



THE LAW SOCIETY
OF NEW SOUTH WALES

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Dr James Popple
Chief Executive Officer
Law Council of Australia
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By email: alan.freckelton@lawcouncil.au

Dear Dr Popple,

ADMINISTRATIVE REVIEW COUNCIL MIGRATION INQUIRY

The Law Society is grateful for the opportunity to provide input to the Law Council of Australia to inform its response to the Administrative Review Council's Migration Inquiry Issues Paper (**Issues Paper**). This letter addresses specific questions from the Issues Paper in turn. The Law Society's Human Rights Committee contributed to this submission.

Question 1: What is your experience with the primary decision-making process relating to visas in the Department of Home Affairs?

Quality of decision-making

We are concerned with the quality of primary decision-making by the Department of Home Affairs (**Department**) with respect to visa matters, as reflected in the high proportion of primary decisions overturned on review by the Administrative Review Tribunal (**ART**). For example, between 1 July 2025 and 30 November 2025, 51 percent of family and partner visa refusals or cancellations were set aside by the ART.¹ During that same period, 40 percent of all migration decisions were set aside, while only 23 percent were affirmed.² These figures demonstrate a systemic issue in primary decision-making and underscore the need for meaningful reform of Departmental processes and training.

Our members also report that within the protection visa assessment process, the quality of decision-making at primary level varies significantly depending on the officer determining the matter, suggesting a variation in experience, skills, support and/or training. Members report that where decision-makers refuse meritorious applications, the records of reasons frequently demonstrate that officers may have misunderstood evidence, overlooked legal or country information submissions, or have reached findings not supported by the evidence.

¹ Administrative Review Tribunal, 'Migration detailed caseload statistics 2025 – 26', <<https://www.art.gov.au/sites/default/files/2025-09/Migration-Detailed-Caseload-Statistics-2025-26.pdf>>. See also the statistics from 14 October 2024 – 30 June 2025, where 42 per cent of all migration decisions were set aside: [Migration detailed caseload statistics 2024-25](#).

² Ibid.

Our members have also reported instances in which the Department, in their view, have misapplied the law when making primary decisions. This is particularly evident in character assessments, where applicants have been asked to provide, and decision-makers have relied on, information that cannot be taken into account, such as non-convictions,³ or other information which is unlikely to have any bearing on character, including whether the applicant has a record of minor traffic infringements. Such requests not only prolong processing times unnecessarily, but also reveal gaps in decision-makers' understanding of the statutory framework. To address these concerns and improve the quality of primary decision-making, we encourage review of the content and frequency of the Department's training, to ensure primary decision-makers understand and correctly apply the law and assess the relevance of information sought.

In addition, we understand that there are often delays at the primary decision-making stage, even for strong or meritorious applications. We suggest that procedures for fast-tracking strong or meritorious applications be considered. To improve efficiency and reduce unnecessary burdens on applicants, we suggest the Department consider implementing procedures, with clear and transparent decision-making guidelines, to identify and fast-track applications that appear straightforward or have high prospects of success.

Procedural fairness

Several concerns also arise regarding the procedural fairness that is afforded to applicants at the primary decision-making stage. First, particularly in relation to protection visas, applicants often experience a number of intersecting barriers to lodging 'decision ready' applications, such as language, health, experience of trauma, experiences of domestic and family violence, discrimination on the basis of sexual orientation or gender-identity, coupled with under-resourced legal service providers. When this is combined with what is, in our practitioners' experience, an increasing reliance by the Department on written requests for information in lieu of interviewing applicants, the ability of many applicants to put forth a strong application is impeded. We understand that the written requests for information from the Department can be lengthy, vague and poorly drafted. They also require a written response in English. Accordingly, this process can be burdensome for applicants, particularly where they are self-represented or those with a first language other than English, and can therefore mean that applicants are unable to fully understand, or meaningfully respond, to the issues raised.

Compounding the above concerns, our members report that the Department frequently fails to process Freedom of Information (**FOI**) requests within statutory processing times, leaving applicants without key information and documents needed to meaningfully engage in the visa application process. Practitioners also report that the Department often does not provide particulars of adverse information as required by s 57(2) of the *Migration Act 1958* (Cth) (**Migration Act**), limiting applicants' ability to respond to adverse information and raising serious procedural fairness concerns. In some cases, the Department refers applicants to the FOI pathway instead of providing the adverse information directly, an approach that is neither timely nor reliable for applicants who require prompt access to material to meaningfully respond.

³ *Minister for Immigration and Citizenship, Migrant Services v Thornton* [2023] HCA 17; *Heathcote and Minister for Immigration and Multicultural Affairs* [2025] ARTA 131.

Further procedural inequities arise in relation to applicants in immigration detention, who are subject to shorter timeframes for responding to Departmental requests than people in the community,⁴ despite reduced access to resources and legal advice by virtue of their detention. In our members' experience, it does not appear that these compressed timeframes have led to faster processing times for detained applicants, particularly in character related matters. In light of the barriers experienced by people in detention and in the interests of procedural fairness to such applicants, we suggest that the compressed timeframes for them responding to requests for information be reconsidered.

Internal review

The Issues Paper briefly notes the absence of an internal review mechanism within the Department.⁵ In principle, an internal review pathway might serve as an efficient way to correct clear errors in decision-making at an earlier stage, resolve straight-forward factual matters, and prevent unnecessary progression of applications to external merits review. This could, in some cases, enhance administrative efficiency and reduce the ART's caseload.

However, we remain cautious about introducing a broad internal review process within the Department. As a matter of principle, we emphasise that an internal review process should not replace an independent, external merits review pathway. External review of government decision-making is critical to ensuring transparent government decision-making and the protection of individual rights. It promotes administrative integrity and governmental accountability and is a key oversight mechanism in respect of the quality of public administration and decision-making. Further, migration and protection decisions are often complex, time-sensitive, and involve significant consequences for applicants, meaning that applicants already rely heavily on the ART as the primary avenue for independent merits review. Creating an additional internal review layer risks adding another procedural step without necessarily improving outcomes. For many applicants, it could simply prolong the decision-making process, delaying access to independent review that is, as the evidence above suggests, better equipped to correct errors.

Nonetheless, there may be limited contexts where internal review would be appropriate and efficient; for example, decisions turning solely on objective criteria such as confirmation of a nomination or enrolment to study. In such cases, errors are typically factual and easily rectifiable, and an internal review could prevent unnecessary referrals to the ART. Beyond these narrow circumstances, however, we would caution against introducing a general internal review process. Any such reform should be carefully assessed to ensure it improves accuracy and efficiency rather than adding delay or complexity to an already burdened merits review system.

Question 4: What is your experience in relation to time limits applying for review of migration and protection decisions in the ART?

Section 347(3) of the *Migration Act* requires that an application for review by the ART must be made within 28 days of being notified of a migration decision. If the applicant is in immigration detention, they must make the application within 14 days. The 28-day time limit is aligned with the 28-day period applying to reviews of

⁴ See *Migration Regulations 1994* (Cth) reg 2.15.

⁵ Administrative Review Council, *Migration Inquiry Issues Paper* (November 2025)14.

decisions made under other legislation within the ART's jurisdiction, and we support this consistency across the ART's jurisdiction, to promote clarity and fairness for all applicants.

However, an exception to the 28-day time limit applies to applications for review under s 500 of the Migration Act, for which there is a significantly shorter 9-day limit to apply for review.⁶ In our view, this is unduly restrictive. Applications for review under s 500 often involve serious visa cancellation matters where applicants are in custody or immigration detention. These circumstances can prevent them from obtaining timely legal advice or preparing and lodging a valid application within this compressed timeframe. This timeframe therefore poses a real barrier to accessing ART review. The 9-day limit should be extended, or at minimum, the ART should be given discretion to extend the filing period where necessary to ensure procedural fairness.

Similarly, the requirement that the ART make a decision in a s 500 review within 84 days,⁷ failing which the primary decision is deemed affirmed, does not promote just outcomes. The strict deadline risks premature or incomplete decision-making, particularly in cases involving complex evidence or vulnerable applicants, and does not allow adequate flexibility to reflect the realities of the ART's workload. In our view, this timeframe should be reconsidered.

More broadly, the ART should have discretion to extend filing timeframes for applications to review decisions made under Part 5 of the Migration Act in compelling or exceptional circumstances. Currently, and noting the onerous nature of a number of applicable deadlines, applicants who miss deadlines have no recourse other than seeking Ministerial intervention. This is an avenue that is rarely exercised and, in our view, does not provide a genuine safeguard against procedural unfairness.⁸ Introducing a limited discretion for the ART would better balance efficiency with fairness and ensure applicants are not unfairly excluded from merits review.

Question 5: What is your experience with the provisions governing when adverse information must be disclosed to an applicant?

We support applicants being afforded the same entitlement to access materials before the ART as applicants in other ART jurisdictions. Under the Migration Act, the ART must provide the applicant clear particulars of any information that it considers would be the reason, or a part of the reason, for affirming the decision under review, and must ensure that, as far as is reasonably practicable, the applicant understands why it is relevant to the review, and the consequences of it being relied on in, and must invite the applicant to comment on it.⁹ However, beyond this limited obligation, applicants do not have a general right to access material before the ART. Instead, applicants must request that the Department provide access to written material it has given or produced to the ART.¹⁰ While the Department is required to provide access to the material upon request,¹¹ it is not required to do so within a particular time frame.

⁶ *Migration Act 1958* s 500 (6B).

⁷ *Ibid*, s 500(6L)(c).

⁸ In the absence of a decision by the ART, the Minister can intervene pursuant to ss 48B or 195A, *Migration Act 1958* (Cth).

⁹ *Migration Act 1958* s 359A.

¹⁰ *Ibid* s 362A.

¹¹ *Ibid* s 362A(1A).



As a result, applicants, particularly those experiencing language barriers or other vulnerabilities, often struggle to obtain the information necessary to meaningfully participate in the review process. It is also difficult for many applicants to identify what documents they should be requesting, and to navigate the process without legal assistance.

These issues are compounded by the prevalence of unregulated visa application assistance, where applicants may be unaware of the claims made or evidence submitted on their behalf. Without timely and automatic access to materials before the ART, these applicants are placed at a significant disadvantage and are less able to understand, let alone respond to, the case against them.

Question 10: Are there any changes that could be made to the current procedures for migration and protection decision-making in the ART to improve the process or outcomes for individuals?

In addition to our above comments, we propose the following measures to improve the ART's review procedures and processes.

Improvements are needed to ART Registry processes to ensure that gender-sensitive claimants are provided with appropriate interpreters and Tribunal Members. Our members have reported instances where the absence of gender-appropriate support has caused trauma or re-traumatisation to vulnerable claimants. Registry staff should receive further training on gender sensitivities so they can more effectively identify when such accommodations are required.

Additionally, decision-makers across both the Department and the ART should receive further training on culturally aware and trauma-informed practice. Our members have observed interviews and hearings conducted in ways that are not trauma-informed, as well as instances where decision-makers have misunderstood complex protection claims due to a lack of cultural awareness, and awareness of how trauma affects applicants' memory, disclosure and communication. Providing comprehensive cultural awareness training, and training on trauma and its impacts, would not only improve the experience of vulnerable applicants and support better engagement with the application and review process; it would also enhance the quality and reliability of information available to decision-makers.

Thank you for the opportunity to comment. Questions at first instance may be directed to Ursula Paetzholdt, Policy Lawyer, at (02) 9926 0130 or Ursula.Paetzholdt@lawsociety.com.au.

Yours sincerely,

Ronan MacSweeney
President