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Submission to the Standing Committee on Social Policy and Legal Affairs

Inquiry into the Administrative Review Tribunal Bill (ART Bill) and the Administrative Review (Consequential and Transitional Provisions No. 1) Bill 2023 (Consequential and Transitional Bill)

5 February 2024

Acknowledgment of Country

We acknowledge the Traditional Owners of Country throughout Australia. We pay our respects to Elders past and present, and to the Gadigal and Bidjigal People of the Eora Nation on whose traditional land we work.

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Introduction

The Refugee Advice and Casework Service (**RACS**) provides critical free legal advice, assistance and representation to financially disadvantaged and vulnerable people seeking asylum in Australia. We advocate for systemic law reform and policy that treats refugees with justice, dignity and respect, and we make complaints about serious human rights violations to Australian and United Nations bodies.

RACS acts for and assists refugees, people seeking asylum, people that are stateless or displaced, in the community, in immigration detention centres, alternative places of detention and community detention. Our services include supporting people to apply for protection visas, re-apply for temporary visas, apply for work rights and permission to travel, apply for family reunion, lodge appeals and complaints, assist with access to citizenship and challenging government decision-making.

RACS welcomes the opportunity to contribute to the scrutiny of the Administrative Review Tribunal Bill (**ART Bill**) and the Administrative Review (Consequential and Transitional Provisions No. 1) Bill 2023 (**Consequential and Transitional Bill**). Together, these Bills seek to abolish the Administrative Appeals Tribunal (**AAT**) and the Immigration Assessment Authority (**IAA**) to instead establish the Administrative Review Tribunal (**ART**). In accordance with the proposed ART Bill, the Tribunal must pursue the objective of providing an independent mechanism of review that:

(a) is fair and just;

(b) ensures that applications are resolved as quickly, and with as little formality and expense, as a proper consideration of the matter permits;

(c) is accessible and responsive to the diverse needs of parties to proceedings;

(d) improves the transparency and quality of government decision-making; and

(e) promotes public trust and confidence in the ART.[1]

RACS routinely advises and assists non-citizen clients with challenging government decisions that fundamentally impact their safety from persecution, liberty, freedom from arbitrary and indefinite detention and ability to reunite with their families. The clients that RACS supports (that being people seeking asylum, refugees and the stateless) typically experience structural exclusion and intersecting barriers to accessing justice. Such barriers can include the profound impacts of trauma arising from the experience of persecution, limited English capabilities, complex mental health issues and financial distress. Accordingly, it is critical that any proposed reform to the administrative review

[1]Administrative Review Tribunal Bill 2023 (Cth) cl 9 (**'ART Bill'**).

system accounts for the profile of some its most vulnerable applicants to ensure that they are equally able to access a fair, just and independent mechanism of merits review.

We welcome many aspects of the Bills that seek to imbue integrity and accessibility in the ART, including the introduction of a merits-based appointment process, performance standards for decision-makers and the abolition of the IAA. However, the Bills fall short of meeting its objectives for migration and protection visa applicants who are subject to a distinctive procedural code that excludes them from some of the benefits of the proposed legislation. The decision to maintain a separate procedural code for non-citizens unjustly prevents these applicants from equality before the law. This distinction between citizens and non-citizens releases the ART from its obligations to comply with procedural fairness for the latter and is particularly egregious given the profile of stateless, refugee and asylum-seeking applicants highlighted above. It is these applicants who are most in need of greater flexibility and dedicated measures to improve accessibility.

Our submission draws directly from RACS' experience in supporting clients to navigate the difficulties of accessing merits review in the context of their specific backgrounds. We make a number of recommendations that would bring the Bills closer in line with the purported objective of the proposed legislation enumerated above, with a particular focus on the objectives of accessibility and fair and just decision making.

We would like to extend our gratitude to the following contributors to this submission: Mursal Rahimi and Ahmad Sawan.

Accessible and responsive

The ART Bill provides that the Tribunal as a review mechanism must aim to be accessible and responsive to the diverse needs of parties to proceedings.[2] The term accessible is defined in the Bill to mean 'enables persons to apply to the Tribunal and to participate effectively in proceedings in the Tribunal'.[3] As far as it is practicable, the ART must conduct each proceeding in a way that is accessible for the parties to the proceeding, accounting for the needs of the parties.[4]

This section sets out the ways in which some of the provisions of the Bills are inconsistent with this objective, and how merits review is made inaccessible for refugee and asylum-seeking applicants. Recommendations are then made on the basis of RACS' experience with supporting these applicants to improve the accessibility of merits review under the ART.

Timeframe to make an application

Applicants in detention

The ART Bill sets out a general rule that provides for 28 days to lodge an appeal,[5] however, some refugees and people seeking asylum in detention would have only 7 days to apply for a review a decision.[6] Other applicants who are seeking a review of a decision to refuse or cancel a visa on character grounds are limited to only 9 days to make an appeal.[7] In our experience, this is a wholly insufficient timeframe for an applicant to: read a complex legal decision that is likely in a language they are not fluent in, understand the contents of the decision, recognise the timeframe for an appeal and contact a legal service provider for advice or assistance. This is also not accounting for the time required by the legal service provider to respond to queries for assistance, obtain the necessary information to be able to provide relevant legal advice, and offer substantive assistance with lodging an appeal.

The explanatory memorandum for the Consequential and Transitional Bill suggests that a shorter timeframe is beneficial to applicants as it seeks to avoid extending their time in detention.[8] We submit that any purported benefit from a reduced timeframe to lodge an appeal is far outweighed by the significant and likely risk of being entirely excluded engaging in with the appeals process. In fact, applicants who are in detention and miss

[2] Ibid, cl 9(c).
[3] Ibid, cl 4.
[4] Ibid, cl 51.
[5] ibid, cl 18(3).
[6] Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (Cth) s 347(3)(a) ('**Consequential and Transitional Bill**').
[7] *Migration Act 1958* (Cth) s 500(6B).
[8] Explanatory Memorandum, Consequential and Transitional Bill 2023 (Cth) [70].

the deadline to appeal may unnecessarily spend excess time in closed detention while exploring their other legal avenues, including seeking an extension of time application.

These rigid timeframes undermine the ART's attempt to provide fair, accessible, and effective decision-making. A minimum 14-day timeframe is a more appropriate period of time to enable applicants to properly access and engage with the merits review offered by the ART in a fashion that upholds access to justice principles.

Extension of time

It is not uncommon for applicants to approach RACS for assistance having missed the deadline to lodge an appeal, or with very limited time left to do so. In these circumstances applicants may be substantively excluded from merits review altogether, with their only options to remedy their situation being to apply for an extension of time (which may only be granted in exceptional circumstances). Those with a very limited period of time remaining may not be able to receive comprehensive legal advice to properly understand the steps required to lodge an appeal and the prospects of their matter in order to make an informed decision about applying.

Section 347(5) of the Consequential and Transitional Bill stipulates that the power for the ART to extend deadlines under Clause 19 of the ART Bill would not be applicable to reviewable migration or protection decisions. This further excludes applicants with a migrant, refugee, or asylum-seeking background from the benefit of the flexible practices and powers provided for in the ART Bill. This is notwithstanding that applicants who appeal migration and protection decisions may be more likely to experience factors which complicate their ability to meet the rigid prescribed deadlines. This includes but is not limited to, insecure housing, limited employment opportunities, complex mental and physical health issues and limited English fluency.

Recommendation 1:

The deadline to apply for a review of a decision for applicants in detention should be set to a minimum of 14 days, with the ability to extend to 28 days per the provisions of the ART Bill.

Recommendation 2:

Section 347(5) of the Consequential and Transitional Bill should be removed. Division 3 of the ART Bill should apply to migration and protection applicants instead.

Appointing an interpreter

Subclauses 68(1)-(2) of the ART Bill requires the ART to appoint an interpreter at an applicant's request, save for where it considers that the applicant does not need an interpreter to communicate or understand evidence and submissions. An applicant's request for an interpreter should be honoured by the ART, as they are in the best position to advise on their needs to properly participate in a hearing. Denying access to an interpreter when requested not only maintains an asymmetry of power between the ART and the applicant, but also contravenes the ART's objective of being responsive to the diverse needs of parties to a hearing.

Subclause 68(3) mandates that the ART must, on its own initiative, appoint an interpreter for an applicant even where they have not requested one if it believes that an interpreter will be required for the purposes of communication at a hearing. We recommend that an applicant's consent must be obtained before any interpreter is appointed. There are many reasons why an applicant may seek to not request an interpreter. This may include privacy concerns where the applicant had previously experienced discomfort or judgement from members of their own community, or where the prospect of revealing intimate information regarding their claims for protection to someone from their community may limit their ability to comfortably discuss their situation. This clause is especially concerning in the context of reviewable protection decisions, where the appointment of an interpreter without consent can significantly hinder how forthcoming an applicant may feel to discuss sensitive aspects of their claims.

The ART must respect and facilitate the agency of applicants with respect to the decision to request or not request an interpreter. Doing so would give effect to the ART's objectives of increasing accessibility and responding to the diverse needs of applicants in a trauma-informed manner.[9]

Recommendation 3:

Subclauses 68(1) and (2) of the ART Bill should be amended to require that the ART appoint an interpreter where requested by an applicant.

Recommendation 4:

Subclause 68(3) should be amended to require that the ART seek the consent of the applicant before appointing an interpreter.

[9] Explanatory Memorandum, ART Bill 2023 (Cth) [435].

Translated notifications of decision

Applicants are notified of the outcome of their review application and decisions in a lengthy document that is entirely in English. The majority of applicants assisted by RACS do not speak English fluently, and many do not comprehend the outcome of their review application until it is explained to them with an interpreter. This can have dire consequences on some applicants who do not contact a legal service provider like RACS expeditiously and may subsequently miss their opportunity to further appeal the decision for judicial review.

A user-focused accessible design of the ART would see applicants be able to meaningfully participate in all aspects of ART processes, including understanding the outcome of their review application. One way to do so would be to communicate notification of the outcome of an ART review application in the language of the applicant, especially where an interpreter was used at their hearing. If an interpreter was required for an applicant to adequately participate at a hearing, it reasonably follows that the applicant would require translated information to genuinely understand the outcome of their review application. Letters notifying applicants of the outcome of their application usually include standard information about the review of decisions, timeframes they may be subject to, the payment of fees and the publication of decisions. This information could be easily translated as it is general and not specific to an applicant. Where an applicant's language is only spoken (for example, Rohingya) the ART should endeavour to notify the outcome of the application verbally with an interpreter of the relevant language – particularly in circumstances where such applicants are unrepresented.

Recommendation 5:

Where a second language is indicated at any stage of a matter, the ART should communicate the outcome of a review decision to the applicant in their chosen language. This could involve providing a translated letter of notification, or by contacting the client with an interpreter to advise of the outcome of their application.

Mode of hearing

Paragraph 36(1)(f) of the ART Bill stipulates that the President of the ART may make practice directions concerning the use of technology that allows a person to participate in a proceeding without being physically present. This is intended to allow for virtual participation in proceedings where an applicant may not be able to travel to the ART or attending a hearing may be unsafe for them.[10]

Applicants supported by RACS have consistently expressed a desire to attend hearings in person to ensure that they are able to express the full range of their verbal and non-

[10] Ibid, [61].

verbal communication. Applicants have previously cited greater comfort at being able to speak face to face with a Member of the AAT, which has had a positive impact on their ability to speak in detail about their claims. The use of technology as a precondition to participation in a hearing may be prohibitive for some applicants who do not have access to a safe and quiet space to attend a hearing, technology literacy, a computer or mobile phone, and stable internet connection. This paragraph should be amended to maintain in-person hearings as a default position, with the option to make provisions for virtual participation where relevant and consented to by an applicant.

Recommendation 6:

Paragraph 36(1)(f) of the ART Bill should be amended to maintain in-person hearings as a default position, with the option to make provisions for virtual participation where relevant and consented to by an applicant.

Accessing documents

Applicants are currently entitled to request access to material that has been provided to the AAT for the purpose of review by seeking it from the Tribunal directly. Section 362A of the ART Bill would disallow applicants from doing so, and instead directs them to apply to the Department of Home Affairs (the **Department**) to access materials provided to the ART for the purposes of the review.

Applicants often approach RACS for assistance once they receive an invitation to attend a hearing, which may only provide a period of 2 - 4 weeks to obtain access to materials that may be relevant to their matter. The Department receives the most Freedom of Information (**FOI**) requests of all Commonwealth agencies (at a rate of 43% with 11, 334 in the period of 2022 – 23), representing close to 3 times the amount of the agency with the second highest request.[11] The existing caseload and backlog of FOI requests has led to serious delays in the provision of requested material, which can significantly undermine our ability to properly advise or assist applicants with respect to their matter. While the Department has made efforts to reduce the delay in processing these requests through the administrative release of documents through the Privacy Act, requests may still be dealt with under the existing FOI scheme where there are likely to be significant redactions and processing times can still extend beyond the prescribed 30-day statutory timeframe.[12] RACS lawyers routinely make FOI requests to the AAT with the knowledge that the request will likely be dealt with more expeditiously than those made to the Department.

[11] Office of the Australian Information Commissioner, Annual Report 2022-23 (2023), p. 146 accessible at: <□HYPERLINK "https://www.oaic.gov.au/__data/assets/pdf_file/0029/94295/OAIC_Annual-Report-2022-23.pdf>."https://www.oaic.gov.au/__data/assets/pdf_file/0029/94295/OAIC_Annual-Report-2022-23.pdf>.

[12] *Freedom of Information Act 1982* (Cth) s 15(5)(b).

Recommendation 7:

Section 362A of the Consequential and Transitional Bill should be removed to maintain an applicant's entitlement to seek materials from the ART directly.

If this section is not removed, then the Department should offer a streamlined process for applicants within the existing FOI system to seek access to materials that have been provided to the ART.

Fair and just decision-making

Abolition of IAA

RACS welcomes the abolition of the IAA, for which we have long advocated for. The IAA offers a restricted form of review specifically for unauthorised maritime arrivals who form part of the Legacy Caseload (**fast-track applicants**).[13] It aimed to deal with the large caseload of fast-track applicants by favouring expediency over procedural fairness and just decision-making. [14] Indeed the legislation establishing the review body noted that its objectives were simply to be 'efficient and quick'[15] and not 'fair, just, economical, informal and quick' like the AAT (which was available for non-fast-track applicants).[16] To give effect to this objective, the IAA conducted 'on the papers' reviews of existing material without inviting fast-track applicants to a hearing and implemented incredibly high thresholds to justify the provision of new evidence.[17] This had devastating impacts on the fast-track applicants assisted by RACS, which is exemplified by the following case studies.

Case study: no 'exceptional circumstances' to provide new information

Balan arrived by boat from Sri Lanka in 2013. He lodged a substantive visa application in 2017. Later that year, the Department notified Balan that his visa application had been refused. The application was referred to the IAA for review.

Balan submitted documents to the IAA with new information about his fears of persecution. This information related to his involvement in the Sri Lankan civil war and his experiences of physical abuse.

Balan explained that he had not initially disclosed this information due to fears that he may be detained or deported.

The IAA did not consider Balan's new claims, as the decision-maker was not satisfied that there were exceptional circumstances to justify considering the new information.

In 2018, the IAA affirmed the Department's decision to refuse Balan's visa application.

* Names and other personal identifiers have been changed in case studies in order to protect confidentiality.

[13] The term Legacy Caseload refers to the approximately 30,000 people seeking asylum who arrived in Australia by boat from 13 August 2012 to 1 January 2014. The IAA was established by the *Migration and Migration and Maritime Powers Legislative Amendment (Resolving the Asylum Legacy Caseload) Act 2014* which received Royal Assent on 15 December 2014 and which commenced on 18 April 2015.
[14] Explanatory Memorandum, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth).
[15] *Migration Act 1958* (Cth) s 473A.
[16] *Administrative Appeals Tribunal Act 1975* (Cth) s 2A.
[17] Immigration Assessment Authority, 'The Review Process' (31 March 2023) accessible here: <https://www.iaa.gov.au/the-review-process/faqs/new-information>.

Case study: challenges faced by fast-track applicants

Hamza arrived in Australia by boat in 2013, fleeing persecution based on his religion. In 2016, the Minister 'lifted the bar' to allow Hamza to apply for a substantive visa. Hamza prepared his application with the help of a friend, but did not have an opportunity to receive legal advice. His application included a series of photographs as evidence of his activities with a religious organisation.

After undergoing an interview with the Department, Hamza was notified that his application had been refused. The statement of reasons accompanying the refusal notification explained that the decision-maker did not believe that Hamza in fact held his claimed role within the religious organisation. His application was referred to the IAA for review.

Due to his limited English language skills, Hamza was unable to fully understand the statement of reasons. When the decision was eventually explained to him by a lawyer, Hamza approached the religious organisation in his country of origin, whose leaders wrote a letter corroborating his stated role. Hamza planned to provide the original copy of the letter to the IAA.

However, the IAA — without having interviewed Hamza — affirmed the primary decision before he was able to submit the letter as evidence. Even if Hamza had submitted the letter in time, it is unclear whether it would have been considered due to restrictions on the IAA's ability to consider new information.

Hamza's visa application is now considered 'finally determined' and he has no further options to remain in Australia, despite his ongoing fear of persecution.

* Names and other personal identifiers have been changed in case studies in order to protect confidentiality.

Research conducted by the Kaldor Centre Data Lab confirms that any efficiency garnered by these measures at the IAA was reversed by the significant potential that decision-making was infected by judicial error:

> 'the very high rates at which cases are successful at judicial review in the Federal Courts has led to significant delays. From 2015 to 2023, 37% of judicial review applications relating to IAA decisions were successful, generally resulting in the cases being remitted back to the IAA for reconsideration. On average, the judicial review process takes more than 2-3 years. Any time saving generated by shortened procedures at the IAA stage is almost certainly more than negated by the delays caused by the high rates of judicial review of these cases. When the

system is considered holistically, the 'fast track' process has not led to any efficiency gains, but rather caused significant additional delays.' [18]

The explanatory memorandum to the Consequential and Transitional Bill acknowledges that the provisions abolishing the IAA 'promote the right to an effective remedy and a fair and public hearing'.[23] Item 36 of this Bill further provides for the transition of fast-track reviewable decisions that are unresolved in the discontinued IAA by the transition time to the ART. To ensure the right of this caseload to access an effective remedy and fair hearing, RACS recommends that the IAA cease processing its existing caseload so these matters may be heard in the ART.

RACS also urges the Australian government to address the situation of those fast-track applicants who received a final decision and were subject to the limited review of the IAA and consequently may be at a greater risk of refoulement.

Recommendation 8:

The IAA should cease processing its existing caseload so that fast-track applicants can access an effective remedy and a fair hearing at the ART.

Unfavourable inferences

Section 367A of the Consequential and Transitional Bill instructs that the ART is to draw an unfavourable inference as to the credibility of a claim or evidence that was not raised an applicant seeking review of a protection decision before the primary decision was made. An exception to this is where the ART is satisfied that the applicant has a reasonable explanation for why the claim or evidence was not presented before the primary decision. RACS has serious concerns for the significant and unjust hardship that this provision will cause for applicants seeking review of protection decisions.

This proposed section is 'intended to ensure that applicants raise all claims relevant to their visa application, and present all evidence, upfront, to ensure that the decision made by the Department of Home Affairs can be as efficient and effective as possible'. [19] This provision relies on a similarly flawed logic to that of the IAA, which presumes that applicants for protection are in a position to raise the full extent of their claims in the first instance. In our experience and the overwhelming experience of the applicants supported by RACS, this presumption is deeply distorted for several reasons including:

[18] Kaldor Centre Data Lab, Submission No 11 to Standing Committee on Social Policy and Legal Affairs, *Inquiry into Administrative Review Tribunal Bill 2023 (ART Bill) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (Consequential and Transitional Bill),* 25 January 2024, 5-6].
[19]Explanatory Memorandum (n 8) [621].

- The trauma typically experienced by people seeking asylum and the impact this has on their memory. It is well established that people seeking asylum globally experience multiple traumas before and during their arrival in the country where they are seeking protection.[20] Studies have revealed that trauma, particularly of the kind experienced by people seeking asylum, often leads to memory loss or gaps, loss of concentration, impairment in cognitive function and the deterioration of mental health.[21] For some people seeking asylum, the need to cope with past traumas may lead to avoidance, suppressing memories, or dissociation when prompted to recount their experience of these traumatic events.[22] This can explain why there may be a lack of detail, incoherence or gaps in an applicant's retelling of an event;
- Stigma and shame, which can inhibit the disclosure of sensitive information that may form the basis of a protection claim. Stigma attached to the experience of sexual or gender-based violence may leave persons seeking asylum afraid or unwilling to share their experience for fear of lack of trust in authorities, fear of rejection, fear of serious harm as a reprisal or concerns about the confidentiality of information shared. People seeking asylum because of their diverse sexual orientation, gender identity, gender expression or sex characteristics (**SOGIESC**) may have been raised in cultures where their SOGIESC is considered shameful or taboo. This could foster a hesitance to express their SOGIESC verbally or physically, and even limit how readily they identify themselves as being someone with diverse SOGIESC;
- The fact that applications are completed in English, which can act as a barrier for people seeking asylum who may not speak the language. Limited publicly funded interpreting and translation services also significantly undermine an applicant's ability to understand and articulate their claims for protection; and
- The limited availability of funded legal assistance to comprehensively explain what information should be included in a protection visa application and appropriate forms of supporting evidence.

The explanatory memorandum to the Consequential and Transitional Bill also points to efficiency as an objective underpinning s 367A. We refer to the submission of the Kaldor Centre Data Lab whose research emphasises that previous attempts to justify the distinctive treatment of applicants in the Migration and Refugee Division for the purpose of efficiency has only created inefficiencies and unjust outcomes.[23] With specific

[20] Sanjida Khan, Sara Kuhn and Shamsul Haque, 'A Systematic Review of Autobiographical Memory and Mental Health Research on Refugees and Asylum Seekers' (2021) 12(1) *Frontiers in Psychiatry* 1, 2.
[21] Ibid 5; Philippe Charlier et al, 'Memory Recall of Traumatic Events in Refugees' (2018) 392(1) *The Lancet* 2170; Altaf Saadi et al, 'Associations Between Memory Loss and Trauma in US Asylum Seekers: A Retrospective Review of Medico-legal Affidavits' (2021) 16(3) *PLoS ONE* 1, 5.
[22] United Nations High Commissioner for Refugees (UNHCR) and the European Refugee Fund of the European Commission (2013) *Beyond Proof: Credibility Assessment in EU Asylum Systems,* p. 65 < https://www.unhcr.org/sites/default/files/legacy-pdf/51a8a08a9.pdf>.
[23] Kaldor Centre Data Lab (n 18) p 7-12.

reference to successive pieces of legislation and other measures that have attempted to codify decision-making procedures for decisions made under the *Migration Act 1958* (Cth), the Kaldor Centre Data Lab found that:

> 'the increased codification of migration and refugee procedures has not increased efficiency or fairness, and accordingly it is unlikely to serve the new Tribunal's objectives. Instead, the failure to abolish the separate and rigid migration procedures, including stricter, shorter deadlines and the exclusion of common law natural justice, will perpetuate many of the issues the Migration and Refugee Division is currently facing. It means that many of the benefits of the new more flexible and adaptable procedures at the ART, and associated efficiency gains, will not apply to the Migration and Refugee Division, where they are most needed.'[24]

Tribunal Members already have the discretion to deal with delay in raising evidence or claims in their assessment of an applicant's credibility. It is unclear why there is a need to codify this direction and restrict merits review in such a significant manner, particularly when subsequent forms of judicial review would be limited to questions of legal error.

We are also concerned that the introduction of this section could exacerbate the existing divide between legally represented and unrepresented applicants. Data indicates that legally represented clients are more than five times more likely to success at the AAT than those who are unrepresented.[25] Proposed s 367A fails to proportionally balance the ART's objectives of resolving applications quickly with the need to ensure that decision-making is fair and just.

Recommendation 9:

RACS strongly urges that s 367A be removed from the Consequential and Transitional Bill.

Notification of information relied upon for decision

Subsection 359A(4)(d) removes the obligation for the ART to notify applicants of information that it intends to rely on to affirm the decision under review if that information is contained in the original decision. Currently, the Tribunal must notify applicants of any adverse information contained in the decision under review.

Applicants must be afforded an opportunity to respond to any adverse information the ART seeks to rely upon in affirming a decision under review. The ART may give different weight or importance to the information in a Departmental decision, and denying an applicant from addressing these concerns is inconsistent with the objective of the ART to provide

[24] Ibid, 12.
[25] Ibid, 13.

fair and just decision-making. RACS recommends that this section be removed from the Consequential and Transitional Bill.

Recommendation 10:

RACS recommends that s 359(4)(d) be removed from the Consequential and Transitional Bill.

Summary of Recommendations

Recommendation 1:

The deadline to apply for a review of a decision for applicants in detention should be a minimum of 14 days, with the ability to extend to 28 days per the provisions of the ART Bill.

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Recommendation 4:

Subclause 68(3) should be amended to require that the ART seek the consent of the applicant before appointing an interpreter.

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Where an interpreter was used at a hearing, the ART should communicate the outcome of the decision to the applicant in their chosen language. This could involve providing a translated letter of notification, or by contacting the client with an interpreter to advise of the outcome of their application.

Recommendation 6:

Paragraph 36(1)(f) of the ART Bill should be amended to maintain in-person hearings as a default position, with the option to make provisions for virtual participation where relevant and consented to by an applicant.

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Section 362A of the Consequential and Transitional Bill should be removed to maintain an applicant's entitlement to seek materials from the ART directly.

If this section is not removed, then the Department should offer a streamlined process within the existing FOI system for applicants to seek access to materials that have been provided to the ART.

Recommendation 8:

The IAA should cease processing its existing caseload so that fast-track applicants can access an effective remedy and a fair hearing at the ART.

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