Refugee Legal:

Submission to the Inquiry into the Administrative Review Tribunal (Miscellaneous Measures) Bill 2024
Legal and Constitutional Affairs Legislation Committee

Introduction

Refugee Legal (formerly the Refugee and Immigration Legal Centre[1]) is a specialist community legal centre providing free legal assistance to people seeking asylum and disadvantaged migrants in Australia.[1] Since its inception over 36 years ago, Refugee Legal and its predecessors have assisted many thousands of people seeking asylum and migrants in the community and in detention. Refugee Legal is the largest provider of free legal assistance to such people in Australia. In the 2022-23 financial year, its total client assistance was over 17,200.

Refugee Legal specialises in all aspects of refugee and immigration law, policy and practice and is a regular contributor to the parliamentary and other policy reform processes on refugee and general migration matters. We also play an active role in professional training and community education. We are a longstanding member of the peak Department of Home Affairs/Immigration and Border Protection-NGO Dialogue and other consultative fora.

We welcome the opportunity to contribute to the Senate Legal and Constitutional Affairs Legislation Committee's scrutiny of the Administrative Review Tribunal (Miscellaneous Measures) Bill 2024 (the Bill). The focus of this submission and its recommendations reflect our experience and expertise as briefly outlined above.

While we have generally welcomed the reforms of the Commonwealth's system of merits review of administrative decisions through the introduction of Administrative Review Tribunal, we consider that the amendments proposed in the Bill will severely compromise access to the Tribunal, particularly for vulnerable protection and migration applicants subject to decisions affecting their rights to enter and/or remain in Australia (and therefore access other fundamental rights), to reunify with family

[1] RILC is the amalgam of the Victorian office of the Refugee Advice and Casework Service (RACS) and the Victorian Immigration Advice and Rights Centre (VIARC) which merged on 1 July 1998. RILC brings with it the combined experience of both organisations. RACS was established in 1988 and VIARC commenced operations in 1989.

Refugee Legal:
Defending the rights of refugees.

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and/or to be protected from return to persecution, torture or cruel, inhuman or degrading treatment or punishment.

According to s9 of the *Administrative Review Tribunal Act 2024,* the Tribunal must pursue the objective of providing an independent mechanism of review that is fair and just; ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits; is accessible and responsive to the diverse needs of parties to proceedings; improves the transparency and quality of government decision - making; and promotes public trust and confidence in the Tribunal.

In our submission the proposed amendments are antithetical to this objective for the following reasons:

Proposed subsection 347(2)

The rigid time frames which operate for this jurisdiction exclude the Tribunal from having the power, available for other jurisdictions in which it reviews decisions, to extend time frames where the merits of an application call for it.

We note that the 7-day period for people in detention is longer than that currently available for review of bridging visa refusal and cancellation decisions, but it shortens the time available for review of non-character migration decisions where the review applicant is in immigration detention from 7 working days to 7 calendar days. In our submission, there is no justification for this decrease in that time period.

We reiterate our submissions in support of a standard time period, being a 28-day period to apply for all review of migration/refugee and character decisions with the power to extend the timeframes for making applications for review of migration/refugee decisions (including for character matters and the 84-day deadline for decisions under s 500 of the *Migration Act 1958*).

Refugees and vulnerable migrants will often face difficulties or barriers in lodging applications for review within standard timeframes, including:

- Correspondence being sent to an abusive visa sponsor who did not inform the visa applicant about the refusal;
- An applicant being homeless and not able to effectively receive the correspondence;
- An applicant not understanding the Department’s refusal notification due to language barriers and being unable to access affordable legal assistance in time, especially for people in immigration detention;
- An applicant not having the funds to pay for merits review (even with a fee reduction);
- An applicant experiencing serious mental or physical illness; and

- Fraudulent migration agent or legal representation.

Recommendation:

That this amendment not be passed.

Proposed subsection 347(3)

The proposed new subsection would require that the full fee for non-protection decisions be paid within 28 days after the day the applicant is notified of the decision to be reviewed.

This will be an impossible hurdle for many vulnerable people. For example, partner visa applicants who have experienced family violence are unlikely to have access to the funds to pay the full fee within the 28-day period, particularly where they would potentially be eligible for a fee-reduction. The requirement to provide full payment upfront from people who may be destitute works against the objective of an accessible Tribunal and will prevent people with meritorious applications from being able to seek review.

In our submission, there must be a discretion to extend the time period in which Tribunal fees are payable.

In our submission, the current prescribed payment for protection decision reviews to be made only upon unsuccessful review should be protected by incorporation into the Act, given the vulnerabilities of so many protection visa applicants.

We further submit that application fees for migration/refugee decisions should be aligned with comparable fees under the ART and a full fee exemption be provided for applicants suffering financial hardship, victim-survivors of family violence and their dependent children, minors, people detained in prisons, immigration detention and other public institutions, protection visa applicants, bridging visa applicants/holders and people who qualify for concession cards.

Recommendation:

That this amendment not be passed.

Proposed subsection 348(2)

This proposed amendment potentially creates further difficulties in accessing the Tribunal given that we do not yet know what additional matters may be prescribed.

Current merits review under the *Migration Act 1958* (Parts 5, 7, 7AA and 9) is not currently subject to the requirement that applicants provide a statement of reasons setting out the reasons why the application is being made and/or why the primary decision is incorrect. In our view, this is the correct approach given the barriers that

are routinely present in the migration/protection context, such as:

- a lack of English language literacy;
- mental and physical health conditions;
- cultural barriers;
- fear of authorities based on experiences in their home country;
- complexity of the process and governing laws and policies;
- family violence;
- homelessness and destitution;
- Inaccessibility of legal assistance due to:
  - financial constraints;
  - insufficient availability of pro bono assistance; and/or
  - insufficient providers in remote and regional areas.

If any requirements additional to a standard application form are imposed on migration/protection applicants, the standard for satisfying the Tribunal that an application is valid should be 'substantial compliance'. Any consequences of failing to substantially comply with application requirements should not prevent a fair hearing of claims. That is, applicants must be given an opportunity to remedy their application and there must be a genuine and prolonged lack of engagement before the Tribunal can determine that it has no jurisdiction over the application.

Recommendation:

That this amendment not be passed

Conclusion

In our submission, the existing and proposed barriers to accessing merits review, such as the proposed non-flexible rules in relation to fees, standing, and time limits, are the antithesis of a well-functioning system of merits review in that their impact is harshest upon the most vulnerable. It is contrary to the fundamental purposes of merits review to systematically deny review to those who are most in need of accessible means to enforce legal rights.