UNSW
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Refugee Law

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Submission to the 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)

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1 Introduction

We thank the House of Representatives Standing Committee on Social Policy and Legal Affairs for the opportunity to provide a submission to assist in its scrutiny of the ART Bill and Consequential and Transitional Bill.

The Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney is the world's first and only research centre dedicated to the study of international refugee law. The Centre was established in October 2013 to undertake rigorous research to support the development of legal, sustainable and humane solutions for displaced people, and to contribute to public policy involving the most pressing displacement issues in Australia, the Asia-Pacific region and the world.

The Kaldor Centre Data Lab was established in 2022. The Lab publishes regularly updated data and statistical analysis of the administrative and judicial review of Protection Visa applications in Australia. The data currently covers review by the Administrative Appeals Tribunal (AAT) and Immigration Assessment Authority (IAA), as well as judicial review by the Federal Circuit and Family Court.

We welcome many of the components of the ART Bill and Consequential and Transitional Bill, particularly the implementation of a merits-based appointment process, the re-establishment of the Administrative Review Council and the abolishment of the Immigration Assessment Authority (IAA) and Fast Track process. These changes will make substantial improvements to the fairness and efficient operation of Australia's administrative review system. However, the decision to retain a separate procedural code for decision-making in the Migration and Refugee Division is a missed opportunity for creating a unified and consistent framework across all areas of administrative review. Moreover, it will mean that many of the benefits in terms of flexibility and adaptability of procedures set out

in the ART Bill, and associated efficiency gains, will not apply to the Migration and Refugee Division where they are most needed.

Our submission draws on statistical analysis undertaken by the Kaldor Centre Data Lab concerning the decision-making of the Administrative Appeals Tribunal (AAT) and the Immigration Assessment Authority (IAA) with respect to Protection Visa applications.

The data drawn on for the purposes of this submission covers:

- 26,036 Protection Visa decisions made by the AAT from 1 January 2015 to 18 May 2022; and
- 10,000 Protection Visa decisions made by the IAA from 1 May 2015 to 17 May 2022.

This data covers the entire caseload of the AAT and IAA with respect to Protection Visa decisions during the respective periods and was obtained through freedom of information requests to the AAT.

We have also separately collated data on the judicial review of migration and refugee decisions made by the AAT (and its predecessor tribunals), as well as the IAA, from 1982 to 2022. This data was drawn from the published annual reports of the respective bodies.

Our aim is to provide quantitative empirical foundation for evaluating key elements of the ART Bill and Consequential and Transitional Bill. However, it is important to note the limited data points which we were able to access through the freedom of information process and annual reports. Access to more detailed data would open opportunities for more robust analysis in relation to whether the bills will achieve the Government's policy objectives and not have unintended consequences. Moving forward, it is essential that the new ART adopts a robust approach to data collection and transparency to enable ongoing evaluation of its operation and to identify areas in need of further reform.

2 Administrative Review Tribunal Bill

2.1 Appointment and Reappointment Processes

2.1.1 Merits-based appointment process

We welcome the implementation of merits-based independent appointment and re-appointment processes. Analyses carried out by the Kaldor Centre Data Lab raises serious questions about the potential impact of the previous politicised process for appointing and reappointing members on decision-making outcomes at the AAT.

Our data shows that the political party in government at the time a tribunal member was first appointed to the AAT appears to have a significant and sizeable effect on the outcomes of their decision-making in Protection Visa cases. The odds of an applicant succeeding was 25% (95% CI [1.08, 1.44]) higher where the applicant appeared before a tribunal member appointed by a Labor government (when compared to Coalition appointed members), controlling for all other variables (including the individual decision-maker, legal representation, time since appointment, and country of origin of the applicant).

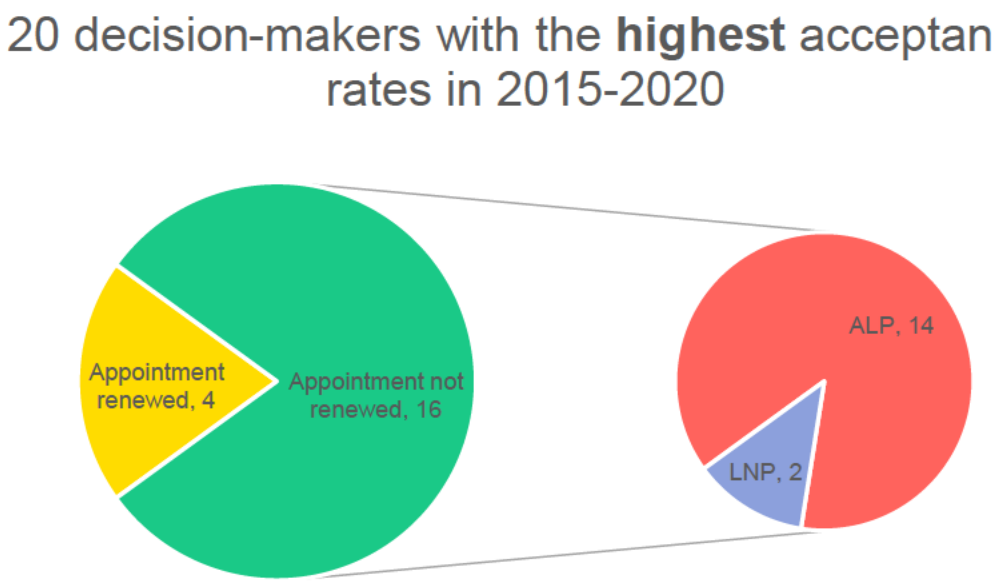
2.1.2 Period of appointment and reappointment process

We welcome the introduction of a fixed term of appointment of five years, with reappointments of members only available in the last six months of their terms. This will reduce potential or perceived political interference in decision-making and the reappointment process.

We also welcome the introduction of a 'performance standard', including clear performance expectations regarding factors such as knowledge and technical skills, efficiency and integrity, to guide the reappointment process. Clear and objective criteria reduce the likelihood of other political factors influencing the reappointment process, such as whether members were deciding cases in a manner that aligns with the subjective objectives of the government of the day.

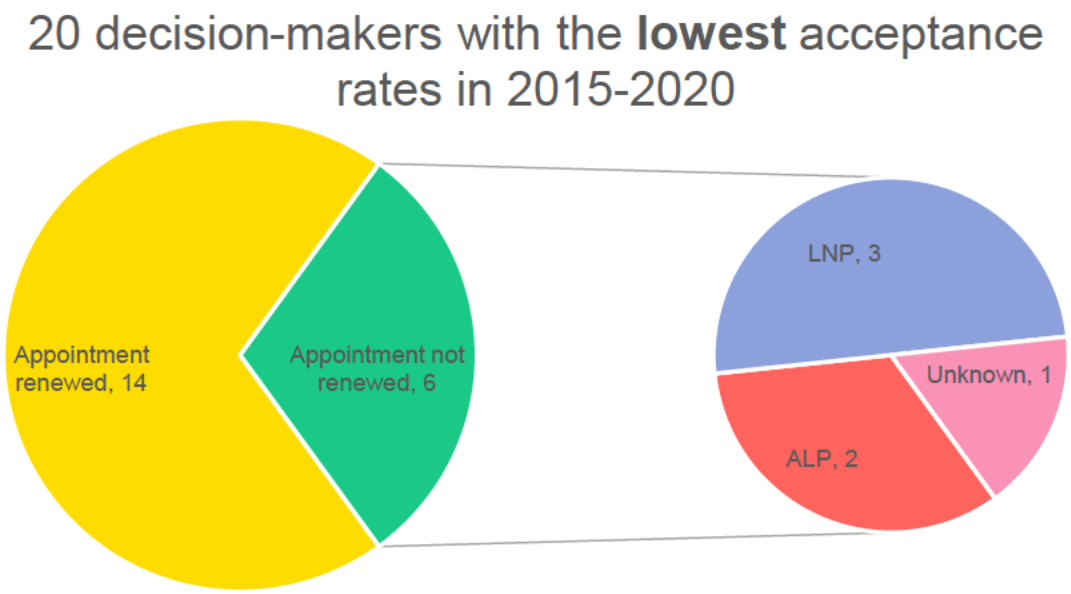
The data collected by the Kaldor Centre Data Lab highlights the possibility that such political considerations may have influenced the reappointment process at the AAT in the past. Of the 20 decision-makers (who heard more than 50 cases) with the highest acceptance rates with respect to Protection Visa applications in 2015–20, 80% (being 16 decision-makers) did not have their appointments subsequently renewed by Coalition governments. Fourteen out of 16 of these decision-makers who did not have their appointments subsequently renewed were first appointed by the Labor. Below is a visualisation of this.

Figure 1. Reappointment of Decision-Makers with the Highest Acceptance Rates



By comparison, of the 20 decision-makers (who heard more than 50 cases) with the lowest acceptance rates in 2015–20, only 30% (being six decision-makers) did not have their appointments subsequently renewed. Two out of six of these decision-makers were first appointed by Labor. Below is a visualisation of this.

Figure 2. Reappointment of Decision-Makers with the Lowest Acceptance Rates



2.2 The re-establishment of the Administrative Review Council (ARC)

We welcome the re-establishment of the ARC, whose functions would include 'monitor[ing] the integrity of the Commonwealth administrative review system' and 'inquir[ing] into systemic issues related to the making of administrative decisions and the exercise of administrative discretions' (cl 249). However, as a core part of these functions, we believe the Council's responsibilities should include reviewing, analysing and publishing data on the decision-making and operation of the new administrative review body.

As an independent advisory body, the ARC is ideally positioned to undertake data collection and statistical analysis that can facilitate ongoing evaluation of the operation of the ART and identify areas in need of further reform.

We also recommend that this data on the outcome of decision-making also be made publicly available. Publication of data is crucial to ensuring the new administrative review body achieves its objectives of transparency. In the words of former Chief Justice Gleeson of the High Court, 'all institutions of government exist to serve the community'.[1] By publishing this data, the community will be better informed about how the new administrative review body is operating, which, in turn, can strengthen public confidence in the body.

2.3 Using data to improve agency decision-making

In addition to the collection and analysis of data independently by the ARC, we recommend that the new ART develops a policy on the creation, development and use of statistical analysis of outcomes of decision-making. This

[1] Justice Murray Gleeson, 'Public Confidence in the Courts' (Speech, National Judicial College of Australia, 9 February 2007) p. 2.

should encompass analysis of the types of decisions being overturned. This analysis and data should be shared with agency departments and decision-makers. Particular types of cases from a specific agency or individual decision-maker that have high overturn rates should be identified and flagged to enable strategies to be implemented to address any identified issues.

Data collection and use internally by the new body will enable it to anticipate and address increases in workload and identify areas in need of additional resources. Data and statistics are also an important tool that can assist the body in evaluating the quality and efficiency of their own decision-making and identifying potential areas in need of improvement or reform.

In the judicial context, the Australian Law Reform Commission (ALRC) recently recognised and endorsed the utility of using statistical data to improve the function of the courts. The ALRC's Report on Judicial Impartiality recommended that:

> [t]he Commonwealth courts (individually or jointly) should develop a policy on the creation, development, and use of statistical analysis of judicial decision-making.[2]

In addition to the applications outlined above, the ALRC also highlighted the important role that statistical analysis can play in identifying and reducing the role of cognitive and social biases in decision-making.

Both administrative and judicial decision-making are changing rapidly with the development of new technologies that make access and analysis of such data easier. The ART should leverage the insights that data and statistics on decision-making can provide to monitor the functioning and performance of the body as a whole.

3 Consequential and Transitional Bill

3.1 Abolishment of the Immigration Assessment Authority

We welcome the abolishment of the IAA. Applicants in the IAA process are subject to more restrictive statutory procedures set out in the *Migration Act 1958* (Cth). Decisions are generally made on the papers without a hearing, and there are barriers to providing new evidence.[3] While this may have reduced the average time taken for the IAA to finalise a decision, the very high rates at which cases are successful at judicial review in the Federal Courts has led to significant delays. From 2015 to 2023, 37% of judicial review applications relating to IAA decisions were successful, generally resulting in the cases being remitted back to the IAA for reconsideration. On average, the judicial review process takes more than 2-3 years. Any time saving generated by shortened procedures at the IAA stage is almost certainly more than negated by the delays caused by the high rates of judicial review of these cases.

[2] Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report No 138, December 2021), Recommendation 13.
[3] See Part 7AA, *Migration Act 1958* (Cth); Daniel Ghezelbash, 'Fast-track, accelerated, and expedited asylum procedures as a tool of exclusion' in Catherine Dauvergne (ed) *Research Handbook on the Law and Politics of Migration* (Edward Elgar Publishing 2021).

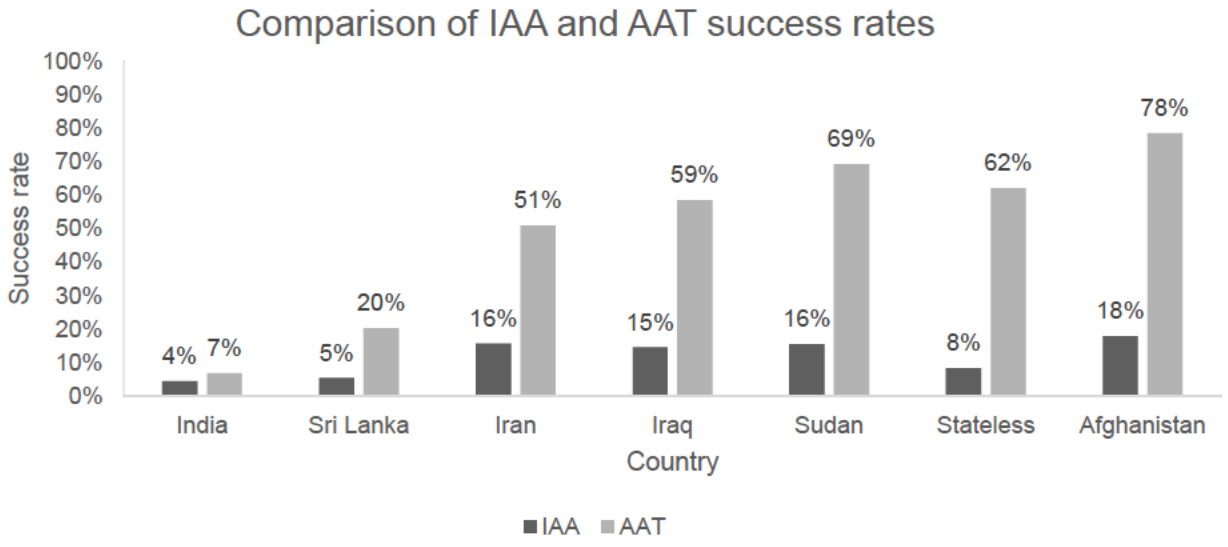
When the system is considered holistically, the 'fast track' process has not led to any efficiency gains, but rather caused significant additional delays.

Table 1. Remittal and set aside rates for judicial review cases of IAA decisions[4]

Year	Appeals finalised	Remitted or set aside	Dismissed or discontinued	Success of appeals
2015-16	1	1	0	100%
2016-17	53	19	34	36%
2017-18	309	100	209	32%
2018-19	925	449	476	49%
2019-20	840	262	578	31%
2020-21	523	158	365	30%
2021-22	442	161	281	36%
2022-23	384	153	231	40%
TOTAL	**3,477**	**1,303**	**2,174**	**37%**

There are also significant concerns about the quality of decision-making at the IAA, and the fact that errors may be being made due to the lack of procedural safeguards. Data compiled by the Kaldor Data Lab shows that there was significant variation between the acceptance rates of the IAA and the AAT, with the AAT exhibiting higher success rates in every country with more than 20 applicants. For example, applicants from Iraq were more than five times more likely to succeed at the AAT, applicants from Afghanistan were more than four times more likely to succeed, while stateless applicants were more than seven times more likely to succeed at that AAT than at the IAA.'

Figure 3. Comparison of IAA and AAT Success Rates for Protection Visa Applications (1 May 2015–17 May 2022)



[4] This data was compiled from the AAT annual reports.

3.2 Separate procedural code for migration decisions

The example of the IAA discussed above illustrates the ineffectiveness of attempts to create efficiencies by reducing procedural and substantive rights of applicants. As such, maintaining the carve out of separate more restrictive procedural code for the Migration and Refugee Division in the *Migration Act 1958* (Cth) will undermine both the fairness and efficiency of decision-making.

Several provisions of the Consequential and Transitional Bill exclude the application of provisions set out in the ART Bill to applicants in the Migration and Refugee Division. For example, section 347(5) provides that s 19, which allows the ART to extend the period during which the applicant may apply to the Tribunal for review of a decision, does not apply to reviewable migration decisions or reviewable protection decisions. On this point, we endorse the submission of Professor Crock:

> [T]he inflexibility of time limits undermines the ability of the tribunal to deliver effective and efficient justice for applicants. If the tribunal is denied jurisdiction to hear a case, applicants must either apply for judicial review in the Federal Court or they must seek an exercise of the Minister's 'non-reviewable, non-compellable' discretion (see s 351 of the Migration Act). With the backlog in judicial review applications and the overwhelming number of ministerial appeals, it is difficult to see the wisdom in this constraint on the new ART.[5]

Similarly, s 347(3)(a) provides that, where an applicant is in immigration detention, an application for review must be made within seven days of the applicant being notified of the decision – whereas other applicants are permitted a 28-day period. The Bill also preserves the effect of s 357A, which codifies the natural justice hearing rule for migrants and refugees, and inserts subsection (2C), which confirms that the ART is not required to observe any principle or rule of common law.

Most concerning of all is the new s 367A, which directs a tribunal member to draw an unfavourable inference where a Protection Visa applicant raises new claims or evidence before the ART, unless the member is satisfied the applicant has a reasonable explanation for the delay. On this point we endorse the submission made by the ASRC:

> Protection visa applicants often have valid reasons for a delay in providing updated evidence and claims, including trauma and related mental health illness, language barriers, fear of authorities and lack of legal representation. As the legislation does not provide any guidance regarding what would suffice as a 'reasonable explanation' there is no guarantee that these valid explanations would be accepted by the ART. Consequently this provision is likely to cause severe hardship and unfair outcomes for protection applicants. There is no valid justification for including this requirement, especially as Tribunal members already have discretion to assess any delay as part of an applicant's credibility within their existing powers. The ASRC strongly recommends that this section is removed from the Bill.[6]

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[5] Professor Mary Crock, 'Submission to the House of Representatives 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*,* January 2024, 6.

[6] ASRC, 'Submission to the House of Representatives 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*',* January 2024, 6.

While we understand that the government has attempted to justify the different treatment of applicants in the Migration and Refugee Division on the basis that it enables faster processing, it is our view that it will only create inefficiencies and unjust outcomes.

Over the years, Parliament has passed numerous pieces of legislation that have attempted to codify decision-making procedures for decisions (and exclude the common law natural justice hearing rule) under the *Migration Act 1958* (Cth), as well as other measures aimed at limiting access to judicial review of migration decisions. This process began with the *Migration Reform Act 1992* (Cth) (which became operative from 1 September 1994), and included numerous subsequent reforms, including the *Migration Legislation Amendment Act (No 1) 1998* (Cth), the introduction of the privative clause by the *Migration Legislation Amendment (Judicial Review) Act 2001* (Cth), the exhaustive statement of natural justice requirements in the *Migration Legislation Amendment (Procedural Fairness) Act 2002* (Cth), the concept of a purported privative clause decision in the *Migration Litigation Reform Act 2005* (Cth), and the *Migration Amendment (Review Provisions) Act 2007* (Cth).

The stated goal of the procedural code and other associated amendments was to make the process clearer, and to reduce the number of applications for judicial review of migration decisions. However, the code of procedure and associated reforms have not achieved either of these goals in practice.

In a joint submission to the 2012 Administrative Review Council review into federal judicial review in Australia, the Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT) argued that the code had been the subject of significant litigation yet had not improved the quality of decision-making, and that:

> the experience in the migration jurisdiction has been that codification aimed at supplanting the natural justice hearing rule has distinct limitations. Although the codification of procedure may have the advantage of setting out a framework for the parties, experience shows that it leads to unexpected interpretation, uncertainty and extensive litigation... Statutory codes of procedure, whilst providing a framework for the parties, cannot replicate the adaptiveness of common law procedural fairness.[7]

There is also no evidence that the procedural code has been effective in its goal of reducing the number of judicial review applications for migration and refugee cases. The table and graphs below set out data we have compiled on judicial review of migration and refugee decisions from 1988 to 2022. The data shows that the number of applications for judicial review of migration and refugee decisions has steadily increased over time, and there are no correlations between the introduction the procedural code or subsequent amendments and the number of judicial review applications.

[7] Migration Review Tribunal (MRT)—Refugee Review Tribunal (RRT), Submission to the Administrative Review Council, *Consultation Paper on Judicial Review in Australia*, 5 July 2011, p. 3; ARC, *Federal judicial review in Australia*, September 2012, p. 120.

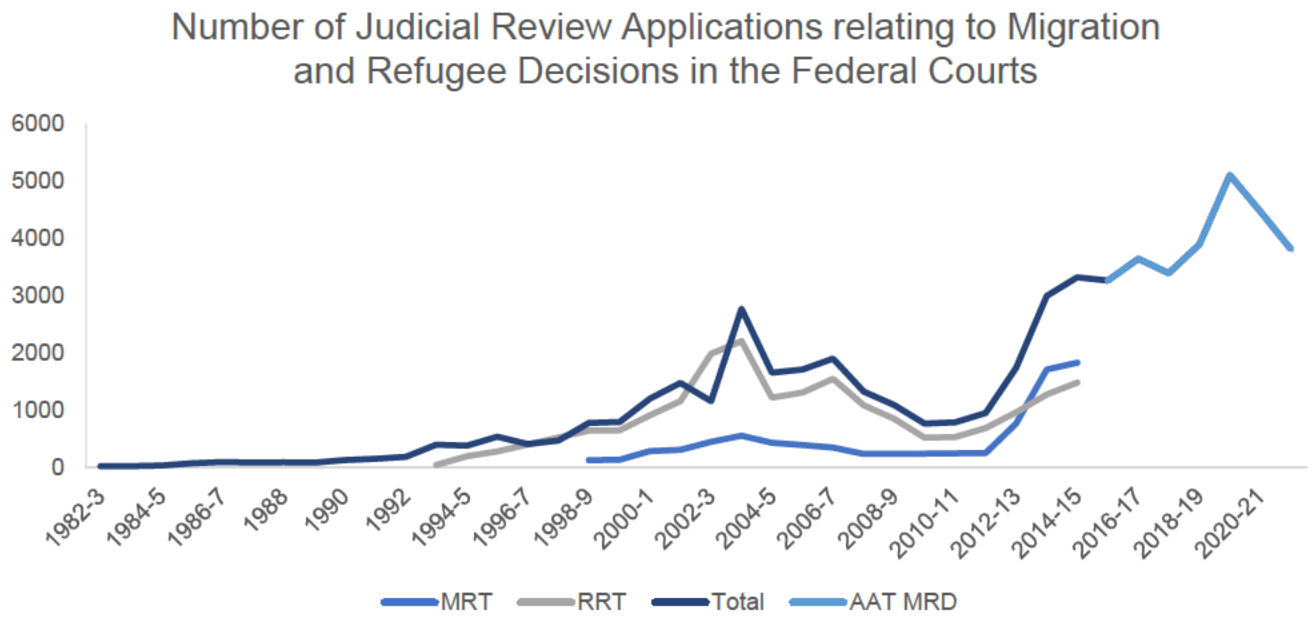
Table 2. Judicial Review of Migration and Refugee Decisions in the Federal Courts[8]

Year	Number of applications made to Federal Court from migration and refugee decisions	Percentage of applications decided that were successful
1982-3	30	23% (n=7)
1983-4	31	23% (n=7)
1984-5	45	7% (n=3)
1985-6	80	11% (n=9)
1986-7	106	7% (n=7)
1987-8	94 (Calendar year 1987)	No data available
1988-9	97 (Calendar year 1988)	42%
1989-90	95 (Calendar year 1989)	46%
1990-1	137 (Calendar year 1990)	42%
1991-2	160 (Calendar year 1991)	37%
1992-3	192 (Calendar year 1992)	No data available
1993-4	RRT: 52 (4% appeal rate ('AR')) Total: 404	12% (n=36/292)
1994-5	RRT: 202 (8% AR) Total: 387	41% (n=142/349)
1995-6	RRT: 286 (12% AR) Total: 543	37% (n=152/415)
1996-7	RRT: N/A (9.9% AR) Total: 419	11% (n= 43/389)
1997-8	RRT: N/A (7.3% AR) Total: 476	16% (n=84/518)
1998-9	MRT: 136 (5.5% AR) RRT: 651 (9.98% AR) Total: 787	MRT: 39% (n=54/138) RRT: 26% (n=172/663) Total: 28%
1999-2000	MRT: 145 (4.8% AR) RRT: 657 (10.40% AR) Total: 802	MRT: 25% (n=18/73) RRT: 16% (n=94/579) Total: 17%
2000-1	MRT: 294 RRT: 916 (16.39% AR) Total: 1,210	MRT: 31% (n=74/240) RRT: 18% (n=147/833) Total: 21%
2001-2	MRT: 318 (4% AR) RRT: 1167 (21.3% AR) Total: 1485	MRT: 21% (n=64/299) RRT: 15% (n=130/874) Total: 17%
2002-3	MRT: 455 (4% AR) RRT: 1989 (30% AR) Total: 2444	MRT: 10% (n=29/279) RRT: 6% (n=66/1031) Total: 7%
2003-4	MRT: 561 (6% AR) RRT: 2,213 (38% AR) Total: 2774	MRT: 15% (n=61/414) RRT: 8% (n=166/2059) Total: 9%
2004-5	MRT: 440 (5.0% AR) RRT: 1223 (40% AR)	MRT: 17% (n=93/541) RRT: 11% (n=245/2144)

[8] For data from 1982-96, see Mary Crock, 'Judicial Review and Part 8 of the Migration Act: Necessary Reform or Overkill?' (1996) 18(3) *Sydney Law Review* 267, pp. 288-290. Data for 1996-2021 is taken from the Migration Review Tribunal, Refugee Review Tribunal and Administrative Review Tribunal Annual Reports.

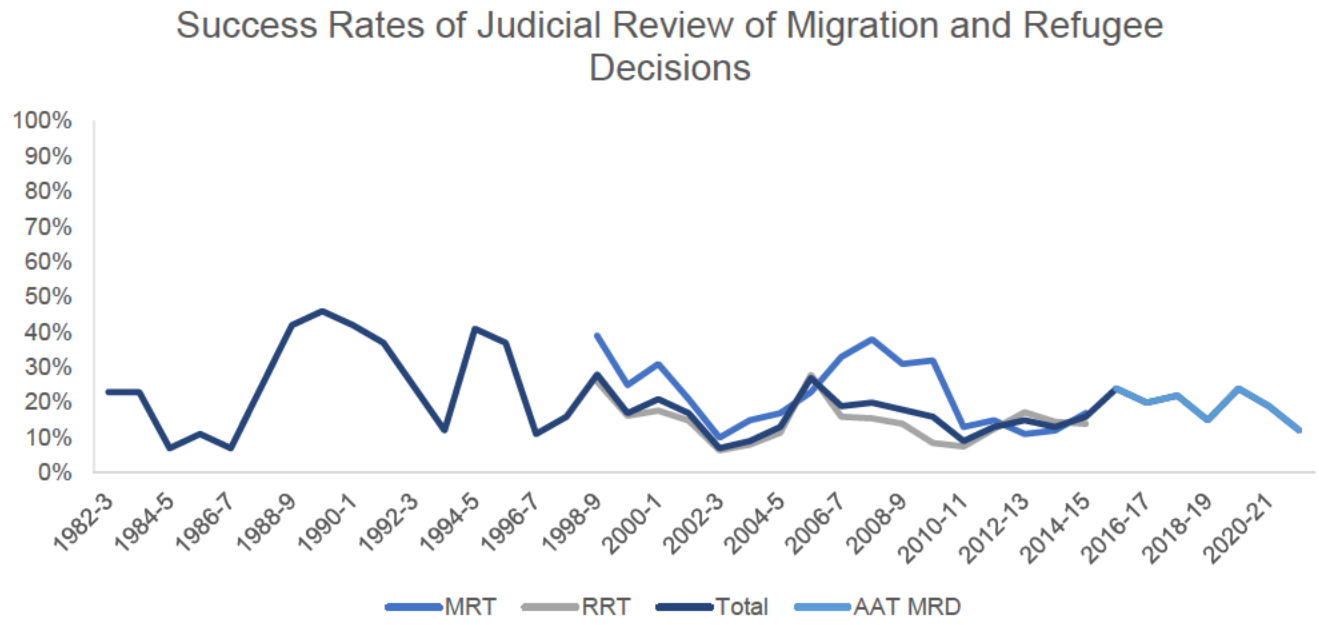
	Total: 1663	Total: 13%
2005-6	MRT: 401 RRT: 1315 (40% AR) Total: 1716	MRT: 23% (n=104/450) RRT: 28% (n=363/1304) Total: 27%
2006-7	MRT: 353 RRT: 1556 (51% AR) Total: 1909	MRT: 33% (n=114/343) RRT: 16% (n=246/1542) Total: 19%
2007-8	MRT: 244 RRT: 1090 Total: 1334	MRT: 38% (n=91/241) RRT: 16% (n=169/1090) Total: 20% (n=260/1331)
2008-9	MRT: 244 RRT: 855 (35% AR) Total: 1090	MRT: 31% (n=76/242) RRT: 14% (n=119/851) Total: 18%
2009-10	MRT: 248 RRT: 527 (24% AR) Total: 775	MRT: 32% (n=79/245) RRT: 8% (n=44/520) Total: 16%
2010-11	MRT: 255 RRT: 541 (21% AR) Total: 796	MRT: 13% (n=33/252) RRT: 7% (n=40/537) Total: 9%
2011-12	MRT: 263 RRT: 695 (25% AR) Total: 958	MRT: 15% (n=40/259) RRT: 13% (n=86/687) Total: 13% (n=126/946)
2012-13	MRT: 776 RRT: 971 Total: 1747	MRT: 11% (n=87/760) RRT: 17% (n=153/889) Total: 15%
2013-14	MRT: 1715 RRT: 1283 Total: 2998	MRT: 12% (n=174/1414) RRT: 15% (n=120/827) Total: 13%
2014-15	MRT: 1835 RRT: 1489 Total: 3324	MRT: 17% (n=88/507) RRT: 14% (n=37/265) Total: 16%
2015-16	AAT MRD: 3269 (23% AR)	AAT MRD: 24% (n=710/2958)
2016-17	AAT MRD: 3644 (22% AR)	AAT MRD: 20% (n=523/ 2617)
2017-18	AAT MRD: 3393 (23% AR)	AAT MRD: 22% (n=602/ 2735)
2018-19	AAT MRD: 3900 (23% AR)	AAT MRD: 15% (n=398/ 2650)
2019-20	AAT MRD: 5106 (24% AR)	AAT MRD: 24% (n=398/2857)
2020-21	AAT MRD: 4467 (23% AR) Including, refugee cases: 1455 (29%)	AAT MRD: 19% (n=390/2052) Including, refugee cases: 23% (n=133/590)
2021-22	AAT MRD: 3812 (22% AR) Including, refugee cases: 2043 (41%)	AAT MRD: 12% (n=251/2067) Including, refugee cases: 13% (n=82/654)

Figure 4. Number of Judicial Review Applications Relating to Migration and Refugee Decisions in the Federal Courts



Similarly, the procedural code and other associated amendments have not correlated with a reduction of the success rate of judicial review applications. While the percentage of migration and refugee cases which were successful before the Federal Courts has oscillated over time, there are no clear correlations between the introduction of the procedural code and subsequent amendments, and the rates of success at judicial review.

Figure 5. Success Rates of Judicial Review of Migration and Refugee Decisions



Not only is there no evidence that the code of procedure has reduced legal uncertainties or reduced the number of judicial review applications, but the rigidity of the procedures may be actively contributing to inefficiencies. These limitations resulting from the rigidity of the procedures are set out in detail in Professor Crock's *Submission to Attorney-General's Department responding to the Administrative Review Reform: Issues Paper*, and we endorse Professor Crock's conclusion that the code of procedure reduces

> the tribunal's ability to respond with efficiency and humanity to different situations…. these shortcomings encourage the conclusion that as far as possible the new review tribunal should be established with processes that apply uniformly but flexibly across cases according to the nature and complexity of each matter. In other words, fairness and efficiency would be enhanced by abandoning the blanket 'carve out' for migration appeals.[9]

Therefore, the Consequential and Transitional Bill should be amended to harmonise the procedures for review in the Migration and Refugee Division with the other divisions of the ART. The data above indicates that the increased codification of migration and refugee procedures has not increased efficiency or fairness, and accordingly it is unlikely to serve the new Tribunal's objectives. Instead, the failure to abolish the separate and rigid migration procedures, including stricter, shorter deadlines and the exclusion of common law natural justice, will perpetuate many of the issues the Migration and Refugee Division is currently facing. It means that many of the benefits of the new more flexible and adaptable procedures at the ART, and associated efficiency gains, will not apply to the Migration and Refugee Division, where they are most needed.

3.3 Supporting parties with their matter

Clause 294 of the ART Bill provides that applicants may apply to the Attorney-General for legal or financial assistance with their application before the Tribunal. However, s 336P(2)(l) of the Consequential and Transitional Bill precludes the application of cl 294 to applicants in the Migration and Refugee Division, again limiting the rights of these applicants before the ART. This is particularly concerning given the importance of legal representation for both efficiency and fairness of decision-making.[10] Indeed, the data collected by the Kaldor Data Lab demonstrates the importance of access to representation for Protection Visa applicants. There is a very strong correlation between having representation (either by a lawyer or migration agent) and the chances of success before the AAT.

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[9] Professor Mary Crock, *Submission to Attorney-General's Department responding to the Administrative Review Reform: Issues Paper* 6.

[10] Craig Damian Smith, Sean Rehaag and Trevor Farrow, *Access to Justice for Refugees: How Legal Aid and Quality of Counsel Impact Fairness and Efficiency in Canada's Asylum System* (Report, 2021) 28-9; Jamie Chai Yun Liew et al, 'Not Just the Luck of the Draw? Exploring Competency of Counsel and Other Qualitative Factors in Federal Court Refugee Leave Determinations (2005-2010)' (2021) 37(1) *Refuge* 61, 70; Nicholas Fraser, 'More than advocates: Lawyers' role in efficient refugee status determination' (2022) 65(2) *Canadian Public Administration* 647, 664. See, also, Sean Rehaag, 'The role of counsel in Canada's refugee determinations system: An empirical assessment' (2011) 49 *Osgoode Hall LJ* 71, 116. Andrew Schoenholtz and Jonathan Jacobs, 'The state of asylum representation: Ideas for change' (2002) 16(4) *Georgetown Immigration Law Journal* 739, 743-4, 764; Ramji-Nogales, Schoenholtz and Schrag (2007) (n **Error! Bookmark not defined.**) 340; Ingrid Eagly and Steven Shafer, 'A national study of access to counsel in immigration court' (2015) 164 *U. Pa. L. Rev.* 1, 2, 9. Emma Jane Borland, 'Fairness and the right to legal aid in asylum and asylum related cases' (2016) 2(3) *International Journal of Migration and Border Studies* 245, 246, 262; Sonia Morano-Foadi et al, 'The Stratification of Rights and Entitlements: Access to Residency, Welfare and Justice by Migrants in the UK' in Marie-Claire Foblets and Jean-Yves Carlier (eds) *Law and Migration in a Changing World* (Springer, Cham, vol 31, Ius Comparatum - Global Studies in Comparative Law, 2022) 723, 740-2.

Our data shows that the odds of an applicant succeeding at the AAT were more than five times higher (5.27, 95% CI [4.66, 5.97]) if the applicant had legal representation, controlling for all other variables (including the individual decision-maker, the country of origin of the applicant and the political party that appointed the decision-maker). Similarly, at the IAA, an applicant's chance of success was 2.5 times higher (2.63, 95% CI [2.21, 3.13]) if the applicant had legal representation, controlling for the individual decision-maker and the country of origin of the applicant.

Therefore, the lack of support for Protection Visa applicants, where the barriers to representation are often higher, and the risks of incorrect decisions greater, is especially problematic for the ART's goals of efficiency and fairness. The availability of legal assistance for applicants in the Migration and Refugee Division needs to be brought in line with other divisions of the ART, and there needs to be adequate funding so that applicants who cannot afford legal assistance and representation are able access it.