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18 September 2025

Dr James Popple
Chief Executive Officer
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By email: alan.freckleton@lawcouncil.au

Dear Dr Popple,

ADMINISTRATIVE REVIEW TRIBUNAL AND OTHER LEGISLATION AMENDMENT BILL 2025

Thank you for the opportunity to provide feedback to the Law Council to inform its submission to the Senate and Constitutional Affairs Legislation Committee on the Administrative Review Tribunal and Other Legislation Amendment Bill 2025 (**Bill**). The Law Society's Human Rights and Public Law Committees contributed to this submission.

The Administrative Review Tribunal (**ART**) is experiencing a marked increase in applications, which has created delays in the finalisation of certain reviews. While it is important to ensure the efficiency of the ART's operations, this should not undermine fairness in the merits review process or the accessibility of the ART, particularly for unrepresented applicants and those from diverse backgrounds. We are concerned that removing the opportunity of an oral hearing in certain circumstances may disadvantage such applicants, who may struggle to present their case in a written form.

The comments below are directed to the proposed amendments to the *Migration Act 1958* (Cth) (**Migration Act**) to require the ART to make decisions in relation to applications for review of certain decisions on the papers without conducting an oral hearing, including decisions to refuse student visas and applications relating to temporary visas prescribed in the *Migration Regulations 1994* (**Regulations**).

Limitations of written submissions in certain cases involving the refusal of student visas

The proposed amendments are designed to enhance the efficiency of merits review processes to ensure that applications are resolved as quickly, and with as little formality and expense, as a proper consideration of the relevant matters permits.¹

While it is possible that certain applications relating to refusal of student visas can be resolved on the papers in a satisfactory manner which does not result in a denial of procedural fairness, we suggest there are several limitations to this approach.

¹ *Administrative Review Tribunal Act 2024* (Cth) s 9.



One difficulty which may arise is where the Member/decision-maker seeks to take a matter into account that is not addressed by the applicant in their written submissions. This could be avoided if there was the opportunity for an oral hearing during which the Member could raise the matter directly with the applicant. While it is possible that, under the proposal contained in the Bill, the Member could seek further written submissions, we suggest that this could defeat the purpose of costs savings and efficiencies which the amendments are intended to address.

Further, in considering a decision to refuse a student visa on the basis that the student is not a 'genuine temporary entrant', the ART is required under s 499 of the Migration Act to comply with Ministerial Direction 108. Our members consider that applicants, particularly those without legal representation, may struggle to grapple with the multiple considerations to be addressed under this Direction, which can be complex and nuanced. This may cause difficulties for the Member tasked with making an assessment on whether the review applicant has a genuine intention to temporarily stay in Australia.

The fact that the Bill requires the ART to decide student visa refusals and any other applications relating to temporary visas prescribed in the Regulations on the papers means that there is no flexibility in approach in these matters. In this context, we note the recent matter of *2318630 (Migration) [2025] ARTA 517*. While that matter concerned the cancellation as opposed to refusal of a student visa, it is nevertheless illustrative of why an oral hearing is sometimes an important avenue through which the ART Member can engage in a meaningful way with an applicant to arrive at the correct or preferable decision.

In concluding that the decision to cancel the applicant's visa should be set aside in light of her circumstances as a victim of sexual assault, General Member T. Quinn made the following comments:

The Tribunal deeply empathises with the applicant in this regard and found her evidence about these events and what she experienced in the aftermath was authentic and reliable and consistent with well-known literature on the impact of sexual violence on victims.²

Such a case suggests the benefits of an oral hearing in certain circumstances, particularly where the Member must make a decision on the credibility of evidence that contains particular sensitivities or nuance.

For these reasons, we suggest that there be a mechanism in the Bill, for example, by amendment of cl 367C(3), whereby a Member is permitted to hold an oral hearing in circumstances where, after reviewing the written materials, they have formed the view that this process is required to engage meaningfully with the application. This would provide the necessary certainty to allow for an oral hearing, in contrast with reliance on the contingency of regulations to be made under cl 367C(3)(b).

² *2318630 (Migration) [2025] ARTA 517, [39] (General Member T Quinn).*



THE LAW SOCIETY
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Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

President