Submission to the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025*

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1 Introduction

1.1 The Migrant Workers Centre (MWC) welcomes the opportunity to make a submission to the Legal and Constitutional Affairs Legislation Committee Inquiry into the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025* (hereafter 'the Bill').

1.2 The MWC is a community legal service that empowers migrant workers in Victoria to understand and enforce their workplace rights. Our activities include free employment law services, education programs to raise awareness of workplace rights, and an advocacy program to amplify and support migrant workers' voices through research and policy development. Since we were established in 2018, we have been working closely with government, unions, and civil society organisations to advance the rights of migrant workers in Australia.

1.3 The Administrative Review Tribunal (ART) plays a pivotal role in ensuring that the high volume of migration and refugee decisions made by the Department of Home Affairs (DHA) are reviewable by an independent body. Robust mechanisms for merits review are in the best interests of Australian society; they not only ensure high-quality and consistent administrative decision-making but also uphold the broader foundations of a healthy democracy, including natural justice, the rule of law, and open and accountable government.

1.4 Transparent and independent review mechanisms are also critical to the proper functioning of the migration system, allowing visa holders and applicants certainty regarding their rights and period of stay in Australia. Conversely, review mechanisms that circumscribed or that differentiate between applicants based on visa status are likely to undermine consistency in decision-making and ultimately prolong the uncertainty to which temporary visa holders are subject.

1.5 The present Bill purports to strike a balance between 'efficiency and proportionality' in the review process, aiming to ease the Tribunal's caseload by introducing a bespoke 'papers-only' review stream for certain migration decisions (with stricter procedural rules), and by expanding the ART's discretion to dispense with an oral hearing more generally.

1.6 **The MWC is deeply concerned that the Bill will undermine the review rights of temporary visa-holders and applicants and normalise a culture of poor decision-making.** We strongly oppose any reform that diminishes these rights. Most affected applicants will be onshore on Bridging visas when exercising their right of review at the Tribunal. Undermining their right to merits review will likely prolong the period that temporary migrants spend on Bridging visas, in turn increasing their vulnerability to labour exploitation. This risk is well-established in research; when visa status becomes even more uncertain, the likelihood of exploitation intensifies. This risk is further

compounded by financial precarity, language and information barriers, and limited access to legal representation.

1.7 **Curtailing review rights carries other serious downstream consequences.** The right to an oral hearing is central to procedural fairness and must not be dispensed in the pursuit of 'efficiency'. For many applicants, being heard at the Tribunal, often with the assistance of an interpreter or an advocate, is essential to ensure they can put forward their case. Many temporary visas, including student visas, are also now subject to stricter, broad and discretionary criteria that do not lend themselves to simple, binary decision-making. Should these decisions be appealed and fall within the scope of the "new review procedure",[1] it will be extremely difficult for applicants to secure a fair outcome without the right to an oral hearing.

1.8 Narrowing review rights has also historically led to more, not less, litigation.[2] The Bill's restriction of the presumptive right to an oral hearing, together with the introduction of stricter procedural rules,[3] will likely increase the risk of errors in the review process. Our experience with the now-abolished Immigration Assessment Authority (IAA) illustrates the dangers associated with limiting review rights in this way; poor quality decision-making not only harmed applicants, but also generated additional costs for taxpayers when matters ultimately proceeded to judicial review. We are concerned that this Bill will generate similar outcomes which, as with the IAA, will have significant flow-on consequences for years to come.

1.9 **A well-functioning visa system is one in which the best decisions are made at the earliest possible stage in the visa application process.** Given the broad and complex nature of Australia's migration framework, and the open-ended discretion it entails, the review of migration decisions must be assessed by qualified human decision-makers. Defaulting to 'paper-only' review essentially replicates what occurs at the departmental level when assessing visa criteria. It does not amount to genuine merits review. A stronger case for efficiency gains can be made by strengthening decision-making within the DHA, ensuring that officers responsible for visa determinations are properly qualified, supported, and trained. At the same time, the ART must be adequately resourced to conduct timely and robust merits review.

2 Recommendations

Recommendation 1. The Committee should recommend that the Bill should not be passed.

Recommendation 2. The Department of Home Affairs must be adequately resourced to ensure that migration decisions are made correctly at the earliest stage.

Recommendation 3. The Administrative Review Tribunal must be adequately resourced to provide full and fair merits review in all matters before it, wherever this is reasonable in the circumstances.

[1] Commonwealth, *Parliamentary Debates*, House of Representatives, 3 September 2025, 14 (Michelle Rowland, Attorney-General)
[2] Alice Ashbolt, 'Taming the Beast : Why a Return to Common Law Procedural Fairness Would Help Curb Migration Litigation' (2009) 20(4) *Public Law Review* 264.
[3] *Administrative Review Tribunal and Other Legislation Amendment Bill 2025* (Cth) ('Amendment Bill') ss 367F(3), 367M.

3 Visa insecurity and migrant worker exploitation

3.1 Temporary migrants who come to Australia are equal members of our society, participants in our labour market and potential future citizens. Unlike many other countries, Australia operates a universal visa system that is designed to provide certainty and clear status to all visa holders. Embedding a framework that tolerates poor-quality decision-making instead subjects people to prolonged visa uncertainty and undermines the integrity of our visa system.

3.2 Limiting the review rights of temporary visa-holders, and depriving them of procedural protections such as the right to a hearing, will ultimately prolong the review process as applicants will be required to seek judicial review of defective decisions. The recent experience of the IAA suggests that review decisions made 'on the papers' based on a limited framework of review are more likely to be legally defective. For instance, between 2021-2023, 37% of decisions made by the IAA were overturned by the Courts based on jurisdictional error.[4] By contrast, in 2024, just 1.9% of the decisions made by the former Administrative Appeals Tribunal (AAT) were set aside by Courts on review.[5] The difference is due in large part to the robust procedural rights afforded to applicants before the Tribunal, ensuring that in the vast majority of cases, a correct, preferable and legally defensible decision is made.

3.3 By undermining merits review rights, the Bill risks creating further precarity for applicants, most of whom will be onshore on a Bridging visa while exercising their right of review. Research has demonstrated a strong link between migrant worker exploitation and visa insecurity.[6] Living on a Bridging visa is a form of migration limbo, marked by long processing times and significant barriers to economic and social participation. Although many migrants on bridging visas have in-demand skills, relevant work experience, and a strong desire to work, Australian employers frequently refuse to hire them. As a result, many are forced into the informal or cash economy to support themselves. This leads to deskilling, exploitation, and financial stress.[7]

3.4 Studies also show that the threat of visa refusal or cancellation, and the resulting loss of any future pathway to stay in Australia, remains one of the greatest deterrents to pursuing workplace claims.[8] A key part of addressing exploitation requires tackling the broader features of the migration system that render workers vulnerable. The Bill threatens to entrench yet another structural barrier into the system itself, making it even more difficult for workers to report and challenge exploitation at work.

3.5 Exploitation does not only harm migrant workers; it has significant flow-on effects across society, distorting labour markets and undercutting workplace standards for all workers. We commend the Albanese Labor Government for the work undertaken thus far to address migrant worker exploitation. Recent policy and legislative changes, including the introduction of visa protection pilots,[9] have made some progress in addressing the drivers of exploitation, and encouraging migrant workers to

[4] Kaldor Centre Data Lab, Submission No 11 to the Standing Committee on Social Policy and Legal Affairs, *Inquiry into the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Bill 2023* (25 January 2024).
[5] Administrative Appeals Tribunal, 2023-24 *At a Glance* (Report, 11 October 2024).
[6] Migrant Workers Centre (MWC), *Lives in Limbo: The experiences of migrant workers navigating Australia's unsettling migration system* (Report, November 2021).
[7] Shanthi Robertson and Anjena Runganaikaloo, 'Lives in Limbo: Migration Experiences in Australia's Education–Migration Nexus' (2014) 14(2) *Ethnicities* 215-216.
[8] Bassina Farbenblum and Laurie Berg, *Wage Theft in Silence: Why Migrant Workers Do Not Recover their Unpaid Wages in Australia* (Report, Migrant Worker Justice Initiative, October 2018) 7.
[9] Migrant Workers Centre (MWC), *In review: Australia's visa protection pilots* (Migration Matters, Policy Brief, June 2025)

report exploitation. It is vital that these gains are preserved and not wound back or undermined by measures elsewhere in the system.

3.6 To build on this progress, any reforms that affect migrant workers must be grounded in evidence about how visa status shapes exposure to exploitation. As we have pointed out, curtailing review rights risks prolonging the time that temporary migrants spend on Bridging visas in the community, preventing them from accessing the formal labour market and increasing their reliance on informal and underregulated forms of work. It also prolongs the pathway for temporary migrants to eventual permanent residency, again increasing their exposure to exploitative forms of work. Our most recent report, *Visa on Arrival and Migrant Worker Exploitation* (n= 959), examined differences in workers' experiences of exploitation based on their visa on arrival, specifically whether that visa provided a pathway to permanent residency or not.[10] Whether or not a visa offers a clear pathway to permanency has profound implications for a worker's visa security, bargaining power, and willingness to report abuses. Those who arrive on visas without a pathway to permanency often cycle through multiple temporary visas over many years, creating a state of "permanent temporariness".[11] This prolonged precarity limits their ability to secure stable work and undermines their confidence to enforce their rights.

3.7 Our research report shows that labour exploitation is pervasive for all migrant workers, with high rates of workplace abuse (62%) and injury (34%) reported irrespective of visa status.[12] However, non-pathway arrivals are significantly more likely to experience underpayment (44% compared to 34% of pathway arrivals), including wage theft practices such as non-payment of superannuation (22%) and not receiving payslips (18%), and to report being pressured to work in hazardous or unsafe conditions without proper training, equipment, or breaks (18%). These differences are shaped not only by visa status itself but also by the socio-demographic profile of non-pathway arrivals, who are more likely to be younger, recent arrivals, casually employed, and concentrated in industries that are strongly associated with unsafe and exploitative practices, such as Accommodation and Food Services. These findings are corroborated by earlier research and large-scale studies.[13]

3.8 Taken together, the substantial body of available evidence makes clear that visa insecurity is a critical driver of migrant worker exploitation. Weakening review rights will not only heighten workers' vulnerability but also undermine the Government's broader efforts to combat exploitation.

4 Other downstream impacts

Denial of a fair opportunity to be heard

4.1 The proposed 'on the papers' stream explicitly applies to Student visas, but the Bill also permits this stream to be extended by Regulation to other temporary visa categories.[14] These changes are especially concerning in the context of Student visas, where grant rates have fallen sharply following

[10] **Pathway visas** are permanent or temporary visas that provide a clear and certain pathway to qualify for permanent residency after meeting specific criteria, such as skilled occupation requirements, nomination or sponsorship, and health and character requirements. **Non-pathway visas** do not provide a clear or formal process for the visa holder to transition to permanent residency or long-term status in the country. These types of visas are typically limited in duration, have restrictive conditions, and may be tied to specific purposes like tourism, short-term work, or temporary study.
[11] MWC, *Insecure by Design: Australia's migration system and migrant workers' job market experience* (Report, March 2023).
[12] MWC, *Visa on arrival and migrant worker exploitation: 2023-24 survey findings* (Report, November 2024).
[13] Laurie Berg and Bassina Farbenblum, Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey (Report, Migrant Worker Justice Initiative, 2017).
[14] Amendment Bill (n 3) s 367C(2)(b), (4)–(5).

recent reforms to Australia's international education settings. As shown in **Figure 1 below**, student visa approval rates have fallen dramatically since 2022–23, particularly in the VET and ELICOS sectors. In the VET sector especially, grant rates now hover at around 50%. Many of these refusal decisions are likely to proceed to merits review, assuming that the visa applicant was onshore at the time of decision.

4.2 In the 2024-25 period, 47% of student visa refusals under review at the ART were set aside or remitted to the Department, with only 22% affirmed.[15] This suggests that a significant proportion of decisions are being incorrectly made in the first instance. It is therefore more appropriate to pursue efficiencies at the departmental level, so that correct decisions are made at the earliest possible opportunity. This is especially important given the highly discretionary nature of many visa criteria. A clear example is the Genuine Student (GS) requirement, which replaced the Genuine Temporary Entrant (GTE) requirement. Beyond meeting objective criteria such as age, financial capacity, and English language proficiency, visa applicants must now also demonstrate they are a 'genuine student' by addressing the following factors:

4.2.1 Their broader personal circumstances, including family, employment and ties to home country;

4.2.2 Why they wish to study their chosen course in Australia with a particular education provider, including their understanding of the requirements of the course and of studying and living in Australia;

4.2.3 How completing the chosen course will be of benefit to them; and

4.2.4 Any other information they consider relevant.[16]

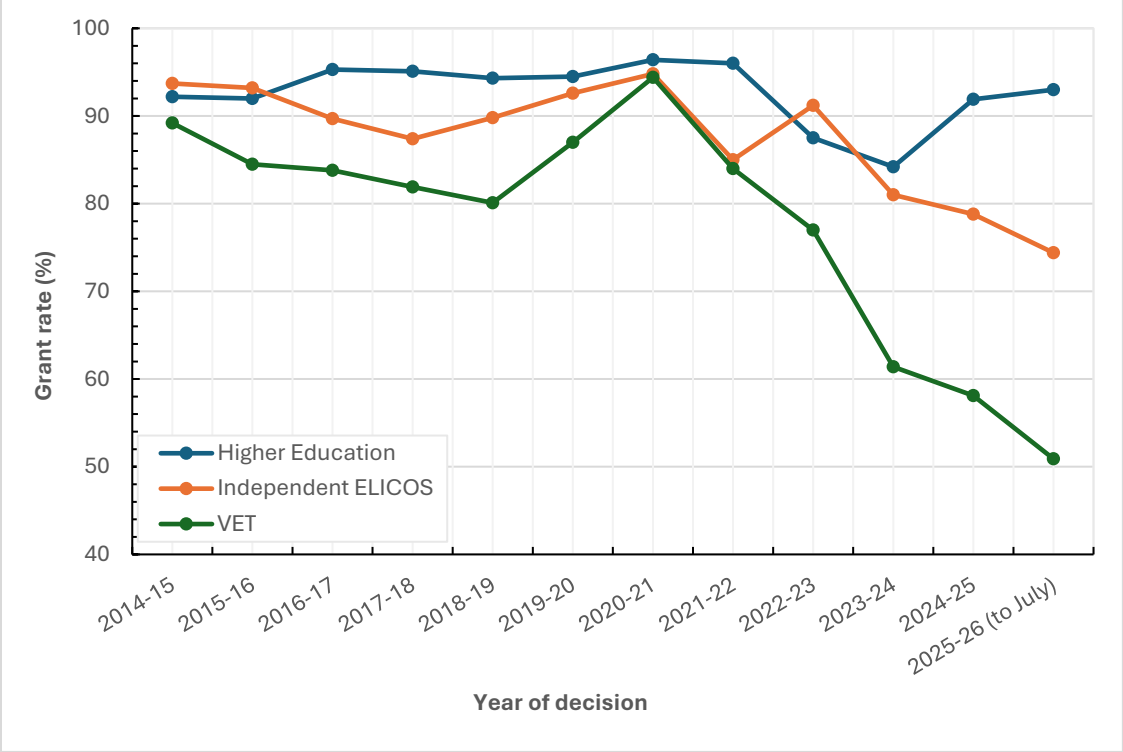

Figure 1. Student visa grant rates by sector (primary applicants)[17]

[15] Administrative Review Tribunal, *Migration Jurisdictional Area Caseload Summary 2024-25* (Report, 31 May 2025).
[16] Department of Home Affairs, 'Genuine Student requirement' (Web Page, 23 September 2024)
[17] '*Student visas grant rates at 2025-08-31*' (dataset, Data.gov.au, 25 September 2025).

4.3 The GS criteria, among others, are highly discretionary. They require department officers to weigh a wide range of qualitative factors, which are open to differing interpretations. For example, what one officer may view as a 'logical' progression in the choice of course, another may view as inconsistent. A 'papers-only' review is ill-suited to fair assessment of such open-textured requirements. We note that almost all other temporary visa subclasses contain similarly-formulated requirements, relating to the applicant's 'genuine intention' to stay in Australia temporarily.

4.4 A further difficulty is the assessment of credibility. Many migration cases turn not only on documents but also on the plausibility and consistency of applicants' explanations about their circumstances. Determining whether a person is a 'genuine student', for example, inevitably requires judgment about the reliability of their stated intentions and plans. Such assessments cannot be made fairly 'on the papers' alone. Oral hearings allow decision-makers to clarify ambiguities, test explanations through questioning, and observe the applicant's responses in real time.

4.5 Furthermore, temporary visa applicants are not interviewed by the DHA, meaning that if the right to an oral hearing is restricted, the ART would be replicating the Department's paper-based processes when reassessing the case on its merits. Restrictions on oral hearings are not a feature of a fair and just system and undermine the whole purpose of the ART. Without a presumptive right to an oral hearing, the Tribunal risks rubber-stamping the Department's decisions, rather than providing a robust merits review. This undermines the ART's role as an independent safeguard and increases the likelihood that genuine applicants will be shut out—including international students who may otherwise become future participants in Australia's skilled workforce.

Access barriers

4.6 Limiting oral hearings by default will disproportionately harm people with language, literacy, or disability-related barriers who rely on interactive processes to make their case. In effect, it will create a 'two track' system of review, whereby applicants who can afford legal representation can access their review rights, and those without representation cannot.

4.7 There is generally very limited access to free legal representation. Only a few community legal services across Australia, including the MWC, offer free migration advice. However, chronic underfunding and capacity constraints mean these services are heavily means-tested or unable to assist many of those who seek help. As discussed above, transitioning between visas carries profound consequences for income stability, work rights, and access to welfare services. As a result, temporary and bridging visa holders often face significant financial precarity, with international students in particular struggling to meet basic needs while maintaining tuition payments.[18] This means that most applicants cannot afford to be vigorously represented, leaving them particularly vulnerable when decisions are made against them.

4.8 The high costs of legal advice and information barriers may also push many towards sub-standard or exploitative migration advisers. Numerous media reports have exposed migration scams and false assurances, costing victims thousands.[19] Concerningly, our research into workers' experiences with

[18] Benjamin Mulvey, Alan Morris and Luke Ashton, 'Differentiated experiences of financial precarity and lived precariousness among international students in Australia' (2024) 87 *Higher Education* 741.
[19] Sophie Bennett, Tala paid $32,000 to a migration consultancy. She now claims she was scammed', *SBS News* (online, 11 November 2024); Meghna Balie, 'Scams shattering Indian students' dreams of studying in Australia', *ABC News* (online, 17 September 2024).

the migration advice sector found that 46% of respondents experienced significant problems with their primary migration service, most commonly insufficient updates (42%) and incorrect advice (38%).[20] These deficiencies had serious consequences: 39% reported negative impacts on their visa or stay in Australia, nearly half (48%) experienced financial hardship, and many (45%) struggled to appeal visa decisions.

4.9 As noted above, Student visa applicants often need an oral hearing to explain their educational choices, clarify gaps or inconsistencies, and provide context about their personal or financial circumstances. The Bill provides that the only avenue to respond under the 'papers only' review stream is through written submissions, subject to strict deadlines,[21] with no power to extend response periods.[22]

4.10 For applicants with limited English language proficiency, these procedural requirements can be difficult to understand or contest in writing, especially without legal representation. In the absence of interpreters, advocates, and real-time dialogue, many applicants will be unable to fully understand the case against them or effectively present their claims, especially when credibility is in issue.[23] Applicants also experience high stress, anxiety, and trauma associated with migration uncertainty, which limits their ability to navigate complex paper-only processes.[24] When appropriately supported, oral hearings provide a vital opportunity for these applicants to communicate their circumstances in a more accessible and supportive setting.

4.11 Without access to legal representation, the ability of applicants to exercise their appeal rights is severely curtailed, in ways that are both shaped by and likely to entrench existing structural vulnerabilities. In practice, these barriers mean that many applicants will struggle to provide a timely or effective response under a paper-only process. When replicated across thousands of cases, these access barriers can translate into broader systemic consequences, fueling backlogs and weakening decision-making standards.

Systemic impacts

4.12 Over the past 20 years, the Tribunal has faced a persistent backlog of cases, driven not only by chronic under-resourcing but also by the historical politicisation of appointments to the former AAT. This has contributed to inconsistencies in decision-making and undermined the timeliness and accessibility of merits review. These historical and systemic barriers cannot be effectively addressed by depriving applicants before the Tribunal of basic review rights.

4.13 As we have noted above, the removal of procedural safeguards in the review process increases the risk of defective decisions, inevitably resulting in a greater number of proceedings seeking judicial review of decisions by the Courts. This simply shifts the decision-making burden to the Courts, causing greater uncertainty, delay in the decision-making process and cost to the public.

4.14 Over time, the absence of robust merits review risks entrenching a culture of poor decision-making, because flawed decisions are less likely to be identified and remedied. This undermines

[20] MWC, *Pathways and Pitfalls: Migrant workers experiences with the migration advice sector* (Report, June 2024).
[21] Amendment Bill (n 3) s 367H.
[22] Ibid s 367M.
[23] Matthew Groves, 'Interpreters and Fairness in Administrative Hearings' (2016) 40(2) *Melbourne University Law Review* 506.
[24] Andrian Liem et al, 'Acculturative Stress and Coping among Migrant Workers: A Global Mixed-methods Systematic Review' (2021) 13(3) *Applied psychology : health and well-being* 491.

accountability and allows substandard practices to persist. Judicial review of migration decisions is available through the Federal Circuit and Family Court of Australia, with limited original jurisdiction also available in the High Court.[25] If there is jurisdictional error, the court can grant appropriate relief. However, judicial review is no substitute for merits review; it only tests the legality of a decision, not the appropriateness of a fact finding. This means it is a much narrower safety net. It is also not a practical option, as it involves some risk for applicants who may be required to bear the costs if their case is unsuccessful.

4.15 In a recent analysis of the efficacy of the IAA, Elton concluded that many of the "concerns [raised about] administrative justice" are not just applicable to the IAA, but also extend to the review of migration decisions and the ART more broadly:

> *This article serves as a warning to future policymakers to preserve checks-and-balances on merits review and ensure that administrative justice is served through full review. To achieve this, the IAA model should not be replicated. Instead, a return to core traditional legal principles of due process is warranted. Applicants should have the right to a hearing and should be able to include any additional evidence that they consider relevant to support their claim.*[26]

4.16 Other measures that can preserve quality decision-making, while also addressing the Tribunal's caseload, should be explored. For example, Tribunal members already have the discretion to make decisions on the papers in select circumstances, including where the outcome is positive, where the parties consent, or where an applicant fails to comply with an order or attend a case event.[27] Tribunal members should be trained and encouraged to use those powers where appropriate.

4.17 Lastly, the Bill grants the executive broad discretion to prescribe, by regulation, additional visa categories that may be subject to the new 'papers-only' review stream. The proposed amendments indicate that the circumstances in which applications may be determined on the papers will be set out in the *Migration Regulations 1994* (Cth), yet these circumstances are not defined or explained in the Bill itself. This is concerning because delegated legislation is subject to limited parliamentary oversight. The primary safeguard is the disallowance process, supported by technical scrutiny from the Senate Standing Committee for the Scrutiny of Delegated Legislation. However, this safeguard depends heavily on political will and the balance of numbers in Parliament and therefore cannot always be relied upon as an effective check.

4.18 Vesting such broad power also further concentrates executive control in a migration framework already marked by wide ministerial discretion. This creates uncertainty and instability for applicants, who may face shifting rules and curtailed review rights without meaningful parliamentary debate or public accountability. It also risks politicising review rights, with categories added at the Minister's discretion to service short-term or political objectives – which will directly undermine the Bill's stated goal of carefully balancing efficiency with individual rights.

[25] *Migration Act 1958* (Cth) s 476.
[26] Amy Elton, 'Reviewing Review: Administrative Justice and the Immigration Assessment Authority' (2024) 51(2) *Federal Law Review* 74.
[27] *Administrative Review Tribunal Act 2024* (Cth) s 106(1)–(5).

5 Conclusion

5.1 Restrictions on oral hearings are inconsistent with the principles of a fair and just system and undermine the purpose of the ART. The Bill risks repeating the mistakes of the IAA. It gives the appearance of fairness and efficiency while failing to meet the principles of administrative justice necessary to balance the needs of the individual with the interests of the state. Any efficiency gains at the Tribunal resulting from these amendments will be displaced by a likely increase in applications for judicial review. Curtailing review rights is therefore contrary to the wider public interest.

5.2 **A well-functioning migration system depends on making the best possible decisions at the earliest stage.** Where initial decision-making is robust and supported by strong review mechanisms, the risk of error is reduced, protracted litigation is avoided, and the financial and administrative burden on both applicants and taxpayers is lowered. Truncating or limiting merits review will have the opposite effect. It will also prolong visa uncertainty, heighten the risk of exploitation, and deny migrants a fair opportunity to exercise their appeal rights and be properly heard.

Recommendation 1. The Committee should recommend that the Bill should not be passed.

Recommendation 2. The Department of Home Affairs must be adequately resourced to ensure that migration decisions are made correctly at the earliest stage.

Recommendation 3. The Administrative Review Tribunal must be sufficiently resourced to provide full and fair merits review in all matters before it, wherever this is reasonable in the circumstances.