



Australian Government
**Department of Immigration
and Border Protection**

Inquiry into the Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016

**Senate Legal and Constitutional Affairs Legislation
Committee**

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Introduction

The Department of Immigration and Border Protection welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016 (the Bill), following the introduction of the Bill into the House of Representatives on 30 November 2016.

This submission addresses the reasons for referral and principal issues for concern which were raised by the Selection of Bills Committee and will also briefly explain the measures included in the Schedules to the Bill.

Reasons for Referral / Principal Issues for Concern

The Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee by the Selection of Bills Committee in its Report No. 10 of 2016, on 1 December 2016. The reasons for referral and principal issues for consideration by the Senate Legal and Constitutional Affairs Legislation Committee were given as follows:

- The complex nature of the Migration Act and the impact any change may have on people seeking a visa, industry bodies, Australian business and residents warrants further consideration and investigation.

Portfolio Submission

Background to the Bill

The *Tribunals Amalgamation Act 2015* (the Amalgamation Act) commenced on 1 July 2015 and merged key Commonwealth review tribunals including the former Migration Review Tribunal (MRT) and the former Refugee Review Tribunal (RRT). Their functions in reviewing certain decisions made under the *Migration Act 1958* (the Migration Act), such as a decision to refuse to grant a visa or a decision to cancel a visa on non-character grounds, were taken over by the newly established Migration and Refugee Division (MRD) of the Administrative Appeals Tribunal (AAT).

The codes of procedure for review of decisions by the former MRT and the former RRT were, respectively, contained in Parts 5 and 7 of the Migration Act. The separation of the codes of procedure in Parts 5 and 7 reflected the previous existence of the two former tribunals. The Amalgamation Act amended these Parts as a consequence of the establishment of the MRD. However, now that the functions of both the former MRT and the former RRT have been taken over by a single Division of the AAT, it is appropriate that the codes of procedure are streamlined and consolidated into a single Part of the Migration Act.

The Bill consolidates the codes of procedure in Parts 5 and 7 into a single code of procedure, and makes a number of additional amendments aimed at clarifying the operation of certain provisions relating to the conduct of review, and at improving the efficiency of the review process by the MRD and by the Immigration Assessment Authority (IAA).

Schedule 1 and Parts 1-2 of Schedule 2 to the Bill

The code of procedure and the purpose of these amendments

The codes of procedure contained in the Migration Act are statutory statements of the processes and procedural steps relating to the making of administrative decisions under the Migration Act.

Parts 5 and 7 of the Migration Act currently contain the codes of procedure for merits review of non-character based decisions. These codes of procedure (which will be a single, consolidated code if the Bill passes and commences) prescribe the procedural steps relating to the review, such as how an application may be made and the timeframe in which an application for review must be made, as well as the requirements associated with notifying a decision of the Tribunal.

Consolidating the codes of procedure under Part 5 and Part 7 into a single code of procedure will support the effective and efficient operation of the MRD, provide greater certainty and clarity for review applicants, and facilitate a fair review.

Impact on people seeking a visa

The amendments do not alter the decisions for which merits review is currently available under the Migration Act, and do not otherwise diminish a former visa holder or visa applicant's access to merits review of refusal and cancellation decisions.

Former protection visa holders and protection visa applicants will retain their right of access to merits review, and the amendments will not affect how a review applicant's protection claims are assessed. The Bill also maintains privacy requirements in relation to former protection visa holders and protection visa applicants, including mechanisms to protect the identity of the review applicant and relevant parties.

Impact on the Tribunal

Following the consolidation of the MRT and RRT into the MRD, it is beneficial for the MRD to have a single code of procedure.

The additional amendments to clarify the operation and interpretation of certain provisions will support the effective and efficient operation of review in the MRD by ensuring that the consolidated code of procedure operates as intended.

Impact on business and residents

The amendments will not impact businesses and residents. The decisions for which merits review is currently available to businesses in a sponsor capacity will not change under the amendments.

Part 3 of Schedule 2 to the Bill

The purpose of these amendments

The changes in Part 3 of Schedule 2 to the Bill enable fast track reviewable decisions in relation to members of the same family unit to be referred to the IAA together. The changes will also confirm that the IAA may review two or more fast track reviewable decisions together, whether or not they were referred together, and provide that documents given by the IAA to any of the review applicants are taken to be given to each of them.

Currently the Minister must refer each fast track reviewable decision separately to the IAA, even where the decisions relate to members of the same family unit. Further, in circumstances where the combined protection visa applications made by a family group have been referred to the IAA for review, and the IAA has made its decision in relation to those applications, the IAA is not able to both give documents to only one member of the family unit and to have each other family member taken to have been given those documents as well.

The changes in Part 3 are aimed at overcoming the associated administrative inefficiencies.

Impact on people seeking a visa

Visa applicants will benefit from this change because the amendments will increase the efficiency of review of decisions concerning members of the same family unit. Applicants will not be disadvantaged as these changes do not compel referral, consideration or notification of decisions together. If it is considered appropriate in the circumstances, the IAA retains the ability to review decisions relating to members of the same family unit separately.

Impact on the IAA

The amendments enhance the administrative efficiency and flexibility of the IAA when reviewing decisions relating to members of the same family unit, by enabling the referral, consideration and notification of decisions relating to such applicants together.