



Submission: Administrative Review Council Inquiry on Migration

27 January 2026

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. Sovereignty was never ceded.

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:

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

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Executive Summary

Around one in three migrant and refugee women in Australia have experienced family violence and rates are known to be even higher amongst women on temporary visas.¹ The Government's *National Plan to End Violence Against Women and Children 2022-33* recognises the vulnerability of migrant women and children to family violence. The Department of Home Affairs, Administrative Review Tribunal (ART) and broader justice system must be responsive to this context and become more inclusive and safer.

Women on temporary visas face unique structural barriers to safety, such as the threat of visa cancellation or deportation upon leaving a violent relationship or the loss of access to healthcare or income by becoming ineligible for social security and Medicare. These structural barriers, together with language and cultural differences and prolonged visa determination processes, create unique forms of insecurity and precariousness, and can prevent women from escaping violence.

Seven Women's Legal Services across Australia are responding to this need and provide specialist integrated assistance to women and non-binary people on temporary visas. This submission, prepared by Women's Legal Services Australia (WLSA), draws from the practice experience of those members.

WLSA welcomes the opportunity to provide a submission to the Administrative Review Council (Council) about the implementation of amendments to the *Migration Act 1958* (Cth) (**Migration Act**) made by the passing of the *Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Act 2024* (**ART (CTP 1) Act**). In this submission, WLSA interrogates the procedure enacted by the ART on migration and protection decisions.

When the ART (CTP 1) Act was introduced, WLSA noted that the Act provided a significant step towards improving the efficacy and fairness of administrative decision-making. However, while the legislation was a step towards a more progressive administrative framework, WLSA members and our clients are experiencing procedural injustices that must be addressed.

WLSA member experience indicates that the ART is not consistently implementing **trauma-informed and human-centred approaches** that accommodate clients and the situational vulnerabilities they are navigating, including communication and language barriers. As this submission demonstrates, when the ART is not human-centred or trauma-informed, the risk of harm and injustice for applicants escalates, particularly for women who are victim-survivors of domestic, family and sexual violence.

WLSA makes a range of recommendations throughout this submission that aim to help the ART to become ensure **more efficient, fair and compassionate** for the benefit of the women and non-binary people that our services work with. As our recommendations and case studies demonstrate, there is also a clear need for **free legal and non-legal support** to be available to all people experiencing financial disadvantage and vulnerability.

Key recommendations include:

- Ensure all applicants in situations of vulnerability or financial hardship can access free legal and non-legal support to assist them to navigate the ART.

¹ M Segrave et al, *Migrant and refugee women in Australia: the safety and security study* (2021, Monash University)

- Review of the current objectives and principles to ensure they support the ART to take a human-centred and trauma-informed approach to the review of government decisions.
- Processing at the primary stage should be human-centred and auto-generate letters should be reviewed for relevancy, accuracy and accessibility.
- A single delegate should be responsible for processing visa applications at the primary stage as far as possible, to ensure a human-centred, efficient and consistent approach
- There should be less reliance on written requests for further information at the primary stage. Applicants should be afforded a fair and accessible interview, supported by an interpreter where needed.
- There should be flexibility in the application of review time limits by the ART, for example, where applicants are victim-survivors of violence.
- Documents should be released as soon as possible after requested to enable hearings to proceed and avoid drawing out stressful processes for applicants.

Objectives and Principles

During the drafting process of the ART (CTP 1) Act, WLSA supported the objectives of the Act. WLSA also recommended,² and continues to recommend, the inclusion of the following additional principles:

- a) **Human-centred approach** – the Administrative Review process should centre the experiences of the individuals involved as applicants. This is particularly important if legal assistance is not accessible or available for applicants who are experiencing financial disadvantage or other vulnerabilities or complexities. A human-centred approach also requires the identification of non-legal needs and making non-legal supports available (like the court support model). By addressing non-legal needs, people are better able to engage in proceedings, which will improve the efficacy and fairness of ART decision-making.
- b) **Accessible and affordable** – the Administrative Review process must be truly accessible and affordable for people experiencing financial hardship. We support the general principle that the Tribunal is to be accessible. Current fee structures and discounts for hardship still present significant cost barriers. For WLSA clients subject to family violence, they are often relying on family violence brokerage and support payments to cover their application fees. These brokerage payments are not intended to cover legal costs – rather, they are crisis payments to support with housing and other essentials. Legal costs continue to be a significant barrier to fair administrative decision-making.
- c) **Inclusive, diverse, and culturally safe** – the Administrative Review process should be gender and LGBTQIA+ inclusive, embrace cultural and linguistic diversity, and be 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 all 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. Family violence can significantly impact an applicant's ability to engage in a hearing, provide evidence and access the ART – particularly if they are still in a relationship with a person using violence. A family violence lens should be applied to all applications and where risk factors are identified, referrals and appropriate supports should be offered, including a suspension to a hearing if needed to enable all applicants to engage in the process safely.
- e) **Informed by lived experience** – the Administrative Review process should be informed by the lived experience of people using the system. The ART can only be truly human-centred and fair if it is informed by the experiences of those engaging with ART.

The absence of these principles can be seen through the negative experiences that our members and clients have had with the ART since its establishment. These are further detailed in responses to questions below.

² See Women's Legal Services Australia, Submission to the Inquiry into the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023) (2 February 2024).

Responses to Issues Paper questions

Aspects of the primary decision-making process

1. **What is your experience with the primary decision-making process relating to visas in the Department of Home Affairs ('Department'), including but not limited to:**
 - a. **Submitting a complete application:**

WLSA members report that their clients frequently struggle to submit complete visa applications at the primary stage without legal assistance. This is often due to language barriers, lack of understanding of the legal process, the Department's requirements or reliance on another person (applicant or representative) to complete the documents.

Even where our clients receive legal assistance and representation to lodge complete applications, we still regularly receive complex section 56 requests for further information. These requests often either ask for information that has already been provided in the application, or include generic questions that do not apply to the circumstances of the client.

Commonly, section 56 requests from the Department ask for details that are already explained in an attached statement or would be explored in an interview with a case officer. For example, a Department delegate requested evidence of family violence when the application had included a final intervention order from an Australian court, screenshots of abusive text messages, and a detailed Statutory Declaration outlining severe physical family violence.

It appears to WLSA that some section 56 requests are being imposed as additional documentation requests on clients instead of interviewing them. This is a significant concern because it negatively impacts on a person's right to a fair and accessible primary application process. For example, for applicants who are not represented and may not understand a section 56 request and its significance and may therefore fail to respond or provide relevant information.

Further, WLSA notes that the tone and wording of section 56 requests can be intimidating and may give clients the impression they are not believed, regardless of what is included in the initial application.

WLSA recommends that processing at the primary stage is human-centred and that auto-generate letters are reviewed for relevancy, accuracy and accessibility.

- b. **The number of departmental officers handling a visa application**

Due to the depersonalised nature of correspondence from the Department, it is difficult to differentiate between different officers who handle a decision prior to an interview. Correspondence often only includes a first name and position ID and is sent from a general email inbox or processing section.

During interviews, delegates advise clients they may not be the one to make the final decision. However, in practice WLSA practitioners generally receive a decision from the same delegate.

WLSA recommends that a single delegate be responsible for processing the visa application as far as possible, to ensure a human-centred, fair, efficient and consistent approach.

- c. **Timeliness of decisions**

The delay in the processing of visa applications is a significant barrier and source of distress for clients experiencing hardship, particularly in the protection visa stream. WLSA member clients are often navigating multiple forms of oppression and marginalisation, including family and sexual violence and financial hardship. The visa process, especially where protracted, exacerbates these complexities.

There is no mechanism to predict the time an application takes to be processed. There is no formal criteria or avenue to request decisions be prioritised. Updates on the status of an application are often vague, inconclusive and unhelpful.

For example, where applicants are remitted by the ART, with a direction that they meet the protection criteria, they still wait months for a visa grant. In most of cases, applicants are only waiting for health and character checks to be processed. In one case, the ART fast-tracked and heard the clients matter due the client's vulnerability. However, it still took almost 12 months for the visa grant to come through after it was remitted to the Department.

The delay in finalising a visa significantly impacts on the ability for victim-survivors to move forward in their lives, recover and rebuild. Often, they are unable to work or access services critical to their recovery including housing, healthcare, education or reuniting with family.

2. What do you expect of the primary decision-making process?

WLSA expects primary decision makers to:

- Consider all evidence attached to an application before sending a request for further information to an applicant.
- Consider the wording and accessibility of all correspondence including section 56 requests, particularly when they are sent to vulnerable clients or where significant disclosures of violence and trauma have been made.
- Receive training in family and sexual violence and understand the difference between gender and sexuality, use the correct terminology when corresponding with gender diverse applicants and put relevant questions to applicants when seeking further information.
- Follow Department policies, procedures and processing guidelines.
- Write and explain their decisions in full and not rely on template decisions.
- Acknowledge and treat sensitively the personal disclosures that people make to the Department.
- Consider each application individually on its merits, according to relevant and up-to-date country information.
- Treat each applicant as an individual and seek to understand the complexity of each person's situation by approaching their application with curiosity.
- Identify clients who are vulnerable, struggling or at risk and help them access appropriate supports to engage in their immigration process.
- Work collaboratively with applicant representatives to resolve applications as efficiently as possible.

3. Are there any changes to primary decision-making that you consider could improve the process?

WLSA continues to raise the need for training for all Department staff, particularly the ability for all staff to identify and respond to family violence and gender-based harm and to respond appropriately.

We also continue to have concerns with the reliance on, and approach to, written correspondence to applicants who have disclosed family violence, sexual violence or have gender-based protection claims.

Written requests severely disadvantage anyone who is not represented, lacks proficiency in English, or is unable to access their emails readily. Where applicants are victim-survivors of family violence, written correspondence between the applicant and Department can also present a significant safety risk.

WLSA recommends that there be less reliance on written requests for further information and that applicants be afforded a fair and accessible interview, supported by an interpreter where needed.

Tribunal Review

4. What is your experience in relation to time limits applying for review of migration or protection decisions in the ART?

WLSA emphasises that the lack of flexibility of migration deadlines continue to present significant justice barriers to clients trying to have a primary decision reviewed.

WLSA members have seen unrepresented clients who have missed time limits because of:

- missing an email notification that their visa has been refused because the email went to a different email address or the application was lodged on their behalf by someone else (or another applicant is the primary applicant);
- their contact information changing and not knowing to update it with the Department;
- family violence and threats made by their partner about seeking legal help or fear of doing so;
- being hospitalised for extended periods and not being able to access a computer or phone to lodge an appeal;
- not having the English required to understand the notification that their visa has been refused;
- a lack of access to a computer, or even a mobile phone, and being unable to appeal without legal assistance; and
- being unable to afford the fees associated with appeals (especially partner visa refusals), where even the reduced fee is a significant barrier.

We note that other legal jurisdictions have significant flexibility to protect legal standing and appeal rights and that the ART should align its approach.

WLSA recommends further flexibility in the application of review time limits, especially where applicants are victim-survivors of family and sexual violence.

5. What is your experience with the provisions governing when adverse information must be disclosed to an applicant?

In the experience of WLSA members, most Members will communicate concerns clearly during a hearing and will provide clarification when asked. Their concerns can then be addressed orally during the hearing, or in writing within seven days.

WLSA is supportive of an approach where Tribunal Members work collaboratively with applicants and their representative to resolve issues in an application efficiently and effectively.

6. What is your experience with requesting the Department to provide access to documents it has given to the ART for the purpose of the review?

In the experience of WLSA members, this process is slower than the previous AAT FOI process, however, a great deal faster than the normal Department FOI process.

Where requests have been made to urgently access documents due to an upcoming hearing, documents have generally been released with priority and they have been received within a few days. However, WLSA members have also experienced instances where Tribunal hearings have been rescheduled where there has been any delay in the release of documents.

WLSA recommends that documents be released when requested as soon as possible to enable hearings to proceed and avoid drawing out processes for applicants.

7. What are your views as to the fairness of the process in the ART's review of migration and protection decisions?

The ART is generally fair and reasonable, particularly in comparison to decision making at the primary stage. WLSA has seen significant improvement from the previous AAT, particularly with the introduction of Directions Hearings to set up matters efficiently and define the scope of the issues in dispute.

8. What is your experience in relation to:

a. Raising new claims to the review by the ART;

The ART has generally been understanding when claims have been raised at a later date, particularly given the wait-time for matters to be heard at the ART.

In general, the ART is much more flexible, understanding and accommodating of clients that raise new claims, when compared with the Department (which often makes unfavourable credibility findings from any delay in lodging a protection application or raising claims). We note that this is particularly important where claims raised late relate to family or sexual violence or gender-based harm. We note the sensitivity of these matters and how difficult making disclosures can be. Understanding is crucial with respect to such disclosures.

It is worth noting the wait-time for a protection application to be heard at the ART is, anecdotally, around five years. WLSA has observed that ART Members are understanding of the changes that can occur in applicant's personal life and country of origin in this time.

ART Members are also understanding that an applicant may not be able to clearly express their claims until they have legal representation, which often does not occur until they reach the ART stage. For example, in an application, a request was made to provide submissions under section 367A for an applicant who had raised claims relating to childhood sexual assault. Although the submissions under section 367A inferred an adverse credibility finding, the Member still made a positive finding on other grounds.

b. Receiving notification of decisions;

There can be long waiting periods of several weeks to several months to receive decisions from the ART. This stress this causes clients is then further exacerbated by processing delays at the Department in situations where the matter is remitted. This can make an application process extremely protracted for applicants and compound safety and hardship risks.

WLSA encourages efficient decision making, especially for people in vulnerable situations.

9. Do the current procedures for review of migration and protection reviewable decisions promote the ART's objectives under the ART act? What changes could be made to improve implementation of the objective?

We acknowledge that the ART will make positive decisions on the papers and without a hearing where they are able to and prioritise some matters for urgent hearing where clients are in vulnerable situations. However, the objective of the ART to resolve applications in a timely manner is being undermined by long wait times for hearings, the application of strict timeframes to apply for review and cost barriers.

WLSA's recommendations throughout this submission will help promote the ART's objectives and would also improve decision making at a primary stage and avoid the need for appeal.

10. Are there any changes that could be made to the current procedures for migration and protection decision-making in the ART to improve the process or outcomes for individuals?

There has been a noticeable improvement in the procedures and decision-making in the ART since its inception. The requirement for General Members to have a background in law or specialised experience has significantly improved accessibility and engagement with the ART for applicants and representatives. Due to the complex nature of the *Migration Act*, WLSA welcomes the appointment of more Members with migration expertise.

However, current procedures continue to impose barriers and safety risks for applicants. Strict appeal deadlines, cost barriers and lack of funding for legal assistance significantly impact the ability of applicants to engage with the ART.

Further the ART's practice of not guaranteeing that correspondence will be kept confidential in joint matters, unless there is a family violence order or confidentiality order in place (rule 2.8) continues to put victim-survivors of family violence at significant risk of harm. We provide below an example of a client who was directly impacted by the system's failure to protect their safety:

Case study

A WLSA member received referral from another firm, who'd been conflicted out of assisting a family unit at the ART for a protection visa matter. The primary applicant was being subjected to family violence perpetrated by the dependent applicants. The primary applicant was referred to the WLSA member and the dependent applicants were referred to another CLC. The WLSA member put in an MR5 for the primary applicant. In subsequent correspondence, the WLSA member requested that the family's matter be heard and decided separately.

The WLSA member explicitly stated that they only represented the primary applicant and that they had never represented the dependent applicants. The Tribunal responded stating that she needed to provide a MR5 and MR6 for the dependent applicants. The WLSA member called the Tribunal and explained she had never represented the dependent applicants.

Correspondence was received the following day, addressed directly to the primary applicant, copying the WLSA member, requesting that she arrange for their father to sign the new MR5 and MR6 form. The Tribunal stated that until they received the MR5 and MR6, they would continue to send all correspondence relating to the dependent applicants to the WLSA member.

The WLSA member advised the Tribunal that she did not have instructions to receive this correspondence and that due to professional ethical obligations she could not receive it and asked the Tribunal not to send such correspondence. The WLSA member provided contact information for the dependent applicant and their representative.

The Tribunal then called the dependent applicants directly while the primary applicant was at home. The Tribunal stated 'did you know your daughter separated your application?'. This caused the family violence from the dependent applicants to escalate significantly and primary applicant experienced suicidal ideation as a result.

In this case, the lack of clear family violence guidelines was a significant issue. The ART practice direction states that they cannot guarantee that correspondence will be kept confidential in joint matters, unless there is a family violence order or confidentiality order in place (rule 2.8).

For jurisdictional reasons, a family violence order could not be pursued. Therefore, the WLSA member did not believe it was safe to inform the Tribunal of family violence in case this information was shared with the dependent applicants. However, in attempting to protect our client's safety, it ultimately placed her at higher risk of harm when the Tribunal contacted the dependent applicants directly, without informing the primary applicant of their intention to do so, so she could make safety plans.

The above case study demonstrates a need for the ART to review its approach to identifying and responding to family violence and ensure that it is operating in a trauma-informed and family-violence informed way, consistent with the principle recommended on page 6 of this submission.

Access to the Guidance and Appeals Panel (GAP)

11. How effectively do the current procedures support consistency in ART decision-making?

There continues to be a degree of inconsistency in the decision-making of certain Members. However, we acknowledge that a decision would come down to the Member's assessment of an applicant's case and credibility.

Other special procedural provisions

12. What is your experience with any of the Special Procedural Provisions ('SPPs') applying in the ART? This includes the operation of sections 357A and 359A, and other sections listed in paragraph 1.4 (Scope). Have you found that the SPPs enable matters to be resolved in a timely and effective manner?

To enable the effective resolution of issues in dispute, minimise trauma for applicants and prevent protracted processing times, WLSA recommends that concerns are raised prior to the deadline for pre-hearing submissions to ensure that the submissions were targeted to the specific area of issue.

However, we understand that issues may arise in a hearing that need to be resolved. Where concerns are not raised until a hearing, WLSA appreciates a reasonable time for response after the hearing.

13. Have you experienced any changes to how migration and protection matters are being carried out in the ART, compared with the former AAT? If so, what are these changes?

WLSA has observed that Members appointed to the ART with migration expertise have a nuanced understanding of the *Migration Act* and generally, strive to be more trauma-informed in their practice and conducting of hearings.

However, there are improvements to be made. For example, hearing invitations do not include which Member has been allocated to a hearing and there remains a lack of willingness to accommodate requests to reallocate hearings to another Member, especially when the request is due to an applicant's experiences of family violence and/or gender-based harm. There is also an unwillingness to reschedule hearings if an applicant's representative is unavailable.

WLSA members have faced a lot of difficulty when attempting to contact the ART regarding hearing dates, including a lack of understanding and empathy, disregarding trauma-informed practices and failing to centre the applicant's wellbeing. The case study below provides an example of the need for greater flexibility to prevent applicant's from having to self-represent.

Case study

A WLSA member was in correspondence with the ART via email attempting to a reschedule a hearing.

The WLSA member received an invitation for hearing without a time and requested that the hearing occur at 2:30pm to accommodate a prior hearing. In her response she provided multiple documents to show that the client had experienced family violence and was in a vulnerable situation. The ART responded that they would be unable to accommodate her request as they wanted to keep the hearing during business hours.

The WLSA member provided further information for the ART to reconsider its decision. The ART set the date with less than 8 weeks notice which meant that there was no opportunity for her to provide the ART with the required 8 weeks notice to seek to postpone the hearing.

The WLSA member notified the ART of her availability within 24 hours of receiving the hearing notice. As the only migration lawyer with the WLSA member, the matter cannot be reallocated. The consequence of the ART not agreeing to reschedule is that the client will be unrepresented during the hearing.

14. What aspects of the SPP arrangements for statutory hearing procedures are working well?

The process of document release works reasonably well.

15. Are there any changes that could be made to the SPPs to improve or better support the timely and effective resolution of matters in the migration and protection jurisdictional areas?

It is important to ensure applicants have the opportunity for their matters to be heard and properly considered. The most significant barriers continue to be the strict time frames to lodge appeals, costs of appeals and access to legal representation.