stay in Australia together. The Partner visa application involves a two-stage process, applying for the temporary Partner visa (sc 820 visa) and the permanent Partner visa (sc 801).

While holding a bridging visa related to the Partner visa application, Maria was threatened and abused by her partner. She eventually left him – but he reported her to the Department. Maria received many letters from the Department but was unsure what to do or where to get help. Her Partner visa was eventually refused.

Maria appealed the decision to the ART. The ART could see the relationship had broken down and that she was no longer in the relationship. At the hearing with the ART, Maria disclosed that she had been subject to DFSV by her partner. The ART then provided her with IARC's contact details.

IARC assisted Maria with her appeal at the ART and was successful in having her matter remitted under the family violence provisions.

*Under the Bill, a decision about a Partner (Temporary) (sc 820) visa could be made on the papers and without legal support with the family violence not being raised as an issue.*

#### Legal assistance increases efficiency in reviews processes

Alongside a number of other free legal service providers, IARC was funded from mid-2024 to 30 June 2025 to address the Protection visa appeals backlog at the ART and FCFCOA by providing free legal support to people who have had their Protection visa refused or cancelled by the Department of Home Affairs.

During this period, IARC was able to address the Protection visa appeals backlog by advising:

- 400+ clients about their Protection visa appeal;
- 67% of clients that they had low to no prospects of success at the ART;
- 80% of clients that they had low to no prospects of success at the FCFCOA;
- 30% of clients that they could withdraw their appeal and apply for another visa;
- 57% of clients that they had no visa options and should consider departing Australia.

In addition to the above, **87% of the clients IARC represented at the ART/FCFCOA** were **successful** in their matter.



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IARC also received positive feedback from the ART that the submissions and evidence provided to the ART greatly assisted in addressing the facts in issue and their ability to make a decision efficiently.

#### Case study – Li

When Li came to IARC, she had both a Protection visa appeal and a Partner visa application pending. IARC advised her that the Protection visa appeal had low prospects and would likely result in a fee if unsuccessful. By contrast, the Partner visa application had reasonable prospects of success. Based on this advice, Li withdrew her Protection visa appeal and pursued the Partner visa pathway. The Partner visa was granted and the ART did not have to use its resources at a hearing.

#### Case study - Mohammad

Following a Protection visa refusal being affirmed at the Tribunal, Mohammad approached IARC to enquire about the judicial review process. IARC explained that successful judicial review requires identifying a legal error and that judges do not undertake merits assessments. On examination of the decision, we advised that we could not see any legal error in the decision. We also outlined the potential costs if he did file, including that Mohammad could incur an additional debt to the Commonwealth. As a result of this initial advice, Mohammad chose not to lodge an application for judicial review.

#### Summary of recommendations

We recommend that the **Bill does not proceed** as it places efficiency ahead of being fair and accessible. It will also disproportionately affect people experiencing vulnerability, such as victim-survivors of DFSV and workers with or without a valid visa experiencing workplace exploitation.

Instead, IARC recommends that additional resourcing be given to the ART to improve case management systems and processes in order to manage high caseloads. Additionally, ongoing funding should be provided to legal assistance services to assist people with vulnerability approaching the ART. This should include additional resourcing to community legal centres specialising in immigration law and legal aids – this could be achieved through the Protection visa appeals backlog funding being included in the MYEFO.

If the Bill is to proceed, it should be amended to exclude certain visa subclasses, specifically those listed on page 2 of this submission. People holding any of the listed visas have a pathway to permanent residency and, in IARC's experience, are vulnerable to exploitation and/or DFSV.

Please do not hesitate to contact us should you have any queries.

Yours sincerely,

**IMMIGRATION ADVICE AND RIGHTS CENTRE Inc**

**Joshua Strutt**

CEO and Principal Solicitor



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