

Administrative Review Tribunal and Other Legislation Amendment Bill 2025

The ASRC welcomes the opportunity from the Senate Legal and Constitutional Affairs Legislation Committee to respond to questions placed on notice by Senator Jana Stewart in relation to our submission regarding the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025*.

The Senator asked if the Asylum Seeker Resource Centre would have any concerns if / be supportive the Committee were minded to recommend one or more of the following amendments, and our responses are below:

- 1. As was the case for the AAT under s 43 of the AAT Act, providing that the Tribunal is only required to provide written reasons if a party requests written reasons within 28 days of a decision being made (subject to appropriate qualifications).**

ASRC would not support this recommendation.

Many people seeking asylum are self-represented or face barriers to understanding procedural steps. Requiring a request within 28 days risks unfairness, especially for vulnerable applicants who may not know of the requirement or may be unable to act promptly. Written reasons should be automatically provided in migration and protection matters, where fundamental rights are at stake. Written reasons are also required in order to assess merit for judicial review, and are therefore critical for our clients to exercise their legal rights.

- 2. Ensuring that minor but necessary tasks, such as correcting typographical or other obvious errors in a decision by a Member or Registrar, can – in appropriate circumstances – be corrected by a person other than the individual who made the decision or a person who has been specifically authorised to do so by the President.**

ASRC would be supportive of this recommendation as long as the parties are notified of any corrections made.

An amendment that limits such corrections to clerical, typographical, or formatting errors, with an obligation to notify parties of any correction and retain the original decision on file is not objectionable.

- 3. Enabling the President to delegate more of his or her powers / discretion to a Deputy President, particularly when it comes to the President's administrative responsibilities (noting the President would be able to revoke any delegation at any time).**

ASRC would require more information before forming an opinion on this recommendation, as the detail of the recommendation would be important to determining its impact on our client group. It would be important to ensure that any delegation instrument is published and that the President retains oversight and revocation power, as noted in the question above. However, it would be important for ASRC to understand the types of powers / discretion that would be proposed to be delegated before we would be able to form an opinion about any potential impact on our client group.

4. Enabling a non-judicial Deputy President to act as President on a temporary basis when the President, who is required to be a Federal Court judge, is absent (e.g. on leave and only for up to, say, a maximum of 1 month).

ASRC would not support this recommendation.

Temporary arrangements for continuity are reasonable but concerns arise if such temporary acting arrangements blur judicial accountability or compromise independence. Our preference would be for point 5 below.

5. As an alternative to point 4, enabling a non-judicial Deputy President to act as President on a temporary basis when the President, who is required to be a Federal Court judge, is absent – provided the non-judicial Deputy President is a former superior court judge.

ASRC would support this recommendation, as it would strengthen the integrity of the temporary leadership arrangement, while providing for continuity. A former superior court judge provides equivalent assurance of independence and competence.

6. Introducing a sunset provision in relation to proposed Division 4A of the Migration Act / the requirement that the ART review certain migration matters on the papers without conducting an oral hearing, with the sunset provision to align with the statutory review of the ART Act (see s 294A).

While the inclusion of a sunset clause would be preferable to the current drafting of the Bill, the inclusion of such a clause is insufficient to address our concerns.

s294A states the review must be completed within 12 months after the 5th anniversary of enactment of the act. That means these provisions are likely to be in place for up to 6 years. Within those 6 years, it remains possible that bridging visas could be designated by the Minister as temporary visas designated for the purposes of these provisions, meaning that decisions about vulnerable peoples' liberty could be made in that time without a hearing. In our view, one instance of this is too many.

As noted in our submission, ASRC recommends that proposed subsection 367C(2)(b) be omitted, which is the subsection that provides the power to designate a temporary visa type by regulation to be 'an application to be reviewed on the papers'.

- 7. Alternatively (or in addition), and noting concerns about the potential for proposed Division 4A of the Migration Act to have unintended consequences, amending proposed section 367C(2) so that a decision to refuse to grant a student visa has to be prescribed in order to be an “application to be reviewed on the papers” for the purposes of proposed Division 4A. This would mean that if, with the benefit of experience, the “on the papers” approach to student visa applications does not work as intended, the Minister would be able to repeal the relevant regulation.**

As noted in our submission, ASRC recommends that proposed section 367C(2)(b) be omitted. It is our view that the proposed Ministerial discretion gives the current or future government/s a new power that could be used to further punish people seeking asylum. The power could be used to make it easier to detain them and could be applied to deny them a fair hearing at the Tribunal.

The ASRC thanks the Committee and the Senator for the opportunity to respond.