



Immigration Advice
and Rights Centre

2 February 2024

Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary,

Inquiry into the Administrative Review Tribunal Bill 2023 (ART Bill) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (Consequential and Transitional Bill)

Thank you for the opportunity to provide a submission in relation to the above inquiry.

Background

The Immigration Advice and Rights Centre (“IARC”) is a community legal centre operating in NSW that specialises in immigration, refugee, and citizenship law. IARC advocates for some of the most vulnerable members of our community including women on temporary visas experiencing domestic and family violence (DFV), migrant workers subject to exploitation, asylum seekers and migrants seeking reunification with their families.

IARC has extensive experience assisting and representing people at the Administrative Appeals Tribunal (both the Migration Review Division (AAT-MRD) and General Division), Immigration Assessment Authority (IAA) and at the judicial review stage.

Summary

In general, IARC supports the ART Bill and Consequential and Transitional Bill and its attempt to bring consistency and harmony across the new review body. In particular, we support the abolition of the IAA, the consistency in timeframes for bringing review, the right for representation and the limited use of exhaustive statements of the natural justice rule.

However, we are concerned that the reforms do not go far enough and still place migrants and refugees at a distinct disadvantage when seeking merits review. We note the ART has no power to extend time periods for review, nor is there any consideration for reducing the significant fees incurred when seeking merits review. Character matters at the new review body will also continue to face the same onerous and often punitive timeframes imposed by s 500 of the *Migration Act 1958* (Cth) (Act). Further, document retrieval may still be problematic given there is no legal onus for the Department of Home Affairs to provide information, let alone within a specified time frame, for all migration matters.

To address the above, we make the following recommendations:

1. The ART be given power to extend timeframes for seeking review in migration and refugee matters.
2. Increase ART review timeframes for people in detention to at least align with the 28-days imposed to those in the community seeking merits review.
3. A complete waiver of the application fee be available at the ART for those facing significant financial hardship and other vulnerabilities.
4. Bring the requirements and timeframes for character matters in line with other migration review matters.
5. Impose a legal onus on the Department of Home Affairs to provide documents in review to the review applicant within a specified time period for all migration matters.



HELPING
PEOPLE
NAVIGATE
AUSTRALIAN
IMMIGRATION LAW

OFFICE
Suite 3, Level 8,
377-383 Sussex Street,
Sydney NSW 2000

POSTAL
PO Box 20035,
World Square
NSW 2000

INFO LINE
(02) 8234 0700

EMAIL
info@iarc.org.au

iarg.org.au



IARCAustralia



Immigration Advice
and Rights Centre

Extending timeframes for review

IARC has witnessed many clients unable to seek merits review at the AAT as the timeframe to lodge a review application has expired. These clients often have meritorious cases, but due to a lack of ability to have the timeframe extended, are then left with limited to no realistic options to appeal their matter or remain in Australia. Further, these clients often miss the deadline for review due to factors outside their control, including:

- Correspondence has been sent to an abusive visa sponsor that did not inform the visa applicant in time about the refusal;
- The applicant is homeless and has not been able to effectively receive the correspondence;
- They do not understand the refusal and are unable to access affordable legal assistance in time;
- They do not have the funds to pay for merits review (even with a fee reduction).

We understand that the Attorney-General's Department's submission states that the reason for not affording extended timeframes for review is to "facilitate the effective management of a person's bridging visa". However, individuals are already able to apply for a bridging visa when they are unlawful, this includes where they have applied for judicial review of an AAT decision out of time. We also note that the consequences for missing a review date can have dire consequences for applicants. For most it risks their liberty, with the possibility of being placed into immigration detention. For some, it may also mean facing return to a country where they are at risk of harm and could also mean long-term separation from family in Australia.

Further, we note that the ART intends to allow people in immigration detention seven days to lodge a merits review at the ART. Whilst this is an improvement on the previous two days afforded by the AAT, we do not consider that seven days is sufficient in the circumstances. In IARC's experience, people in detention often struggle to access appropriate resources and legal assistance within the limited timeframe. The consequences can mean ongoing deprivation of their liberty and removal from Australia.

Recommendations:

1. The ART be given power to extend timeframes for seeking review in migration and refugee matters.
2. Increase ART review timeframes for people in detention to at least align with the 28-days imposed to those in the community seeking merits review.

Waiver of application fee

The current fee for lodging a review at the AAT-MRD is \$3,374. Applicants can only request a fee reduction of 50% (not a complete waiver) where paying the fee would cause them severe financial hardship.

At IARC, we have witnessed clients struggle to pay the reduced fee and place themselves in extremely vulnerable situations. IARC has had clients who are victim-survivors of domestic, family and sexual violence use their emergency funds from the Australian Red Cross, sell their motor vehicle (which they were also using for a home), pawn family heirlooms and other personal items and enter payday loans, in order to access merits review.

The ART Bill and Consequential and Transitional Bill do not consider any arrangements to alleviate the financial burden on applicants seeking review. This will mean review remains inaccessible for many migrants seeking review. Whilst this may be a matter that is dealt with by associated regulations, we consider that this is a matter that warrants immediate attention and reform.



HELPING
PEOPLE
NAVIGATE
AUSTRALIAN
IMMIGRATION LAW

OFFICE
Suite 3, Level 8,
377-383 Sussex Street,
Sydney NSW 2000

POSTAL
PO Box 20035,
World Square
NSW 2000

INFO LINE
(02) 8234 0700

EMAIL
info@iarc.org.au

iarc.org.au



IARCAustralia



Immigration Advice
and Rights Centre

Recommendation:

3. A complete waiver of the application fee be available at the ART for those facing significant financial hardship and/or other vulnerabilities.

Character matters

We note that there are no significant changes to review of character matters at the new ART. Section 500 of the Act, which provides for the conduct of review of decisions of a delegate of the Minister under s 501 and s 36(1C) of the Act, still applies to the ART. Given this, there are significant hurdles and accessibility issues that come from this, including:

- the nine days to make an application;
- the prohibition on applicants raising relevant material during a hearing unless this has been provided to the Minister in writing two days in advance;
- deemed affirmation of the decision if no decision is made within 84 days.

The above onerous timeframes coupled with the adversarial nature of character matter hearings means that applicants will continue to find the new merits review body inaccessible. We also consider that failure to remedy this in the legislation is a missed opportunity to ensure procedural fairness across all sections of the ART.

Recommendation:

4. Bring the requirements and timeframes for character matters in line with other migration review matters.

Access to documents

We understand that the new ART will have a standardised informal arrangement for applicants requesting documents from the new ART. Whilst, we support an informal approach to accessing documents for applicants, we are concerned that the amendments to s 362A of the Act disposes of the entitlement of the applicant to have access to information given to the ART by the Department. This entitlement has been replaced with a mere ability for the applicant to request information from the Department. There appears to be no obligation for the Department to provide that information, nor is there any time limit prescribed.

We are concerned that without an obligation and timeframe, applicants will have issues accessing relevant documents within a reasonable amount of time or at all.

Recommendation:

5. Impose a legal onus on the Department of Home Affairs to provide documents in review to the review applicant within a specified time period for all migration matters.



HELPING
PEOPLE
NAVIGATE
AUSTRALIAN
IMMIGRATION LAW

OFFICE
Suite 3, Level 8,
377-383 Sussex Street,
Sydney NSW 2000

POSTAL
PO Box 20035,
World Square
NSW 2000

INFO LINE
(02) 8234 0700

EMAIL
info@iarc.org.au

iarc.org.au



IARCAustralia



Immigration Advice
and Rights Centre

Please do not hesitate to contact us should you require any further information.

Yours sincerely,

IMMIGRATION ADVICE AND RIGHTS CENTRE Inc

Joshua Strutt

CEO/Principal Solicitor



**HELPING
PEOPLE
NAVIGATE**
| AUSTRALIAN
IMMIGRATION LAW

OFFICE
Suite 3, Level 8,
377-383 Sussex Street,
Sydney NSW 2000

POSTAL
PO Box 20035,
World Square
NSW 2000

INFO LINE
(02) 8234 0700

EMAIL
info@iarc.org.au

iarg.org.au



IARCAustralia