Senate Legal and Constitutional Affairs Legislation Committee

Administrative Review Tribunal (Miscellaneous Measures) Bill 2024

Attorney-General's Department

Hearing date: 02 October 2024

Hansard page: 14-15

Paul Scarr asked the following question:

Senator SCARR: I want to thank the Attorney-General's Department for your helpful table. I actually tracked through the sections myself, and then I read your submission and saw you'd done it for me! I do appreciate that. Obviously, we seem to be focused on the Migration Act changes. I'll turn to attachment B, 'Administration Review Tribunal (Miscellaneous Measures) Bill 2024—Requirements for a valid application under the Migration Act 1958 (Cth)'. You've got a very helpful table. You've got column 1, 'Current state—pre reform', which is the law applying today before 14 October, I think the date is, and then you've got column 2, 'Under ART (C&T No. 1) Act'. Then you've got column 3 for things under the miscellaneous measures bill and then column 4, Description'. I just want to quote from column 4:
Before the reform, applicants could only make a valid application by using the prescribed form. CT1—which is the position immediately prior to this bill being adopted, if it is adopted— *changed these requirements, instead allowing applicants to make an application by providing certain information or documents, rather than needing to complete a form. This provides more flexibility for parties applying to the Tribunal.*
When I read that, it seems to suggest on the face of it that the intent of the department is to make a more flexible system. But, when I consider it in the context of the provisions which are closing out from my perspective—at least I've read Miller's case—it seems to definitively close out a situation where, say, you've missed a document or something that was prescribed and seems to remove any doubt there's any jurisdiction on the part of the Administrative Review Tribunal. That's my interpretation of the effect of the changes, but you seem to be saying that's for the reason of flexibility. How does, say, going from an obligation to use an approved form under the existing system to an obligation to lodge prescribed information and documents—and I know that, under the previous bill, it said 'if any'—provide more flexibility from the perspective of the applicant, who's potentially sitting in detention with limited resources and facing the challenges which the advocates in the previous session outlined?
Ms Samios: We're happy to assist on that question. I would say that I think several of the witnesses in the last session indicated that a prescribed form was still requirement. I'll be very clear that that requirement has been removed. It was suggested by those witnesses that there were additional requirements; these are not additional. This is the change, to be clear, from the current position to the position in the ART. It's not a change from the first bill to the current bill.
Senator SCARR: Understood.
Ms Samios: I think it's helpful if you refer to the actual provisions of the migration regulations which set out this information. Currently, to make a valid application, you must use the prescribed or approved form. Under the requirements of the migration regulations, it is sufficient to simply hand over your notice of decision. That is sufficient to make an application; you don't need to do anything else. If you don't have the notice of decision, and,

as the other witnesses have noted, it is possible someone doesn't have the notice of decision, it would be sufficient to hand over, for example, a post-it note—if you go through the provisions, it's there, or we can table the material from the regulations which have been made—that has simply your name, your address and contact details, some kind of description of the decision and an identifying piece of information. It could be your date of birth, country of birth, country of citizenship or statelessness, if that's the case, or a passport number. Any one of those would be sufficient together with your name, contact details and some sense of what it is—a student visa issue, for example. Genuinely, it means that people aren't falling foul of the requirement by not using the required form. There is still a form you can use, and, if you use that form, you would comfortably meet the requirements under the regulations. But it's no longer the case that it has to be on that form.
Senator SHOEBRIDGE: Nobody has complained about [inaudible].
Ms Samios: Actually, Senator, I think we have quite a lot of complaints through the consultation process we undertook in the previous bill. As I said, this is not a change in this bill. The consultation process we had in the previous bill was that the ability to access and fill in the form was a challenge for some people. The most flexible approach—for example, saying, 'I want to appeal; here's my notice of decision'—would give a broader range of opportunities, and that is in fact what the regulations provide for.
Senator SCARR: I understand now. I think it would be helpful for you to take my question on notice and give a formal, written response—
Ms Samios: And we will table [inaudible].
Senator SCARR: and provide the detail around the regulation. Really, if I understand what you're saying, what's being proposed is that you can initiate the application through completing the approved form—
Ms Samios: Absolutely.

The response to the question is as follows:

Prior to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (C&T No. 1), paragraph 347(1)(a) of the *Migration Act 1958* (Migration Act) required an application to the Administrative Appeals Tribunal to be made in an 'approved form'. Form M2, which is the current approved form for persons in immigration detention, is 16 pages long and contains upwards of 15 interrelated and conditional questions, which are accompanied by notes, caveats and disclaimers. Applicants are instructed to complete all fields. The form's complexity is evidenced by the inclusion of a checklist at the end of the form that attempts to assist applicants with ensuring they have included all required information and attachments. For other types of review applicants, there are three different types of forms that are respectively all upwards of eight pages long. They are similarly detailed and assume a level of literacy.

Item 136 of the C&T No. 1 Act removed the requirement to apply to the Administrative Review Tribunal (ART) via an approved form. In practice, a form continues to be available to applicant to use if they prefer, although they are not required to complete all fields. However, the amendments allow the regulations to prescribe documents and information that are also sufficient to invoke the Tribunal's jurisdiction.

The *Migration Regulations 1994* (as amended by the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024)* prescribe the documents and information, and focus on the minimum information needed rather than the form they are provided in. Details of these requirements is provided in our response to Senator Ghosh's question regarding what information and documents have been prescribed.

Under the new requirements, providing the notice of decision (accompanied by any applicable fee, if it is not a review of a protection visa decision, in the timeframe required) is all that is required for applications for review of a reviewable migration or protection decision. For a person in immigration detention, instead of attempting to navigate and correctly complete a lengthy form, they can simply forward the notification of decision on to the ART. This will provide all of the information that the ART needs to progress its review of the decision and notify the Department of Home Affairs, which must then provide relevant documents in its possession to support the review.

If the person does not have a copy of the notice of decision, they can instead provide the ART with some minimal identifying information and a description of the decision. The identifying information required is the applicant's name, address, contact details and any one of their date of birth, country of birth, citizenship or nationality (or a statement that the applicant is stateless), or country of issue and number of their passport. This list of information, and the fact that only one of the four possible identifying details is needed, has been designed to ensure that any review applicant, regardless of their circumstances, can meet the requirement while still providing sufficient information for the ART to identify the decision and the applicant and progress the review.

Senate Legal and Constitutional Affairs Legislation Committee

Administrative Review Tribunal (Miscellaneous Measures) Bill 2024

Attorney-General's Department

Hearing date: 02 October 2024

Hansard page: 21

David Shoebridge asked the following question:

Senator SHOEBRIDGE: One other way of providing clarity would be a savings provision that says, 'If section 347, as amended, has been substantively complied with, then you have a valid application.' It wouldn't be as prescriptive. For example, if someone made a slight error in not including their middle name, they could still have a valid application. But, as I read it, under your prescriptive changes, if somebody doesn't include their middle name, they're out under 4.12A(3)(a), aren't they? If you don't include your full name—if you drop off your middle name—you get 348ed, don't you?
Ms Virtue: First of all, perhaps I could just clarify that. You're not looking at 4.12A(3) unless you haven't either filled in the form provided by the tribunal or provided the notice of decision, so this will be the minority of people. But I don't think it is the case that you would be 348ed, as you put it, for not including your middle name unless that was essential to the tribunal being able to contact you and progress your application. But we can confirm that on notice.
Ms Samios: We'll be happy to take that on notice and confirm that position.

The response to the question is as follows:

The department cannot provide legal advice to the Committee. However, AGD observes that it is not the intention that failing to provide a middle name would invalidate an application. In the event that a person's first and last name, contact details, date or description of the decision and additional information was not sufficient to allow the Tribunal and the Department of Home Affairs to identify the applicant, the Tribunal would seek additional information to match the applicant to their departmental file. If a party did not assist the Tribunal to "match" the applicant to their departmental file (for example, by failing to respond to the Tribunal's contact request or refusing to provide additional details), the Tribunal may be able to dismiss the application.

Senate Legal and Constitutional Affairs Legislation Committee

Administrative Review Tribunal (Miscellaneous Measures) Bill 2024

Attorney-General's Department

Hearing date: 02 October 2024

Hansard page: 21

Varun Ghosh asked the following question:

Senator GHOSH: Ms Virtue, you used the expression earlier that, essentially, it's the same set of requirements under this provision as the current set. Are you able to outline what the information and documents that have been prescribed are?
Ms Samios: For the ART or for the AAT?
Senator GHOSH: For the ART.
Ms Samios: It's a slightly lengthy provision, but we've already offered to table the relevant sections of the migration regulations amendments that will come into force.

The response to the question is as follows:

A copy of the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024* (Amending Regulations), which were registered on the Federal Register of Legislation on 16 August 2024 and tabled in Parliament on 19 August 2024, is at **Attachment A.** The Amending Regulations amend the *Migration Regulations 1994* to align with the amendments made to the *Migration Act 1958* (Migration Act) by the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*. The amendments support the transition to the Administrative Review Tribunal (ART).

The Amending Regulations prescribe the information or documents that must be provided to the ART when making an application for review of a reviewable migration or reviewable protection decision. These requirements are unchanged by the Administrative Review Tribunal (Miscellaneous Measures) Bill 2024.

Review of a reviewable migration decsision

Regulation 4.12A specifies the information and documents that must be provided with an application for review of a reviewable migration decision under subsection 347(2) of the Act.

It provides that the review applicant must give to the ART either a copy of the notification of the decision (known as the 'prescribed document'), or if they do not have a copy of notification of the decision, the prescribed information. If the review applicant is an individual, the minimum prescribed information is:

- the review applicant's full name;
- the review applicant's address and contact details;
- the date of the decision (if known to the review applicant) and a description of the decision; and
- at least one of the following;

- o the review applicant's date of birth;
- o the review applicant's country of birth;
- o the review applicant's citizenship or nationality [providing that the review applicant is stateless would be sufficient];
- o the country of issue and number of the review applicant's passport.

If the review applicant is not an individual, they must also provide information about their business, including their trading name, ABN or ACN, business address and details of a contact person for the review.

If the applicant is applying for review of a decision that relates to another person's visa application they must also provide the visa applicant's full name, address and contact details and at least one of the following:

- o the visa applicant's date of birth;
- o the visa applicant's country of birth;
- o the visa applicant's citizenship or nationality [providing that the review applicant is stateless would be sufficient];
- o the country of issue and number of the visa applicant's passport.

Review of a reviewable protection decision

Regulation 4.31 specifies the information and documents that must be provided with an application for review of a reviewable protection decision under subsection 347(2) of the Act.

It provides that the review applicant must give to the ART either a copy of the notification of the decision (known as the 'prescribed document'), or if they do not have a copy of notification of the decision, the prescribed information. The minimum prescribed information is:

- the person's full name;
- the person's address and contact details;
- the date of the decision (if known to the person) and a description of the decision; and
- at least one of the following;
    - o their date of birth;
    - o their country of birth;
    - o their citizenship or nationality or a statement that the person is stateless;
    - o the country of issue and number of their passport.

Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 August 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Tony Burke
Minister for Immigration and Multicultural Affairs

Replaced Authorised Version registered 06/09/2024 F2024L01017

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1 Name

This instrument is the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	Immediately after the commencement of Schedule 2 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.	14 October 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Replaced Authorised Version registered 06/09/2024 F2024L01017

Schedule 1—Amendments

Part 1—Main Amendments

Migration Regulations 1994

1 Regulation 1.03 (paragraphs (a) and (b) of the definition of *substituted Subclass 600 visa*)

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

2 Paragraphs 2.08AAA(1)(b) and (e)

Repeal the paragraphs.

3 Subregulations 2.08E(2A) and (2B)

Repeal the subregulations.

4 At the end of subparagraphs 2.08F(3)(b)(i) and (ii)

Add “as in force when the matter is remitted”.

5 After subparagraph 2.08F(3)(b)(ii)

Insert:

(iia) the ART remits a matter in relation to the pre-conversion application in accordance with subsection 349(2) of the Act;

(iib) the ART remits a matter in relation to the pre-conversion application in accordance with paragraph 105(c) of the ART Act;

6 At the end of subparagraphs 2.08F(4)(b)(i) and (ii)

Add “as in force when the matter was remitted”.

7 At the end of paragraphs 2.08G(1A)(a), (b) and (c)

Add “as in force when the matter is remitted”.

8 After paragraph 2.08G(1A)(c)

Insert:

(ca) the ART remits a matter in relation to the pre-conversion application in accordance with subsection 349(2) of the Act;

(cb) the ART remits a matter in relation to the pre-conversion application in accordance with paragraph 105(c) of the ART Act;

9 At the end of subparagraphs 2.08G(2)(b)(i), (ii) and (iii)

Add “as in force when the matter was remitted”.

10 Subparagraph 2.12C(5)(e)(iii)

Omit “section 195A, 345, 351, 417 or 501J”, substitute “section 195A, 351 or 501J, or repealed section 417,”.

11 Paragraphs 2.12G(1)(b) and 2.12H(2)(c)

Omit “subsection 5(9)”, substitute “section 11A”.

12 Paragraph 2.15(1)(a)

Omit “3 working”, substitute “5”.

13 Sub-subparagraph 2.15(1)(b)(ii)(B)

Repeal the sub-subparagraph.

14 Paragraph 2.15(3)(a)

Omit “3 working”, substitute “5”.

15 Subparagraph 2.15(3)(b)(ii)

Repeal the subparagraph.

16 Paragraph 2.15(4)(a)

Omit “2 working”, substitute “5”.

17 After subregulation 2.74(1)

Insert:

(1A) If the applicant has a right to have the decision reviewed by application under Part 5 of the Act, the notification must state all of the following:

(a) that the decision can be reviewed by the ART;

(b) the time in which the application for review may be made;

(c) who can apply for the review;

(d) where the application for review may be made.

18 Paragraph 2.98(1)(c)

After “decision reviewed”, insert “by application”.

19 Subparagraph 2.98(1)(c)(i)

After “reviewed”, insert “by the ART”.

20 Division 4.1 (heading)

Repeal the heading (including the note), substitute:

Division 4.1A—Preliminary

21 Before regulation 4.02

Insert:

Division 4.1—Review of reviewable migration decisions

4.01A Application of this Division

This Division applies in relation to the review of reviewable migration decisions.

Note: The review of reviewable protection decisions is dealt with in Division 4.2.

22 Subregulation 4.02(5)

Omit “For paragraph 347(2)(d)”, substitute “For the purposes of paragraph 347A(1)(d)”.

23 Regulations 4.10 and 4.11

Repeal the regulations.

24 After regulation 4.12

Insert:

4.12A Prescribed information and documents for review applications

(1) This regulation is made for the purposes of subsection 347(2) of the Act.

(2) If the person (the ***review applicant***) making an application for review of a reviewable migration decision has a copy of the notification of the decision, the prescribed document is a copy of that notification.

(3) If the review applicant does not have a copy of that notification and the review applicant is an individual, the prescribed information is:

(a) the review applicant's full name; and

(b) the review applicant's address and contact details; and

(c) the date of the decision (if known to the review applicant) and a description of the decision; and

(d) at least one of the following:

(i) the review applicant's date of birth;

(ii) the review applicant's country of birth;

(iii) the review applicant's citizenship or nationality;

(iv) the country of issue and number of the review applicant's passport; and

(e) if the decision relates to an application for a visa made by a person (the ***visa applicant***) who is not the review applicant—the information specified in subregulation (5).

(4) If the review applicant does not have a copy of that notification and the review applicant is not an individual, the prescribed information is:

(a) the review applicant's name; and

(b) the review applicant's trading name (if any and if different from the review applicant's name); and

(c) if the review applicant has an ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*) or ACN (within the meaning of the *Corporations Act 2001*)—the ABN or ACN; and

(d) the review applicant's business address; and

(e) the name, position and contact details of a contact person for the review applicant; and

(f) the date of the decision (if known to the review applicant) and a description of the decision; and

(g) if the decision relates to an application for a visa made by a person (the ***visa applicant***) who is not the review applicant—the information specified in subregulation (5).

(5) For the purposes of paragraphs (3)(e) and (4)(g), the following information is specified:

(a) the visa applicant's full name;

(b) the visa applicant's address and contact details;

(c) at least one of the following:

(i) the visa applicant's date of birth;

(ii) the visa applicant's country of birth;

(iii) the visa applicant's citizenship or nationality;

(iv) the country of issue and number of the visa applicant's passport.

25 Subregulation 4.13(1)

Repeal the subregulation, substitute:

(1) Subject to this regulation, the prescribed fee for an application for review by the ART of a reviewable migration decision is $3,496.

Note: The fee in this subregulation is subject to increase under regulation 4.13A.

26 Subregulation 4.13(4)

Repeal the subregulation, substitute:

(4) If the ART Principal Registrar, having regard to the review applicant's income, expenses, liabilities and assets, considers that the payment of the fee mentioned in subregulation (1) would cause, or has caused, financial hardship to the review applicant, the prescribed fee is 50% of the amount mentioned in subregulation (1).

27 Regulation 4.13A

Repeal the regulation, substitute:

4.13A Annual increases in fees

The fee prescribed by subregulation 4.13(1) is increased, in accordance with regulation 4.13B, on each 1 July starting on 1 July 2025.

28 Subregulation 4.13B(5) (definition of *relevant period*)

Omit "2018", substitute "2024".

29 Subregulation 4.14(1) (subheading before table item 1)

Omit "*severe*".

30 Subregulation 4.14(1) (table item 1)

Omit "the Registrar of the Tribunal has made a determination mentioned in subregulation 4.13(4)", substitute "subregulation 4.13(4) applies".

31 Subregulation 4.14(1) (subheading before table item 5)

Omit "*Tribunal*", substitute "*ART*".

32 Regulation 4.15 (heading)

Repeal the heading, substitute:

4.15 ART's power to remit matters with orders

33 Subregulation 4.15(1)

Omit "paragraph 349(2)(c)", substitute "the purposes of subsection 349(2)".

34 Paragraph 4.15(1)(a)

Omit "or entry permit made on or after 19 December 1989".

35 Paragraph 4.15(1)(b)

Omit "direction", substitute "order".

36 Paragraph 4.15(1)(b)

Omit "or entry permit".

37 After subregulation 4.15(1)

Insert:

(1A) For the purposes of subsection 349(2) of the Act:

(a) the following are prescribed matters:

(i) a nomination under subsection 140GB(1) of the Act;

(ii) a nomination referred to in subregulation 5.19(1); and

(b) a permissible order is that the nomination must be taken to have met a specified criterion or requirement for approval under subsection 140GB(2) of the Act or subregulation 5.19(3) (as the case may be).

38 Subregulation 4.15(2)

Omit "paragraph 349(2)(c)", substitute "the purposes of subsection 349(2)".

39 Subregulation 4.15(3)

Omit "direct", substitute "order".

40 Subregulation 4.15(3) (note 1)

Repeal the note.

41 Subregulation 4.15(4)

Repeal the subregulation, substitute:

(4) If:

(a) a person applies for a Prospective Marriage (Temporary) (Class TO) visa; and

(b) in the period after the Minister's decision on the application is made and before the application is finally determined, the applicant:

(i) marries the person who was specified in the application as the applicant's prospective spouse; and

(ii) notifies the ART of the marriage; and

(c) the marriage is recognised as valid for the purposes of the Act; and

(d) the ART decides to remit the application to the Minister for reconsideration;

then, for the purposes of paragraph 349(2)(b) of the Act, the permissible order is that the application must be taken to also be an application:

(e) for a Partner (Migrant) (Class BC) visa and for a Partner (Provisional) (Class UF) visa; and

(f) that is made on the day that the application is remitted to the Minister.

42 Regulations 4.17 to 4.25 and 4.27B

Repeal the regulations.

43 Division 4.2 (heading)

Omit "**Part 7-reviewable**", substitute "**reviewable protection**".

44 Subdivision 4.2.1 (heading)

Repeal the heading.

45 Regulation 4.28

Repeal the regulation, substitute:

4.28 Application of this Division

This Division applies in relation to the review of reviewable protection decisions.

Note: The review of reviewable migration decisions is dealt with in Division 4.1.

46 Subdivision 4.2.3 (heading)

Repeal the heading.

47 Regulations 4.31 and 4.31AA

Repeal the regulations, substitute:

4.31 Prescribed information and documents for review applications

(1) This regulation is made for the purposes of subsection 347(2) of the Act.

(2) If the person making an application for review of a reviewable protection decision has a copy of the notification of the decision, the prescribed document is a copy of that notification.

(3) If the person does not have a copy of that notification, the prescribed information is:

(a) the person's full name; and

(b) the person's address and contact details; and

(c) the date of the decision (if known to the person) and a description of the decision; and

(d) at least one of the following:

(i) the person's date of birth;

(ii) the person's country of birth;

(iii) the person's citizenship or nationality or a statement that the person is stateless;

(iv) the country of issue and number of the person's passport.

48 Paragraph 4.31A(a)

After "2.08A", insert ", 2.08AAA".

49 Subregulations 4.31B(1) and (2)

Repeal the subregulations, substitute:

(1) The prescribed fee for an application for review by the ART of a reviewable protection decision is $2,151.

Note: The fee in this subregulation is subject to increase under regulation 4.31BA.

(2) The fee must be paid within the 7-day period beginning on the day when:

(a) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of that decision; or

(b) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of that decision.

50 Subregulation 4.31B(3)

Omit "direction", substitute "order".

51 After subregulation 4.31B(3)

Insert:

(3AA) No fee is payable for review of a reviewable protection decision if:

(a) the decision was referred to the ART under subitem 35(2) or 37(2) of Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*; or

(b) the proceeding for review of the decision was continued and finalised by the ART in accordance with subitem 36(2) of that Schedule.

52 Regulation 4.31BA

Repeal the regulation, substitute:

4.31BA Annual increases in fees

The fee prescribed by subregulation 4.31B(1) is increased in accordance with regulation 4.31BB, on each 1 July starting on 1 July 2025.

53 Subregulation 4.31BB(5) (paragraph (a) of the definition of *fee*)

Omit "paragraph 4.31B(1)(c)", substitute "subregulation 4.31B(1)".

54 Subregulation 4.31BB(5) (definition of *relevant period*)

Omit "2018", substitute "2024".

55 Subparagraph 4.31C(1)(a)(ii)

Omit "direction", substitute "order".

56 Paragraph 4.31C(1)(b)

Omit "section 417 of the Act, has substituted for the decision of the Tribunal", substitute "section 351 or repealed section 417 of the Act, has substituted for the decision of the Administrative Appeals Tribunal or the ART".

57 Subregulation 4.33(1)

Omit "paragraph 415(2)(c)", substitute "subsection 349(2)".

58 Subregulation 4.33(2)

Omit "paragraph 415(2)(c)", substitute "paragraph 349(2)(b)".

59 Subregulation 4.33(2)

Omit "direction" (wherever occurring), substitute "order".

60 Subregulation 4.33(3)

Omit "For paragraph 415(2)(c)", substitute "For the purposes of paragraph 349(2)(b)".

61 Subregulation 4.33(3)

Omit "direction" (wherever occurring), substitute "order".

62 Subregulation 4.33(4)

Omit "For paragraph 415(2)(c)", substitute "For the purposes of paragraph 349(2)(b)".

63 Subregulation 4.33(4)

Omit "direction" (wherever occurring), substitute "order".

64 Subregulation 4.33(5)

Omit "For paragraph 415(2)(c)", substitute "For the purposes of paragraph 349(2)(b)".

65 Subregulation 4.33(5)

Omit "direction", substitute "order".

66 Regulation 4.34

Omit "subsection 418(2)", substitute "subsection 352(2)".

67 Regulations 4.34A to 4.36

Repeal the regulations.

68 Division 4.4

Repeal the Division.

69 Subparagraphs 1129(3)(c)(ii) and (d)(ii) of Schedule 1

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

70 Subparagraph 1222(4)(c)(ii) of Schedule 1

Repeal the subparagraph, substitute:

(ii) if that last substantive visa was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—the later of the day when that last substantive visa ceased to be in effect and the day when:

(A) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or

(B) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART's decision;

71 Subparagraph 1229(4)(a)(iv) of Schedule 1

Repeal the subparagraph, substitute:

(iv) if the ART made a decision to set aside and substitute the Minister's decision not to revoke the cancellation of the applicant's eligible student visa—the applicant must:

(A) if the ART's decision is given to the applicant orally—have been taken, under subsection 368(7) of the Act, to have been notified of the decision not more than 28 days before the day on which the application is made;

(B) otherwise—have been taken, under section 379C of the Act, to have received the notification of the ART's decision not more than 28 days before the day on which the application is made;

72 Subitem 1237(3) of Schedule 1 (table item 5, subparagraph (c)(ii))

Repeal the subparagraph, substitute:

(ii) if that last substantive visa was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—within 28 days after the day when:

(A) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or

(B) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART's decision

73 Subitem 1238(3) of Schedule 1 (table item 7, subparagraph (c)(ii))

Repeal the subparagraph, substitute:

(ii) if that last substantive visa was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—within 28 days after the day when:

(A) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or

(B) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART's decision

74 Divisions 010.1, 020.1, 030.1 and 050.1 of Schedule 2 (note to Division heading)

Repeal the note, substitute:

Note: ***ART*** is defined in subsection 5(1) of the Act. ***Compelling need to work*** and ***criminal detention*** are defined in regulation 1.03. For ***eligible non-citizen***, see regulation 2.20. There are no interpretation provisions specific to this Part.

75 Subclause 050.212(1) of Schedule 2

Omit "(6B),".

76 Subparagraph 050.212(5B)(c)(ii) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351, or repealed section 417,".

77 Subparagraph 050.212(6)(b)(i) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351".

78 Subparagraphs 050.212(6)(b)(ii) and (c)(i) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351, or repealed section 417,".

79 Subclause 050.212(6AA) of Schedule 2

Omit "section 345, 351 or 417 of the Act, to substitute a more favourable decision for the decision of the Tribunal", substitute "section 351 or repealed section 417 of the Act, to substitute a more favourable decision for the decision of the Administrative Appeals Tribunal or the ART".

80 Paragraph 050.212(6A)(b) of Schedule 2

Omit "section 345, 351 or 417 of the Act, to substitute a more favourable decision for the decision of the Tribunal", substitute "section 351 or repealed section 417 of the Act, to substitute a more favourable decision for the decision of the Administrative Appeals Tribunal or the ART".

81 Subclause 050.212(6B) of Schedule 2

Repeal the subclause.

82 Subparagraph 050.511(1)(b)(iiia) of Schedule 2

After "subsection 473CC(2) of the Act", insert ", as in force at the time of the decision,".

83 Subparagraph 050.511(1)(b)(iiia) of Schedule 2

After "section 473CA of the Act", insert "as in force at the time of the referral".

84 Subparagraphs 050.615(1)(b)(i) and 050.615A(1)(b)(i) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351, or repealed section 417,".

85 Clause 050.616 of Schedule 2

Repeal the clause.

86 Division 051.1 of Schedule 2 (note 1 to Division heading)

Repeal the note, substitute:

Note 1: ***ART*** is defined in subsection 5(1) of the Act. ***Compelling need to work*** and ***criminal detention*** are defined in regulation 1.03. For ***eligible non-citizen***, see regulation 2.20. For ***finally determined***, see section 11A of the Act. There are no interpretation provisions specific to this Part.

87 Paragraph 051.511(1)(bb) of Schedule 2

After "subsection 473CC(2) of the Act", insert ", as in force at the time of the decision,".

88 Paragraph 051.511(1)(bb) of Schedule 2

After "section 473CA of the Act", insert "as in force at the time of the referral".

89 Paragraph 051.513(1)(bb) of Schedule 2

After "subsection 473CC(2) of the Act", insert ", as in force at the time of the decision,".

90 Paragraph 051.513(1)(bb) of Schedule 2

After "section 473CA of the Act", insert "as in force at the time of the referral".

91 Clause 100.111 of Schedule 2 (paragraph (b) of the definition of *sponsoring partner*)

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

92 Paragraph 100.221(2A)(a) of Schedule 2

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

93 Subparagraph 100.321(d)(i) of Schedule 2

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

94 Clause 801.111 of Schedule 2 (paragraph (b) of the definition of *sponsoring partner*)

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

95 Paragraph 801.221(2A)(a) of Schedule 2

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

96 Paragraph 801.311(3)(a) of Schedule 2

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

97 Subparagraph 801.321(a)(iii) of Schedule 2

Omit "section 345, 351, 417 or 501J", substitute "section 351 or 501J, or repealed section 417,".

98 Paragraph 3001(2)(d) of Schedule 3

Repeal the paragraph, substitute:

(d) if the last substantive visa held by the applicant was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—the later of the day when that last substantive visa ceased to be in effect and the day when:

(i) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or

(ii) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART's decision.

Part 2—Bulk amendments

Migration Regulations 1994

99 Amendments of listed provisions

The provisions listed in the following table are amended as set out in the table.

Amendments		
Provision	**Omit (wherever occurring)**	**Substitute**
1.03 (definition of ***outstanding***)	Tribunal	ART
1.13A(2)(e)	Tribunal	ART
2.11(3)	Tribunal	ART
2.43(1)(l)(ii)	Tribunal	ART
2.90(2)	Tribunal	ART
4.02 (heading)	Part 5-reviewable	Reviewable migration
4.02(4), (4A) and (4B)	Part 5-reviewable	reviewable migration
4.12 (heading)	Tribunal	ART
4.12(2)(c)	Part 5-reviewable	reviewable migration
4.12(2)	Tribunal	ART
4.12(4)(c)	Part 5-reviewable	reviewable migration
4.12(4)	Tribunal	ART
4.12(5)	Tribunal of:	ART of:
4.12(5)(b)	Part 5-reviewable	reviewable migration
4.12(5)	Tribunal of the	ART of the
4.12(6)(c)	Part 5-reviewable	reviewable migration
4.12(6)	Tribunal	ART
4.13 (heading)	Tribunal	ART
4.13(2) and (3)	Tribunal	ART
4.14 (heading)	Tribunal	ART
4.14(1) (table items 2 and 3)	Tribunal	ART
4.14(2)	Tribunal	ART
4.15(1)	Tribunal’s	ART’s
4.15(3)	Tribunal	ART
4.16	Registrar	ART
4.16	Tribunal	ART
4.27	Tribunal	ART
4.31A (heading)	Tribunal	ART
4.31A(c)	Part 7-reviewable	reviewable protection
4.31A	Tribunal	ART
4.31B (heading)	Tribunal	ART
4.31B(3)	Tribunal	ART
4.31B(3A)(b)	Tribunal’s	ART’s
4.31B(3A)(b)	Tribunal	ART
4.31C (heading)	Tribunal	ART
4.31C(1)(a)	Tribunal	ART

Amendments		
Provision	**Omit (wherever occurring)**	**Substitute**
4.33 (heading)	Tribunal	ART
4.39(1) (definition of ***lodge an address for service***)	Tribunal	ART
4.39(2)	Part 5-reviewable	reviewable migration
4.39(2)	Part 7-reviewable	reviewable protection
4.39(3)	Tribunal	ART
5.19(15)(b)(ii)	Part 5-reviewable	reviewable migration
5.19(15) (note)	Part 5-reviewable	reviewable migration
5.41(1)	Tribunal	ART
1111(3A)(e)(ii) of Schedule 1	Tribunal	ART
1128(3)(e)(ii) of Schedule 1	Tribunal	ART
1216(3)(d)(ii) of Schedule 1	Tribunal	ART
1229(5)(e)(iv) of Schedule 1	Tribunal	ART
1301(3)(e) of Schedule 1	Tribunal	ART
010.511(1)(b) of Schedule 2	Tribunal	ART
010.513(c) of Schedule 2	Tribunal	ART
020.511(1)(b) of Schedule 2	Tribunal	ART
020.512(ba) of Schedule 2	Tribunal	ART
030.511(1)(b) of Schedule 2	Tribunal	ART
030.512(c) of Schedule 2	Tribunal	ART
050.511(1)(b) of Schedule 2	Tribunal	ART
050.511C(1)(b)(ii) of Schedule 2	Tribunal	ART
050.511D(1) of Schedule 2	Tribunal	ART
050.512(c) of Schedule 2	Tribunal	ART
050.513(1) of Schedule 2	Tribunal	ART
050.513B(1) of Schedule 2	Tribunal	ART
050.514(1) of Schedule 2	Tribunal	ART
050.514AB(1) of Schedule 2	Tribunal	ART
051.511(1) of Schedule 2	Tribunal	ART
051.512(d) of Schedule 2	Tribunal	ART
051.513(1) of Schedule 2	Tribunal	ART
051.513(2)(d) of Schedule 2	Tribunal	ART
100.221(4A)(b) of Schedule 2	Tribunal	ART
192.112(2)(e) of Schedule 2	Tribunal	ART
309.321(2)(b)(iii) of Schedule 2	Tribunal	ART
408.112(2)(e) of Schedule 2	Tribunal	ART
801.221(8)(b) of Schedule 2	Tribunal	ART
820.321(b)(iii) of Schedule 2	Tribunal	ART
4020(1) of Schedule 4	Tribunal	ART
4020(1) of Schedule 4	Part 5-reviewable	reviewable migration

Part 3—Application and transitional provisions

Migration Regulations 1994

100 In the appropriate position in Schedule 13

Insert:

Part 139—Amendments made by the Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024

13901 Definition

In this Part:

amending Part means Part 1 of Schedule 1 to the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024*.

13902 Application provision—invitation to give additional information or comments

The amendments made to paragraphs 2.15(1)(a), (3)(a) and (4)(a) by the amending Part apply in relation to an invitation given under section 56 or 57 of the Act on or after the commencement of the amending Part.

13903 Transitional provision—invitation to give additional information or comments

(1) This clause applies if:

(a) an invitation was given under section 56 or 57 of the Act before the commencement of the amending Part; and

(b) the prescribed period for the invitation was the period prescribed by sub-subparagraph 2.15(1)(b)(ii)(B) or subparagraph 2.15(3)(b)(ii) of these Regulations (as the case may be); and

(c) immediately before that commencement, that period has not ended.

(2) The prescribed period for the invitation is taken, on and after the commencement of the amending Part, to be the period prescribed by sub-subparagraph 2.15(1)(b)(ii)(C) or subparagraph 2.15(3)(b)(iii) of these Regulations (as the case may be).

13904 Application and saving provisions—review application fee

(1) Subregulation 4.31B(2), as inserted by the amending Part, applies in relation to an application for review made on or after the commencement of the amending Part.

(2) Despite the repeal of subregulation 4.31B(2) as in force immediately before the commencement of the amending Part, that subregulation continues to apply, on and after that commencement, in relation to an application for review made before that commencement, as if the repeal had not happened.

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Senate Legal and Constitutional Affairs Legislation Committee

Administrative Review Tribunal (Miscellaneous Measures) Bill 2024

Attorney-General's Department

Hearing date: 02 October 2024

Hansard page: 16

Paul Scarr asked the following question:

Senator SCARR: You've referred to the existing regulation, and, on the basis of your testimony, which I accept, you could fill out a post-it note with the relevant information and that would meet the prescribed requirements. If that regulation were amended to provide for, for example, more onerous obligations, would it be through a disallowable regulation?
Mr Burke: Correct.
Ms Samios: It might be worth noting that that's a distinction from the current situation, with the form. If there were a change to the form to make it more onerous, there would be no disallowance mechanism.
Mr Burke: So in that sense we've actually brought greater scrutiny to what is required.
Ms Samios: It's more capable of scrutiny.
Senator SCARR: That's an important point. Could I ask you to take it on notice to provide the legislative support for that proposition?
Ms Samios: Yes.
Senator SCARR: I think that is an important point. As I understand what you're saying, under the AAT scheme, which is in effect until 14 October, the executive could amend the approved form—they could presumably put in obligations that the approved form contain certain information et cetera and therefore make it more onerous. If the executive did that, that would not be subject to disallowance by the parliament. Is that correct?
Ms Samios: That's my understanding. We'll put some material on notice for you.

The response to the question is as follows:

Under the existing law, sections 347 and 412 of the *Migration Act 1958* (Migration Act) require applications for review of migration and protection decisions (respectively) to the Administrative Appeals Tribunal (AAT) to be "made in the approved form". Section 495 of the Migration Act allows the Minister to approve an "approved form" for the purposes of a provision of the Act. The Minister had delegated these powers under section 495 to the President of the Administrative Appeals Tribunal.

Approved forms are not legislative instruments for the purposes of section 8 of the *Legislation Act 2003* (LI Act) (see item 6 of the table in section 6 of *the Legislation (Exemptions and Other Matters) Regulation 2015*), as such are not subject to disallowance under that Act.

By contrast, under the amendments to the Migration Act contained in the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*, and the Administrative Review Tribunal (Miscellaneous Measures) Bill 2024, applicants are required to provide prescribed information and prescribed documents. Prescribed information and

documents must be set out in the *Migration Regulations 1994*, which is a disallowable instrument subject to parliamentary scrutiny.