



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

House of Representatives Standing Committee on
Social Policy and Legal Affairs

5 February 2024

Acknowledgements

We acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water, and community, and pay respect to Elders past and present.

We acknowledge the victim-survivors of domestic, family, and sexual violence who we work with and their voices and experiences which inform our advocacy for justice, equality, and safety for women.

About Women's Legal Services Australia

Women's Legal Services Australia (**WLSA**) is the national peak body for 13 specialist Women's Legal Services in each state and territory across Australia, including two First Nations Women's Legal Services. We provide a national voice for Women's Legal Services to influence policy and law reform, and advocate to increase access to gender-specialist, integrated legal services for women.

About Women's Legal Services

Women's Legal Services provide high quality free legal services for women, including legal advice and representation, support services and financial counselling, community legal education, training for professionals, and engage in advocacy for policy and law reform. Some Women's Legal Services have operated for more than 40 years.

WLSA members include:

- Women's Legal Service Victoria
- Women's Legal Service Tasmania
- Women's Legal Service NSW
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Queensland
- North Queensland Women's Legal Service
- First Nations Women's Legal Service Queensland
- Women's Legal Centre ACT
- Wirringa Baiya Aboriginal Women's Legal Centre NSW
- Top End Women's Legal Service
- Central Australian Women's Legal Service
- Katherine Women's Information and Legal Service

Contact us

For further information, please contact:

Lara Freidin
Executive Officer

Women's Legal Services Australia

lara@wlsa.org.au

Executive Summary

Women's Legal Services Australia (**WLSA**) welcomes the opportunity from the House of Representatives Standing Committee on Social Policy and Legal Affairs to provide a submission regarding the Administrative Review Tribunal Bill 2023 (**ART Bill**) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (**Consequential and Transitional Bill**).

The ART Bill represents a significant step towards improving the efficacy and fairness of administrative decision-making. By introducing an independent Tribunal tasked with reviewing government decisions, the ART Bill establishes a solid foundation for an independent, transparent, and accountable system. The ART Bill demonstrates the Federal Government's commitment to expeditious and efficient proceedings, aligning with the overarching objective of enhancing the quality of government decision-making.

While WLSA welcomes the ART Bill and Consequential and Transitional Bill and the Federal Government's commitment to advancing a more progressive administrative framework, there are a range of shortfalls which must be addressed. The ART Bill does not take a human-centred approach to the review of government decisions which has far-reaching implications and can have dangerous consequences, particularly for victim-survivors of domestic, family, and sexual violence, migrant women, as well as other vulnerable or marginalised people. There are also a range of changes that should be made to make the Tribunal more accessible and affordable, and likely to lead to better outcomes for people who are experiencing financial disadvantage or vulnerability.

WLSA makes recommendations to improve the Bills to ensure the Tribunal appropriately considers the experiences of women and children, particularly victim-survivors of domestic and family violence, to increase accessibility of review of government decisions, and to enhance the efficacy and fairness of administrative decision-making.

Recommendations

- The ART Bill should list general principles to guide the administrative review process, including human-centred approach; accessible and affordable; inclusive, diverse, and culturally safe; trauma-informed and family violence-informed; and informed by lived experience.
- The ART Bill should list examples to explain how provisions apply in the context of domestic and family violence where relevant.
- The administrative review process should be made more accessible by providing free legal assistance and non-legal support services to all people experiencing financial hardship and vulnerable applicants.
- There should be a full fee waiver for applications to the Tribunal in cases of domestic and family violence, or compassionate and compelling circumstances, and a lower fee for applicants facing financial hardship.
- The time limit for applications to the Tribunal should be at least 60 days to allow time for applicants to seek help, information and legal advice or representation, and there should be additional flexibility where there is compassionate and compelling circumstances, including domestic and family violence. The time limit for appeals should be at least 90 days.
- The ART Bill should explicitly clarify that "special circumstances" include where a person has been experiencing, or is at risk of, domestic or family violence.
- The application process should be flexible, accessible, affordable, simplified, and non-punitive.

- The Minister should be required to take into account the need for a diversity of backgrounds within the Council to ensure the Tribunal reflects the diversity of the Australian community.
- The performance standard and relevant processes should take a continuous improvement approach whereby members' performance is systematically reviewed on a regular and continuous basis.
- The Explanatory Memorandum for the ART Bill should list training on domestic and family violence as an example of training for Tribunal members.
- All documents relied on to make decisions should be made available to the applicant, and the Tribunal should not be able to compel the production of documents.
- The Tribunal should not have the power to dismiss an application without holding a hearing unless a positive decision can be made or in circumstances where an applicant is unable to participate in a hearing.

Objectives and principles

1. WLSA supports the current objectives of the ART Bill, however we also suggest including the following additional principles:
 - a) **Human-centred approach** – the administrative review process should centre the experiences of applicants. This is particularly important if legal assistance is not accessible or available for all applicants who are experiencing financial disadvantage or other vulnerabilities. A human-centred approach also means making non-legal supports available to applicants who have additional needs (like the court support model).
 - b) **Accessible and affordable** – the administrative review process should prioritise being accessible and affordable for applicants experiencing financial hardship. We support the 'general principle' that the Tribunal is to be accessible.
 - c) **Inclusive, diverse, and culturally safe** – the administrative review process should be gender and LGBTQIA+ inclusive, embrace cultural and linguistic diversity, and culturally safe and appropriate, including for Aboriginal and Torres Strait Islander people. We support the 'objective' that the Tribunal is responsive to the diverse needs of parties to proceedings.
 - d) **Trauma-informed and family violence-informed** – the administrative review process should be trauma-informed and family violence-informed, including through training and education for decision-makers, and legislated protections for victim-survivors of domestic and family violence to enhance accessibility, reduce costs, and protect review rights.
 - e) **Informed by lived experience** – the administrative review process should be informed by the lived experience of system users.

Recommendation 1

The ART Bill should list general principles to guide the administrative review process, including:

- Human-centred approach;
- Accessible and affordable;
- Inclusive, diverse, and culturally safe;
- Trauma-informed and family violence-informed; and
- Informed by lived experience.

Domestic and family violence

2. Although the Explanatory Memorandum for the ART Bill includes examples of how various provisions would apply in a family violence context, these examples are not included in the legislation. The ART Bill does not make any explicit references to 'family violence' or 'victim-survivors', and different interpretations of provisions can allow women and children to fall through the cracks, to be denied procedural fairness or exposed to unsafe situations.

Recommendation 2

The ART Bill should list examples to explain how provisions apply in the context of domestic and family violence where relevant.

Accessibility, affordability, and legal assistance

3. WLSA welcomes the accessibility considerations in the ART Bill which are designed to facilitate the application process and ensure effective participation in proceedings. The ART Bill provides a list of examples outlining specific areas where adjustments can be implemented to ensure accessibility. For instance, accommodations can extend to premises, facilities, and technology, with tailored adjustments to meet individuals needs, such as providing interpreter services during hearings. WLSA supports the commitment to establishing an inclusive Tribunal that caters to the diverse needs of the parties in the proceedings.
4. However, we do note the ART Bill does not explicitly contemplate the barriers to participation faced by single mothers who have small children, and limited or no supports, or ability to access childcare, during hearings. For example, this could be addressed by allowing for remote hearings.
5. Whilst the ART Bill should be commended for its approach to accessibility, the following must also be prioritised to ensure that hearings are accessible, informal, economical, proportionate, just, and quick:
 - a) **Provide different options** for attending hearings in person, via phone or online.
 - b) **Limit hearings** to matters in issue or dispute to make a positive finding.
 - c) **Provide free legal assistance and representation** for applicants – this is the best way to ensure an accessible, economical, just, and efficient process.
 - d) **Provide non-legal supports** for applicants – for example, access to interpreters, support workers, and financial assistance.
 - e) Give applicants **reasonable and consistent timeframes** for participation.
 - f) Provide **clear notification of decisions** and information about appeal rights – in writing and orally.

Legal and financial assistance

6. The provision for legal and financial assistance in the ART Bill is welcome. The ART Bill provides that legal or financial assistance can be authorised by the Attorney-General if it is deemed that refusing an individual's application would result in hardship and, under all the circumstances, it is reasonable to grant the application. This provision reduces barriers to access to justice.
7. WLSA strongly urges **free legal assistance for all applicants who are vulnerable or cannot afford legal representation**. We highlight the extreme vulnerabilities of most applicants and the multiple barriers they face in taking part in the review process. The new Tribunal must reduce the impact of barriers (such as communication, English proficiency, financial resources, caring responsibilities, cultural and religious expectations, mental health conditions, and disability) to enable applicants to fully participate in the process.

8. Within the physical location of the new Tribunal, WLSA recommends the availability of a **duty lawyer service or referral service and court support-type services**.

Non-legal supports for vulnerable applicants

9. To increase accessibility and protect the safety and interests of applicants who have experienced or are at risk of trauma or abuse, the new body should provide access to non-legal support services such as social workers to conduct **risk assessments, refer clients to supports and respond to applicants in crisis**. We know access to social workers and other supports is often vital to support people experiencing trauma or with other vulnerabilities to access and engage with justice processes.
10. Accessibility for vulnerable applicants would also be improved by providing services that address the complex and multifaceted needs of applicants. The Tribunal should ensure accessibility by being trauma-informed, culturally, and environmentally safe, communicate using clear and plain language, provide interpreters, and allow flexibility with multiple ways of providing information. These are critical features to enhance access to vulnerable applicants.
11. We also strongly encourage the use of special lists and provisions for vulnerable applicants.
12. Further, to be effective, the evidence required to establish special circumstances or vulnerability should be minimal to ensure the new Tribunal is responsive to applicant needs. We strongly recommend there should be no need obtain a report from a psychologist or doctor to establish vulnerability. For example, many women's legal service clients with migration matters do not have access to Medicare and this would place a significant burden on them and create a barrier to accessing these special processes.
13. It is our view that concerns about an applicant's capacity to participate in proceedings could be assessed at a case conference as well as at the start of a hearing, and appropriate referrals made to assess the applicant independently from the new Tribunal if there are any capacity concerns. A funding grant for the assessment will be required.

Recommendation 3

The administrative review process should be made more accessible by providing free legal assistance and non-legal support services to all people experiencing financial hardship and vulnerable applicants.

Application fee

14. The ART Bill stipulates that a fee may be payable in respect of an application to the Tribunal. Failure to pay the fee within the time prescribed by the rules may result in the application being dismissed. Whilst WLSA acknowledges the existing 50% fee reduction, this still poses a significant barrier for most victim-survivors. Women's legal services often see cases where victim-survivors have no financial independence due to the perpetrator's control and financial abuse. After separation, women often face significant financial hardship, including barriers to working while caring for young dependent children. To ensure the new Tribunal is accessible to all, WLSA recommends implementing a full fee waiver in cases of domestic and family violence, or compassionate and compelling circumstances. This measure would eliminate financial barriers for applicants and guarantee their right to appeal a government decision, irrespective of their circumstances.

15. Further, WLSA strongly recommends a different and lower fee structure for applicants facing financial hardship. The current reduced fee of \$1,687 in the Migration and Refugee Division is not reasonable or appropriate for applicants who are accepted as experiencing financial hardship. This fee is well out of reach for most of our clients at women's legal services and forces them to use family violence brokerage payments to cover these fees instead of basic necessities when fleeing family violence.

Recommendation 4

There should be a full fee waiver for applications to the Tribunal in cases of domestic and family violence, or compassionate and compelling circumstances, and a lower fee for applicants facing financial hardship.

Unreasonable time limits

16. The ART Bill stipulates strict time limits that do not accommodate the complexities arising from domestic and family violence. The ART Bill notes that an application to the Tribunal must be made within 28 days after the day the decision is made. WLSA contends that a time limit cannot be placed on the impacts of domestic and family violence. The 28-day timeframe is too narrow and overlooks the circumstances that may affect a victim-survivor's ability to meet the 28-day requirement. For example, many visa applicants experiencing family violence do not have access to their own visa documents as the visa process is controlled by the sponsor and are often unaware that a decision has been made by the Department of Home Affairs. If a woman's email account is being monitored by a person using violence or changed when fleeing violence for safety reasons, they may never receive the correspondence.
17. In the event an applicant misses the 28-day deadline, they lose their right to review. This is particularly devastating for individuals who are on a **bridging visa** who, upon failing to meet the deadline, lose their visa pathway and favourable visa conditions. Based on our experience with victim-survivors of family violence on temporary visas, WLSA strongly recommends the **timeframes are at least 60 days** to allow time for applicants to seek help, information and legal advice or representation. In this context, WLSA reiterates that the new Body should allow out of time applications and extensions where there are **compassionate and compelling circumstances including family violence**. In our view, the time limits should be consistent across all matters to avoid confusion in the migrant community and amongst professionals interacting with the system.
18. The Tribunal has authority to reinstate applications and extend application timelines, however these avenues are flawed as they don't give proper weight to domestic and family violence.
19. Further, the timeframe for lodging an appeal is 25 days after notification of decision with reasons. WLSA recommends this be extended to **90 days**.

Recommendation 5

The time limit for applications to the Tribunal should be at least 60 days to allow time for applicants to seek help, information and legal advice or representation, and there should be additional flexibility where there is compassionate and compelling circumstances, including domestic and family violence.

The time limit for appeals should be at least 90 days.

Extensions of time and reinstatement

20. The new Body may extend the application period beyond 28 days if it is "reasonable in all the circumstances" to do so. Additionally, the Bill permits the reinstatement of applications in "special circumstances". Disappointingly, the Bill's provisions pertaining to "reasonableness" and "special circumstances" lack explicit reference to domestic and family violence. These expressions, being overly broad, fail to offer guidance and direction to the Tribunal in assessing the impact of domestic and family violence.
21. WLSA recommends the inclusion of provisions in the Bill that would enable reinstatement and extension of time in circumstances where domestic and family violence is a factor in delay. It should be explicitly noted that domestic and family violence is a special circumstance for the purposes of reinstating an application and extending timeframes. This would ensure victim-survivors are able to participate in the review process without fear of slipping through the cracks.
22. Interestingly, the Bill's Explanatory Memorandum references family violence when discussing "special circumstances", noting that it could include examples of where a "person has been unable to make an earlier application because they are fleeing a family violence situation or have been in ill health for an extended period of time".¹ Whilst WLSA commends the Explanatory Memorandum's reference to family violence, WLSA strongly advocates for a corresponding inclusion within the legislation. This would guarantee a consistent application of provisions, alleviating any ambiguity in the interpretation of the legislation.

Recommendation 6

The ART Bill should explicitly clarify that "special circumstances" include where a person has been experiencing, or is at risk of, domestic or family violence.

Making an application

23. Drawing on the extensive experiences of women's legal services, we strongly recommend the new Tribunal is more accessible, reasonable, and responsive to create a fairer and more effective administrative review process.
24. We make the the following suggestions to improve the application process:
 - a) **Take a flexible and accessible approach to applications.** The new Tribunal's methods of lodgement should be as flexible as possible, and responsive to the needs of applicants – taking a human-centred and accessible approach. For example, all categories of applicants should be

able to lodge an application orally. The system should be underpinned by a principle of accessibility. In the experience of women's legal services, most people applying and affected by the decisions of the new Tribunal will have limited resources and understanding of the justice system and are likely to be facing multiple barriers which limit their ability to make applications online due to accessibility, literacy levels and other accessibility barriers.

- b) **Simplify the process** for lodging an appeal. For example, the current system prevents applications from being lodged online when they also include an application for reduced fees. The online system needs to be capable of accepting applications that include an application for reduced fees.
- c) **Provide more generous timelines** in recognition of the complexities involved in these matters and particularly in circumstances of domestic and family violence.
- d) **Applicants should not be required to provide a statement of reasons.** As the statement of reasons may waive the requirement to provide natural justice to applicants, the process should not ask applicants to provide this, rather the refusal decision only should be required.
- e) **All evidence should be considered.** The new Tribunal would be required to explore all evidence as it is a de novo review, including new evidence with the applicant (it should be inquisitorial and fact finding), including whether there have been any changes in circumstances, including interviewing applicants separately and screening if there are any previous or current domestic or family violence risks that have not been disclosed by the applicant.
- f) **The onus should not be on the applicant to raise their grounds.** If the process is applicant friendly and doesn't require legal representation, the onus should not be on the applicant to raise their grounds. WLSA considers it is unreasonable and unfair to expect that applicants understand the system and can advocate for themselves, particularly in circumstances where they do not speak English and have experienced trauma.
- g) **Remove upfront application fees** – costs should be awarded at the end if unsuccessful (consistent with protection visa approach), allowing applicants to apply and not lose standing.
- h) **Refund fees where the matter is remitted**, either at the initial stage or judicial review stage. Women's legal services have assisted in matters where the client did not have enough funds in her account at the time the payment was processed, and she lost her appeal rights because the payment could not be processed. Another client missed her notification because she was in refuge while fleeing family violence and was not given the opportunity to update her address within the 28-day timeframe.
- i) **Provide financial assistance for independent expert opinions.** If a decision requires an independent expert opinion to guide the decision-maker, the current onus falls on the applicant to obtain costly expert evidence or seek very limited pro bono assistance. Applicants who are unable to provide expert evidence to support their applications are at a significant disadvantage. Where there are barriers to engaging an expert, funding should be made available to applicants to assist the Tribunal in its decision-making and ensure a consistent and fair process.
- j) **Update the online guidelines on reduction of review application fees** (dated 2015). These need to be updated and simplified as they are currently confusing for applicants. They are also likely outdated and not consistent with current practices by registrars. In the experience of women's legal services and their clients, gathering evidence to support financial hardship applications can be time consuming and cause considerable stress because of the current short timeframes to apply to the AAT. The current application fees are also very high, particularly in cases where an application must be made to the AAT to be able to be considered for Ministerial Intervention in relation to visa decisions. We urge changes with establishment of the new Body.

- k) **The new system should not be punitive**, but rather incorporate more flexibility in its processes to promote compliance. For example, the new body should prioritise giving the applicant a verbal and written warning before deciding not to hear the application. In our experience, there are many reasons someone may not be able to comply with the application requirements, including that they cannot understand or read the information, or have limited understanding of the process and what they must do, particularly unrepresented applicants. It is particularly important that the new system does not take a punitive approach towards victim-survivors of family violence, and therefore members should use their powers to expedite applications where family violence is involved.

Recommendation 7

The application process should be flexible, accessible, affordable, simplified, and non-punitive.

Appointments and reappointments of Tribunal members

25. WLSA commends the ART Bill's robust criteria for appointing members. The requirement that general members must have a minimum of 5 years enrolment as a legal practitioner, and senior members requiring 7 years, reflects a commitment to experience and expertise. Further, the merit-based assessment process for appointment, as well as the requirement that a member will only be assigned to a jurisdictional area based on their subject-matter expertise, ensures members hold the requisite skills and competence.
26. WLSA emphasises the importance of appointment requirements that prioritise diversity in membership. This includes considerations related to gender, cultural background, faith, age, social class and disability. Currently, the ART Bill references "diversity" in the context of appointing members with a "diversity of skills, expertise, experience and knowledge". Nominations should be sought from the wider legal profession to represent the **cross section of society** and draw on the breadth of expertise in the legal sector. WLSA recommends the **membership of the new Tribunal reflects the diversity of the Australian community**.
27. Decisions of appointment and reappointment should be subjected to rigorous consultation processes to maintain integrity, independence, and diversity. The Minister should not be able to directly appoint or reappoint members without consultation. We note the regulations will provide for details of assessment processes, including consultation. Currently, the ART Bill provides that the Minister, before reappointment, must consider the President's advice on the individual's performance against the performance standard. WLSA strongly supports incorporating members' past performance to inform reappointment.
28. In addition, WLSA notes that in considering **members' past performance** when determining reappointment, the review should include measures such as quality decision-making and timeliness. For example, a women's legal service had a matter where the Administrative Appeals Tribunal (**AAT**) member took nearly 3 years to send a request for further information, despite having committed to sending the request on the day of the hearing. The applicant had severe mental health issues and no access to Medicare or Centrelink, so the community was left to support this family while waiting for the member to progress the matter.
29. In regard to sessional members, WLSA has concerns about having members available to hear matters on an ad hoc basis, including that it may be difficult for a sessional member to keep up to date with legislative and policy changes. WLSA suggests, as an alternative to addressing

high volume areas, there is a priority system and processes where positive findings can be made and remitted on the papers without a hearing.

Recommendation 8

The Minister should be required to take into account the need for a diversity of backgrounds within the Council to ensure the Tribunal reflects the diversity of the Australian community.

Performance of Tribunal members

30. The ART Bill provides that the Council must report annually in relation to its operations and some systemic issues related to the making of reviewable decisions. However, there are no provisions which provide for the annual performance appraisals of members. Whilst there is a performance standard and code of conduct, it appears as though the President may only investigate conduct upon a breach of a conduct/performance standard.
31. To support a transparent and merit-based appointment process, WLSA notes that it is critical that members are **held accountable for their decisions**. WLSA recommends that members undergo **annual performance appraisals** which evaluate the quality of decision-making and address issues identified.
32. In relation to the performance standard and improving decision-making, we recommend **embedding a continuous improvement cycle**, whereby performance appraisals of members include a review of primary decision-making and an identification of areas for improvement. This would ensure members are held accountable for consistently poor decisions. The Bill does not currently provide for systematic review of Tribunal members' performance.
33. WLSA considers that an additional role for the new Tribunal is also educating Departmental decision-makers on errors and systemic issues as part of a continuous improvement cycle.

Recommendation 9

The performance standard and relevant processes should take a continuous improvement approach whereby members' performance is systematically reviewed on a regular and continuous basis.

Training, education, and professional development

34. Unfortunately, the ART Bill makes no reference to human-centred training and education. Indeed, the only reference to training in the Bill relates to dispute resolution training and administrative decision-making. There is no reference to education being "continuous" and "ongoing" and there are no mechanisms which provide for how training is to be implemented and maintained – this function is at the discretion of the President.
35. The ART Bill's Explanatory Memorandum makes strong reference to training, education and professional development, noting that training and education could include trauma-informed practice, cultural competency units, and training on appropriate workplace behaviour (such as workplace bullying and harassment awareness training).² Whilst WLSA welcomes the

implementation of these holistic training measures, WLSA emphasises that **training should include domestic and family violence training**. It is disappointing to not see domestic and family violence listed as an example in the Explanatory Memorandum. It is vitally important Tribunal members are trained in being trauma-informed, safe, and recognising the complexities of domestic and family violence. WLSA advocates for the inclusion of human-centred education and training in legislation, particularly in relation to domestic and family violence. This not only contributes to ensuring provisions are applied consistently but would recognise the importance of Tribunal members having knowledge on this topic.

Recommendation 10

The Explanatory Memorandum for the ART Bill should list training on domestic and family violence as an example of training for Tribunal members.

Case management, directions, and conferencing

36. WLSA strongly supports the new Tribunal having powers to use **directions hearings, case conferencing and other case management** approaches, particularly where non-legal support services are also involved. In particular we support case conferencing being used to attempt to resolve migration matters early.
37. We note the benefits of directions hearings, case conferencing and other case management approaches are contingent on applicants having access to legal assistance and representation. For example, a duty-lawyer service should be available on premises at the new Tribunal to gather more information from the applicant prior to the directions hearing and gain a better understanding of the applicant's situation.
38. Registrars with appropriate training could run these case conferences and other case management approaches and hearings, as well as making lower-level decisions. For example, a Registrar could deal with cases of remittance on the papers which relate to the applicant, such as where there are compelling and compassionate reasons demonstrated, out of time applications, and procedural or administrative errors. This could **reduce the backlog** of matters in the new Tribunal.

Information provision and protection

39. WLSA recommends that any documents relied on to make the decision should be made available to the applicant including, for example, country information cited in the footnotes of protection visa decisions. We also consider that as little information as possible should be redacted when providing the documents to the applicant.
40. WLSA's view is that the new Tribunal should not be able to compel the production of documents. The scope of documents in issue should be raised at a case conference and documents subpoenaed if necessary. Further, anything the new Tribunal (or applicant) has concerns about sharing should go to a directions hearing or case conference for decision. Private hearings and non-disclosure or non-publication orders should be considered for sensitive matters such as where there are protection, family violence and safety concerns.

Recommendation 11

All documents relied on to make decisions should be made available to the applicant, and the new Tribunal should not be able to compel the production of documents.

Dismissing applications

41. WLSA is concerned the new Tribunal is empowered to label applications as frivolous or vexatious without holding a hearing. This may have unintended consequences for people who are not able to access legal assistance and have self-lodged, or for victim-survivors of domestic or family violence who are not aware of the contents of the application. Further, some applications may appear to be frivolous because there is no other option for the applicant given limitations in the design of the system, for example without an AAT appeal you could not apply for Ministerial intervention.
42. The new Tribunal should be required to consider whether there is any merit in an application by holding a hearing rather than dismissing an application. There should be exceptions to this, for example the Tribunal should be able to dispense with a hearing where a **positive decision can be made**, or in circumstances where applicants are unable to participate in a hearing because of barriers such as trauma, mental health conditions, or accessibility.

Recommendation 12

The Tribunal should not have the power to dismiss an application without holding a hearing unless a positive decision can be made or in circumstances where an applicant is unable to participate in a hearing.

Women on temporary visas experiencing violence

43. The National Plan to End Violence Against Women and Children 2022-3032 recognises the vulnerability of migrant women and children to family violence. We know 1 in 3 migrant and refugee women in Australia are experiencing family violence and rates are known to be even higher amongst women on temporary visas. Importantly the National Plan recognises migrant women face structural barriers other women do not, such as the impact ending a relationship has on their visa status and eligibility for social security. However, despite recognition of these issues in the National Plan, more work must be done to improve the migration system for women on temporary visas experiencing domestic, family, and sexual violence.
44. WLSA is encouraged by the Federal Government's commitment to improving the migration system and assisting women on temporary visas fleeing family, domestic and sexual violence. However, women continue to be exposed to unsafe situations and fall through the cracks of relevant support systems with devastating consequences for themselves and their children. The establishment of the new Tribunal provides a **unique opportunity** to ensure women experiencing violence can apply for review of decisions, and appeal review of decisions, in a trauma-informed and family-violence informed process that prioritises safety outcomes. This has the potential to lead to better outcomes for migrant women and children.