

Administrative and Judicial Review Legislation Amendment Bill 2026

Founded in 2001, the Asylum Seeker Resource Centre (ASRC) is Australia's largest independent aid and advocacy organisation for people seeking asylum and refugees, supporting and empowering people at the most critical junctures of their journey. Our services include legal, casework, housing, medical, education, employment and emergency relief. Based on what we witness through our service delivery, we advocate for change with refugees to ensure their human rights are upheld.

The ASRC welcomes the opportunity from the Senate Legal and Constitutional Affairs Legislation Committee to provide a submission regarding the *Administrative and Judicial Review Legislation Amendment Bill 2026* (Bill).

The ASRC's legal team, the Human Rights Law Program, has considerable experience representing applicants before the Administrative Review Tribunal (ART) and the Federal Circuit and Family Court of Australia (FCFCOA), and witnessing the challenges that refugees and people seeking asylum face in accessing a fair and transparent merits review and judicial review process.

The Bill proposes many amendments, including but not limited to:

- enabling registrars at the ART to dismiss a review application if there are no reasonable prospects of success (Part 1 of the Bill);
- giving the ART member discretion to provide oral reasons for their review of a decision under the *Migration Act 1958* (Cth) (Migration Act) and only provide a written statement of reasons if they receive a written request (Part 10 of the Bill);
- requiring applicants to confirm their identity as part of the merits review process before the ART and judicial review process before the FCFCOA. Should an applicant not comply with the identity verification process, their review application will be dismissed by the ART and the courts (Part 12 of the Bill).

We appreciate the Bill intends to 'improve the efficiency and responsiveness of the migration review framework'¹ and the government is investing resources in the ART and FCFCOA to address the backlog of migration cases.²

However, the Bill attempts to address the backlog in a way that entirely restricts procedural fairness for protection applicants.

These amendments impose **significant and unnecessary barriers on a person's ability to access justice** and procedural fairness for decisions that relate to their protection visa application. These barriers are particularly concerning for protection applicants who are often facing language barriers, a lack of accessible or available legal resources, difficulties in understanding the complex migration system, strict timeframes in the review process and general unfamiliarity with Australian institutions.

¹ Explanatory Memorandum, Administrative and Judicial Review Legislation Amendment Bill 2026, 5.

² 'Federal Budget 2026-27 Explainer - What the budget means for refugees and people seeking asylum,' Asylum Seeker Resource Centre (13 May 2026) <<https://asrc.org.au/2026/05/13/federal-budget-2026-27-explainer/>>.

Considering these vulnerabilities, **the amendments can completely prevent a protection applicant from accessing the merits review and judicial review process.** These additional barriers are particularly concerning where the government is concurrently ceasing funding to provide legal assistance to protection applicants at the ART, which commenced in 2023.³

The functions of the ART and the FCFCOA are to 'improve the quality of decisions made by the government' by providing a fair and efficient review process of administrative decisions⁴ including protection decisions under the Migration Act. The purpose of the ART and FCFCOA are undermined by the amendments at Parts 1, 10 and 12 of the Bill. They are deeply concerning and should be **omitted or amended to align with the procedural fairness obligations that underpin Australia's judicial system.**

Summary of Recommendations

Recommendation 1:

We recommend that Part 1 of the Bill be opposed in full.

Recommendation 2:

We recommend that Part 10 of the Bill be amended so that any review decision (and the statement of reasons) made in relation to a decision under the Migration Act cannot be provided orally and must be provided in writing only.

This would involve:

- inserting the heading 'Legislation relating to Migration' and 'item 17 *Migration Act 1958*' in the table under Item 38, proposed s 111A of the Bill;
- removing Items 44 - 62 of Part 10 of the Bill.

Recommendation 3:

We recommend that Part 12 of the Bill be opposed in full.

Granting registrars the power to dismiss applications if there are no reasonable prospects of success

Schedule 1, Part 1, Items 1 - 4 amends the *Administrative Review Tribunal Act 2024* (Cth) (ART Act) to empower registrars at the ART to dismiss a review application if they find that there are no reasonable prospects of success. As a 'safeguard', it also enables registrars to reinstate a review application if it was incorrectly dismissed.

A registrar's purpose is to 'support the efficient operation of the Tribunal and focus members' time on making decisions on review.'⁵ It's clear from the ART Act and explanatory materials that there is a clear division of roles within the ART - a Tribunal Member makes merits-based decisions whereas a registrar makes administrative decisions.

³ 'Restoring integrity to our protection system,' Department of Home Affairs (5 October 2023) <<https://minister.homeaffairs.gov.au/AndrewGiles/Pages/restoring-integrity-protection-system.aspx>>.

⁴ 'Our role', *Administrative Review Tribunal*, <<https://www.art.gov.au/about-us/our-role>>; 'About the Courts' *Federal Circuit and Family Court of Australia* <<https://www.fcfcga.gov.au/about>>.

⁵ Supplementary Explanatory Memorandum relating to sheet ZC275, *Administrative Review Tribunal Bill 2024*, 30.

Registrars have broad administrative powers to issue directions to parties in proceedings, and can currently dismiss review applications based on objective criteria, for e.g., if the decision sits outside the jurisdiction of the ART, if a fee is not paid and if parties consent to dismissing the application.⁶

The proposed amendment allowing registrars to dismiss an application where there are no reasonable prospects of success is concerning as it **provides registrars the ability to make a merits-based decision beyond their scope**. The power to dismiss review applications based on merit should only reside with Tribunal members who are trained to consider evidence and make substantive decisions on a merits review application **as a matter of procedural fairness**.

Further, **Tribunal members should only exercise their power to dismiss applications** if there are no reasonable prospects of success **in exceptional circumstances**. We note that protection applicants who have fallen prey to scam agents in the system may have had protection visa claims put forward on their behalf that are inaccurate.

Case Study

Sarah, 21, experienced family violence involving physical and verbal abuse, after her parents discovered that she was attracted to women. She ran away from home with little money, left her country of origin in South Asia and came to Australia on a visitor visa.

After she arrived in Australia, she tried to find a migration agent who could help her with her visa options. Sarah was working part time on a farm to earn some money and to survive in Australia. At the farm, a colleague referred her to a man who could help her apply for another visa and to help her get work rights. He lodged a protection visa for Sarah without telling her what visa he was lodging and in doing so claimed that she feared harm from members of her local community due to ongoing land disputes and debt. Unfortunately, Sarah never had an opportunity to explain her true fears of returning home or tell the Department about her past experiences and ongoing fear of harm on the basis of her sexuality and experience of family violence.

Sarah did not know her visa application contained incorrect information until 18 months later, when she received a letter from the Department of Home Affairs stating her protection application had been refused because she did not provide more information regarding her claims for protection in response to their request for further information. She tried to contact the man who lodged her protection application, however he could not be found. She called a community legal centre who provided her with limited assistance. They lodged a review application with the ART and an FOI application with the Department of Home Affairs so Sarah could see what information had been provided to the Department.

*This case study is based on an amalgamation of client experiences seen by the Human Rights Law Program at the ASRC.

Many clients approach ASRC with limited knowledge of their status or what has been prepared on their behalf by a scam agent. A lawyer can assist them to prepare adequately particularised claims based on their true situation. If a matter is dismissed before a protection applicant is able to access legal assistance, they will have missed an opportunity to have their true claims heard and assessed by a decision maker.

It is also concerning that the only 'safeguard' to expanding the power of a registrar to dismiss a review application on a merits basis is that they can also reinstate review applications if it was

⁶ *Administrative Review Tribunal Act 2024* (Cth) s 285.

'dismissed in error.'⁷ Under the ART Act, the Tribunal can reinstate a review application on its own or if a party applies for a reinstatement within 28 days of receiving a dismissal notification. This is not a realistic safeguard for protection applicants who may miss the opportunity to reinstate a review application due to language barriers, scarcity of pro bono legal assistance and understanding of these institutional processes.

Recommendation 1:

We recommend that Part 1 of the Bill be opposed in full.

Discretion to deliver oral decisions in ART proceedings

Schedule 1, Part 10, Items 44 - 62 amends the Migration Act and allows the ART to dispense with providing a written decision and statement of reasons when they review a decision by the Department of Home Affairs (Department) under the Migration Act. Instead, the ART has the discretion to provide an oral decision where a matter is heard in person and not administratively decided 'on the papers.'

Where an oral decision is provided, the ART is only compelled to provide a written statement of reasons to parties if they receive a written request by the applicant or the Secretary of the Department. The applicant must make this request within 14 days of the oral decision being handed down or a longer period prescribed by the regulations and the Secretary can make this request at any time after the oral decision is handed down. After the ART receives a written request, they are required to give a written statement of reasons to the parties within 14 days or a longer period as prescribed by the regulations.

These proposed amendments are deeply concerning for a number of reasons.

Double Standard

The timeframe for requesting written reasons presents a double standard for the timeframe of when an applicant or a Secretary may request a statement of reasons from the ART. It is restrictive that the applicant will be barred from requesting the written statement of reasons within 14 days or a longer period as prescribed by the regulations given the severe consequences on their ability to seek judicial review.

Impact on the quality of written reasons

We are concerned that the quality of the decisions from the ART will decline due to the proposed amendments. It appears the ART members are not required to concurrently prepare a written statement of reasons when they provide an oral decision - but only if requested. A poorer quality of decisions will only increase the burden on the FCFCOA and undermine the efficiency purpose of the Bill.

Hindering access to judicial review

The amendments present a real and significant risk of preventing an applicant from applying for judicial review of a negative ART decision in time. This is because a written statement of reasons is what enables an ART decision to be reviewed for judicial error, but the applicant may not know to make a written request within 14 days of an oral decision being handed down. It is profoundly

⁷ Explanatory Memorandum, Administrative and Judicial Review Legislation Amendment Bill 2026, 13.

unjust to expect a protection applicant who may be self-represented or experience language barriers to digest an oral review decision, understand the next steps in the review process (including what the necessary documents are) and make a request to the ART for a statement of reasons within 14 days of the oral decision.

Even if an applicant makes this request for a statement of reasons in time, the ART can have 14 days or longer (if prescribed by the regulations) to produce the statement of reasons. In order to apply for judicial review at the FCFCOA, a protection applicant must be able to identify and articulate legal errors in the ART decision. The proposed amendments **significantly reduce the amount of time the applicant has to obtain the written statement of reasons, identify legal error and apply for judicial review** - given they would only have 35 days from the date of the oral ART decision being handed down.⁸

Many protection applicants find that **the current 35 day period** between receiving a written decision and their deadline to lodge at the FCFCOA **is inadequate and too short** for them to properly obtain legal advice. This is due to barriers accessing justice including the cost of lawyers and the complex nature of finding a legal error in a decision. It is particularly challenging as there is no legal funding to assist people at the judicial review stage, which makes it more difficult to get pro bono advice. Therefore, these amendments only serve to aggravate existing barriers that prevent a person from accessing their right to judicial review.

Under the proposed amendments, **there is a real risk that the applicant may be prevented from applying for judicial review because they do not receive a copy of the statement of reasons within the 35 day timeframe.**

Should an applicant try to file a judicial review application after the 35 day deadline, the process is very complex and will require legal assistance. There is a scarcity of available pro bono lawyers to assist with a protection applicant's complex 'out of time' applications. This creates an additional **unnecessary hurdle or barrier for protection applicants to access judicial review**. Should the protection applicant receive legal assistance with an 'out of time' application, this also creates **further administrative burdens for the courts.**

Barriers to accessing legal advice

The delays in obtaining a written statement of reasons will also **prevent lawyers from assisting protection applicants to file judicial review applications**. This is due to changes in September 2025 that require a lawyer to complete a certificate confirming they have reviewed the application and think there is a reasonable prospect of success when they file an application for judicial review before the FCFCOA.⁹

Example

A protection visa applicant, Mariam, receives an oral decision from the ART that affirms the Department's decision to refuse her permanent protection visa application. The Tribunal Member informs her at the ART hearing that she can make a written request for a copy of the 'statement of reasons' within 14 days of the decision. Despite the interpreter's presence, Mariam is stressed by the negative decision and only understands parts of the oral decision

⁸ *Migration Act 1958* (Cth) s 477(1).

⁹ In September 2025, the FCFCOA amended its court rules and issued new practice directions such that judicial review applications must now include the details of the person who prepared the document. A lawyer filing this application must complete a certificate signed by the lawyer confirming they have reviewed the application and think there is a reasonable prospect of success.

handed down by the Member. Mariam forgets the Tribunal Member's reminder that she can make a written request for a copy of the statement of reasons.

Mariam works part time and can only try and call community legal centres to get advice for what her next options are on two days of the week. When she calls them, they say they are at capacity and to try calling on their next available day. When Mariam finally speaks to a pro bono lawyer, more than 14 days has already passed since the ART's oral decision. She is not able to request the statement of reasons from the ART herself. She cannot apply for judicial review of the ART decision because she cannot identify any error from the oral decision and does not have a copy of the 'statement of reasons.'

The proposed amendments in Part 10 will in practice dramatically undermine the current review framework provided in the Migration Act. More importantly, they are **manifestly unjust and restrict an individual's right to properly review their decision and seek judicial review of** an ART decision. We are concerned that these amendments represent an additional burden on applicants and amount to a denial of procedural fairness.

There has been a **long history of Governments trying to restrict protection applicants' access to judicial review, and we are concerned that this Bill represents a continuation of that trend.**

Recommendation 2:

We recommend that Part 10 of the Bill be amended so that any review decision (and the statement of reasons) made in relation to a decision under the Migration Act cannot be provided orally and must be provided in writing only.

This would involve:

- inserting the heading 'Legislation relating to Migration' and 'item 17 *Migration Act 1958*' in the table under Item 38, proposed s 111A of the Bill;
- removing Items 44 - 62 of Part 10 of the Bill.

Unfair identity verification process

Schedule 1, Part 12, Items 67 - 74 require protection applicants to verify their identity for merits review matters before the ART. Whilst not yet specified, it is likely protection applicants will also be required to verify their identity in judicial review matters before the FCFCOA unless they are in immigration detention. Should a protection applicant not comply with the identity verification process, their matter will be dismissed by the ART. With the FCFCOA, they can dismiss the matter or leave is required to continue the proceedings if the applicant does not comply with the identity verification process.

The Bill does not provide much detail about what is required for an identity check and notes that the regulations may prescribe the requirements of when or what the applicant must do to verify their identity. The Bill further states that the regulations may prescribe an applicant to attend an appointment in person or virtually, or provide documents at any time or place. While it is difficult to assess the full impact of these changes as details will be prescribed in regulation, some of the risks are clear and are outlined below.

Vulnerability impacting on ability to attend appointments

Should the protection applicant be required to attend a physical or virtual appointment to verify the identity - this can be very onerous depending on the vulnerability of a protection applicant. Lawyers at the ASRC have observed various factors that contribute to a protection applicant's vulnerability that may prevent them from attending an in person or virtual appointment to verify their identity. This includes their **age, physical or mental health issues and homelessness that may prevent them from adequately managing correspondence** with the Department or the courts, **including attending an appointment**. These vulnerability factors should not lead to the dismissal of a person's application before the ART or FCFCOA.

Lack of access to identity documents

Additionally, the Bill does not specify what documents the ART or FCFCOA would rely on in verifying a person's identity. We note that many of our clients do not have their original identity documents from their home country, are stateless, do not have a valid passport and in many cases are **unable to obtain official Australian identity documents** without providing documents from home.

In these circumstances, some are reliant on immicards as their only form of identification, and as these expire and take time to replace, there is a risk that **people are without any valid identification for periods of time**.

We are also aware that there is a significant cohort of clients in the community who are without bridging visas because they have expired and there are delays in the Department processing renewals. As a result, they are unable to access Medicare or open bank accounts, and therefore unable to obtain the type of identity documentation that would presumably be required for this type of process.

Therefore, we are concerned that protection applicants may not be able to satisfy the identity verification check on a documentary basis which puts them at risk of having their merits or judicial review application being dismissed.

Other ways to target exploitation

We appreciate this amendment has been introduced to disincentivise scam agents who take advantage of vulnerable people by lodging judicial review applications without the applicant's knowledge or consent.¹⁰ However, these amendments would disproportionately impact a large cohort of clients who may be homeless or unable to access adequate identity documents. If the government is concerned with scam agents who exploit vulnerable people, **the problem is better solved through targeting the scam agents and labor agents who exploit people**, rather than through legislation that targets the victim by restricting a protection applicants' right to access merits or judicial review.

Imposing the need for a protection applicant to verify their identity through an appointment or documents represents additional barriers to people accessing justice. These amendments do not consider the unique challenges of protection applicants and amount to a denial of procedural fairness. **We are deeply concerned that these amendments are another attempt by the government to restrict access to merits and judicial review.**

¹⁰ Explanatory Memorandum, Administrative and Judicial Review Legislation Amendment Bill 2026, 49, 56.

Recommendation 3:

We recommend that Part 12 of the Bill be opposed in full.

Conclusion

The amendments proposed in Part 1, Part 10 and Part 12 of this Bill impose significant and unnecessary barriers on a person's ability to access justice and procedural fairness in the merits review and judicial review process. It is critical that the Senate understands the unique challenges faced by protection applicants and considers how the amendments proposed in the Bill can **in practice, completely prevent a protection applicant from accessing the merits review and judicial review process.**

There is a long history of governments undermining the rights of protection applicants in the refugee status determination process. While the intention of this Bill is stated to improve efficiency and responsiveness in the review system, the amendments in this Bill have significant consequences and will restrict people seeking asylum's access to merits and judicial review.

For all of the reasons above, the ASRC recommends that the Senate amend the Bill as outlined in this submission.