



Australian Government
Attorney-General's Department

September 2025

Senate Legal and Constitutional Affairs Legislation Committee

Administrative Review Tribunal and Other Legislation Amendment Bill 2025

Attorney-General's Department Submission

1. Introduction

1. The Attorney-General's Department (department) welcomes the opportunity to provide the Senate Legal and Constitutional Affairs Legislation Committee (Committee) with this submission as part of the Committee's inquiry into the Administrative Review Tribunal and Other Legislation Amendment Bill 2025 (Bill).
2. The Administrative Review Tribunal (Tribunal) commenced operation on 14 October 2024, replacing the Administrative Appeals Tribunal. The Tribunal conducts merits review of government decisions made under a wide range of Commonwealth Acts and instruments.
3. The Bill would expand the Tribunal's ability to make decisions 'on the papers', without conducting an oral hearing, in appropriate cases. This supports the Government's commitment to ensuring the Tribunal has the tools that it needs to deliver effective and efficient merits review and address its significant caseload of applications for review.
4. The Bill was informed by the findings and recommendations of the *Rapid Review into the Exploitation of Australia's Visa System* handed down by Christine Nixon AO APM in March 2023 (Nixon Review), which highlighted the importance of proportionate and efficient merits review processes for the integrity of Australia's migration system. The Attorney-General's Department undertook targeted consultation on the proposed policy approach to the Bill with key civil society stakeholders across the law and migration sectors in August 2025.
5. A more detailed explanation of the provisions in the Bill is included at **Attachment A**.

2. Context

The importance of proportionate review procedures

6. The Bill would support the Tribunal to ensure that its procedures for conducting merits review of government decisions are proportionate to the circumstances of the case.
7. The Tribunal's objective in section 9 of the *Administrative Review Tribunal Act 2024* (ART Act) is to provide an independent mechanism of review that:
 - is fair and just
 - ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits
 - is accessible and responsive to the diverse needs of parties to proceedings
 - improves the transparency and quality of government decision-making, and
 - promotes public trust and confidence in the Tribunal.
8. The Explanatory Memorandum for the Administrative Review Tribunal Bill 2023 explained that the Tribunal's objective reflects that:

- the Tribunal is not a court, and is not bound by the same strict rules and formal processes
 - fair and just elements are separated from others, because fairness and justness go principally to the outcome of the review, whereas economy, informality and speed go to the process
 - however, conducting merits review quickly, cheaply and informally should not come at the expense of properly considering the issues in each particular case, and
 - the balancing of these goals enshrines the principle of proportionality.
9. This reflects the principle that merits review process should be proportionate, such that the time and resources expended to determine a matter should reflect the complexity of the issues for determination.
10. Efficient and proportionate merits review is desirable across all case types, but it is particularly important for the Tribunal's review of **temporary migration decisions**, such as decisions to refuse visas. Most onshore applicants seeking review of a decision to refuse the grant of certain visas are entitled to stay in Australia on a bridging visa for the duration of the merits review process. Backlogs and extended wait times at the Tribunal stage may create incentives for non-genuine applicants to apply for review in order to extend their stay in Australia. Efficient review procedures are important to reduce delays in decision-making, provide genuine applicants with the benefit of a timely decision, and strengthen the integrity of the migration system.
11. The importance of **efficient and flexible review procedures** has been highlighted by recent increases in the Tribunal's caseload. Since early 2024, the Tribunal has experienced an increase in applications across many case types, including an unprecedented surge in applications for review of **decisions to refuse student visas**. This is linked to an increase in student visa applications, changes in student visa policy to enhance migration system integrity, and a resulting increase in decisions to refuse student visas. Figure 1 sets out further information on the increase in the Tribunal's caseload:

Figure 1: AAT/ART student visa lodgements vs total lodgements, 2018-19 to 2024-25			
Financial year	Total AAT/ART lodgements	Number of student visa refusal lodgements	Student visa lodgements as % of total lodgements
2024-25	83,287	32,187	38.6%
2023-24	50,246	11,138	22.2%
2022-23	41,037	1,868	4.6%
2021-22	44,274	3,423	7.8%
2020-21	37,438	214	0.6%
2019-20	54,378	5,984	11%
2018-19	60,595	5,499	9.1%

Tools to support the Tribunal to address its significant caseload

12. There are a number of existing tools and strategies in place to support the Tribunal to conduct reviews in an efficient and proportionate manner.
13. The Tribunal's **powers and procedures** for conducting review under the ART Act incorporate a range of features to facilitate streamlined decision making, such as:
- making it clear that the Tribunal is required to operate with as little formality and technicality as is appropriate (section 50) and is not bound by the rules of evidence (section 52)
 - the ability for the Tribunal to dismiss applications in certain circumstances, such as where an applicant does not appear or fails to comply with a Tribunal order, or the parties consent (sections 96-101), which enables the Tribunal to address non-engagement and prevent parties from being able to frustrate the Tribunal process
 - the ability for the Tribunal to make decisions without conducting an oral hearing in certain circumstances (discussed further below), and
 - the ability for registrars and staff to exercise a range of the Tribunal's procedural and administrative powers and functions, which supports cases being progressed efficiently and enables members to focus on making substantive decisions (sections 283-287).
14. Another key tool to support the Tribunal to effectively manage its caseload is its new, **demand-driven funding model**, which enables the Tribunal's funding to automatically adjust in responses to changes in the volume of applications it receives. Under its funding model, the Tribunal's annual funding for 2025-26 has increased in response to an increase in applications during 2024. This additional funding supports the appointment of additional members, registrars and staff.
15. In addition to these existing tools and strategies, the Bill will further streamline the Tribunal's review procedures and enhance the Tribunal's ability to conduct efficient and proportionate merits review by **expanding the Tribunal's ability to make decisions on the papers, without conducting an oral hearing**, where it is appropriate to do so. The Bill would amend the ART Act and the *Migration Act 1958* (Migration Act) to facilitate this, as explained below.

3. Overview of the Bill

16. The Bill contains two elements. The Bill would:
- amend the ART Act to give the Tribunal a new, broad **discretion** to dispense with a hearing in matters across its caseload where it considers it would be appropriate and reasonable to do so, and
 - amend the Migration Act to **require** the Tribunal to review student visa refusal cases (and other kinds of temporary visa decisions that may be prescribed in the Migration Regulations 1994 (Regulations)) on the papers, without conducting an oral hearing.

16. A summary of the amendments is set out below. A more detailed explanation of the amendments is at **Attachment A**.

Amendments to the ART Act

17. The Bill would amend the ART Act to give the Tribunal additional flexibility in how it decides cases, by expanding the circumstances in which the Tribunal can choose to make a decision based on written materials and without holding an oral hearing.
18. Currently, before the Tribunal makes a final decision on review, the Tribunal is generally **required to conduct an oral hearing**. This requirement is subject to certain exceptions set out in section 106 of the ART Act. The Tribunal may reach a decision on review without conducting an oral hearing if it appears to the Tribunal that the issues for determination can be adequately determined in the absence of the parties, and one of the following circumstances exist:
- the parties consent (in multi-party reviews)
 - the decision is wholly in favour of the applicant or the applicant requests a decision be made without a hearing (in single party reviews)
 - a party fails to comply with the ART Act or a Tribunal order, or
 - a party fails to appear at a Tribunal case event.
19. The Bill would amend the ART Act to **insert an additional circumstance** in which the Tribunal may make a decision without holding a hearing. The additional circumstance is if:
- the issues for determination in the proceeding can be **adequately determined** in the absence of the parties to the proceeding
 - it is **reasonable** for the Tribunal to make its decision without holding the hearing of the proceeding, and
 - the Tribunal has given the parties (other than a non-participating party) a **reasonable opportunity to make submissions** 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.
20. This discretion would be available across the Tribunal's entire caseload (except for reviews that *must* be conducted on the papers in accordance with the amendments to the Migration Act, discussed below).
21. This gives the Tribunal additional flexibility to tailor the review proceedings depending on the nature and complexity of the case. Affording parties procedural fairness does not *require* that an oral hearing be conducted in every case. What is required to conduct a fair review will depend on the circumstances of each case. Accordingly, it is appropriate that members have discretion to adapt Tribunal procedure to achieve fair and just review in a manner that is efficient and proportionate to the complexity of the matter before them, across the Tribunal's varied jurisdiction.

22. The department considers that this new discretion would most appropriately be utilised by the Tribunal in circumstances where a proceeding involves straightforward facts and issues, or the assessment of objective issues or tests, suited to being considered on the basis of written materials.
23. Importantly, the Tribunal's exercise of its expanded discretion would be conditioned by appropriate safeguards, including the following:
- the Tribunal would only be able to dispense with an oral hearing where it appears to the Tribunal that the issues can be adequately determined in the absence of the parties, and it would be reasonable in the circumstances to make a decision without holding a hearing
 - before deciding to dispense with an oral hearing, the Tribunal would be required to consult the parties about this and take the parties' submissions into account, and
 - the Tribunal would be required to exercise the discretion consistently with its existing obligations to:
 - afford the participating parties an opportunity to present their case under section 55 of the ART Act, and
 - ensure that as far as practicable, the Tribunal conducts each proceeding in a way that is accessible for the parties to the proceeding, taking into account the needs of the parties under section 51 of the ART Act.

Amendments to the Migration Act

24. The Bill would amend the Migration Act to identify certain kinds of decisions which the Tribunal **must** review on the papers, without conducting an oral hearing. The requirement:
- would apply to reviews of decisions to **refuse to grant a student visa**, and
 - could be expanded, in the Regulations, to include reviews of decisions relating to other kinds of **temporary visas**.
25. It is appropriate for the Tribunal to review decisions to refuse to grant a student visa on the papers, having regard to the nature of the issues under review, the temporary and short-term nature of a student visa, and the typically low volume and complexity of written materials relevant to proceedings of this kind.
26. It would not be possible for the requirement to be expanded in the Regulations to **reviews of decisions relating to protection visas or permanent visas**.
27. Any regulations made under the regulation-making power would be disallowable by the Parliament.

The proposed review process under the Migration Act

28. Decisions which the Tribunal must review on the papers would be subject to a new, bespoke review procedure under the Migration Act. The review would be conducted entirely on the basis of written materials, without the Tribunal holding an oral hearing.

29. Importantly, an applicant would still be given an opportunity to present their case to the Tribunal and explain why they consider they are entitled to a visa, and will not be restricted from providing new information or evidence to the Tribunal.
30. Key features of the review procedure include:
- a requirement for the Tribunal to invite an applicant to give the Tribunal **written submissions and evidence** on certain matters relating to the issues under review
 - retaining a requirement for the Tribunal to give certain '**adverse information**' to an applicant and allow the applicant to comment on it, and
 - requiring the Tribunal to **make its decision** after considering any submissions, evidence and comments given by the applicant, and any other material given to the Tribunal, without holding an oral hearing.
31. These key features of the review procedure would form part of the exhaustive statement of the natural justice hearing rule, which would displace the common law natural justice hearing rule for the matters it deals with. Section 55 of the ART Act, which sets out the Tribunal's procedural fairness obligations, would not apply in relation to applications to be reviewed on the papers. This will ensure that both the Tribunal and applicants have certainty as to the steps required to ensure that applicants have been afforded an opportunity to present their case. Further, the Tribunal would retain the ability to **request or obtain additional documents or materials** by other means, such as through an order under section 79 of the ART Act for the applicant to provide certain documents to the Tribunal.
32. Existing supports for vulnerable applicants will continue to be available. For example, applicants contacting the Tribunal regarding Tribunal processes will continue to be supported with immediate access to interpreting support through the Department of Home Affairs' Translation and Interpreting Service.

Enhancing Tribunal efficiency

33. The new procedure would support the Tribunal to address its caseload of student visa refusal reviews more efficiently. Efficiencies would arise from the following:
- The Tribunal estimates that removing oral hearings for student visa refusal cases would save the responsible Tribunal member approximately 30-60 minutes per case. This is equivalent to the average length of an oral hearing, and represents approximately 10-20% of the overall time the member spends on the case. Although deciding an application entirely on the papers may require the Tribunal to undertake some additional work in writing, it is expected to result in an overall time saving.
 - In addition, it would enable the Tribunal to allocate cases to members more flexibly, as cases could be allocated without the need for scheduling an oral hearing, and could be assigned at short notice (e.g. when a Tribunal member has unexpected immediate capacity).