

Refugee Legal:

Submission to the statutory review of the Administrative Appeals Tribunal in accordance with section 4 of the Tribunals Amalgamation Act 2015.

Introduction – Refugee Legal

1. Refugee Legal (formerly the Refugee and Immigration Legal Centre) is a specialist community legal centre providing free legal assistance to asylum-seekers and disadvantaged migrants in Australia.¹ Since its inception over 30 years ago, Refugee Legal and its predecessors have assisted many thousands of asylum seekers and migrants in the community and in detention.
2. Refugee Legal specialises in all aspects of refugee and immigration law, policy and practice. We also play an active role in professional training, community education and policy development. We are a longstanding member of the Administrative Appeals Tribunal (Migration and Refugee Division) Community Liaison Consultation Group, the peak Department of Home Affairs-NGO Dialogue and the Department's Protection Processes Reference Group. Refugee Legal has substantial casework experience and is a regular contributor to the public policy discourse on refugee and general migration matters.
3. A significant proportion of client assistance Refugee Legal provides is in relation to merits review processes undertaken by the Administrative Appeals Tribunal (**AAT**), including in the Migration and Refugee Division (**AAT-MRD**) and General Division (**AAT-GD**).
4. We welcome the opportunity to make a submission to the statutory review of the Administrative Appeals Tribunal in accordance with section 4 of the *Tribunals Amalgamation Act 2015* (**the Review**). The focus of our submissions and recommendations reflect our experience and expertise as briefly outlined above.

Outline of submissions

5. We note the Review's terms of reference as follows:
 - A. Whether the objectives of the *Tribunals Amalgamation Act 2015* (**TA Act**) have been achieved;
 - B. The extent to which the Tribunal operates as a truly amalgamated body, and whether any existing levels of separation are necessary and appropriate;
 - C. Whether the Tribunal is meeting the statutory objectives contained in section 2A of the *Administrative Appeals Tribunal Act 1975* (**AAT Act**);
 - D. The degree to which legislation, processes, grounds, scope, and levels of review in, and from, the Tribunal promote timely and final resolution of matters;
 - E. Whether the Tribunal's operations and efficiency can be improved through further legislative amendments or through non-legislative changes; and
 - F. Whether the arrangements for funding the operations of the Tribunal are appropriate, including ensuring consistent funding models across divisions.

¹ Refugee Legal (Refugee and Immigration Legal Centre) is the amalgam of the Victorian office of the Refugee Advice and Casework Service (RACS) and the Victorian Immigration Advice and Rights Centre (VIARC) which merged on 1 July 1998. Refugee Legal brings with it the combined experience of both organisations. RACS was established in 1988 and VIARC commenced operations in 1989.

6. We submit as follows in relation to each of the above. We have provided a number of case studies to illustrate these submissions and note that in each instance the stated facts have been depersonalised and altered to preserve confidentiality.

A. Whether the objectives of the TA Act have been achieved

7. We note that the primary objectives of the TA Act, as stated in the explanatory memoranda to the amending bill² and the relevant second reading speeches³ can be broadly summarised as follows:
 - (i) To amalgamate key Commonwealth merits review tribunals—the AAT, the Migration Review Tribunal-Refugee Review Tribunal (**MRT-RRT**), and the Social Security Appeals Tribunal (**SSAT**).
 - (ii) To simplify the Commonwealth merits review system by providing a single point of contact for review applicants that in turn will assist to streamline and simplify the Commonwealth merits review system and improve access to justice by fostering greater awareness of the Tribunal’s function.
 - (iii) To harmonise and simplify procedures applicable to merits review where appropriate, but also provide for flexibility in rules and diversity in approaches across the amalgamated Tribunal’s varied jurisdictions.
 - (iv) To amend the statutory objective of the AAT in s 2A of the AAT Act to include, in addition to its existing mandate to “pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick”, to further require the Tribunal to pursue the objective of providing a mechanism of review that:
 - a. is accessible; and
 - b. is proportionate to the importance and complexity of the matter; and
 - c. promotes public trust and confidence in the decision making of the Tribunal.
 - (v) To establish a sound institutional framework for the amalgamated Tribunal, which would preserve its independence and the expertise of its members.
 - (vi) To generate savings through the adoption of consolidated financial, human resources, information technology and governance arrangements by the amalgamated Tribunal.
8. It is our submission that the TA Act has been largely successful in meeting (i) to (iii) above. This has generally been our observation and experience when representing clients in the AAT-MRD and AAT-GD.
9. In relation to (iv), although the TA Act was successful in amending the AAT Act’s statutory mandate as per above, we submit that in our experience, the AAT-MRD and AAT-GD have largely failed to meet a number of these specified objectives, both in relation to individual reviews and for the jurisdictions more generally. We discuss this further below.
10. In relation to (v), we respectfully contend that the TA Act was not been successful in meeting this objective, including due to the failure to implement an open transparent merit-based system for appointment of members. We discuss this further below.
11. We are not in a position to comment on (vi).

² Revised Explanatory Memorandum to the Tribunals Amalgamation Bill 2014 at [13]-[19]; and Explanatory Memorandum to the Tribunals Amalgamation Bill 2015 at [13]-[19].

³ Including: Tribunals Amalgamation Bill 2015, Second Reading Speech, House of Representatives, 13 May 2015, Keenan, Michael, MP(Stirling—Minister for Justice).

B. The extent to which the Tribunal operates as a truly amalgamated body, and whether any existing levels of separation are necessary and appropriate.

12. It is our experience as legal representatives for clients appearing before different divisions of the AAT that, other than shared accommodation and website, it cannot be said that the AAT is a truly amalgamated body. However, subject to the below, it is also our view that the existing levels of separation are, in most respects, necessary to accommodate for the differing and highly complex procedural frameworks of these divisions.
13. The AAT-MRD and AAT-GD divisions have very different and highly complex review application requirements to initially engage the Tribunal's jurisdiction. It is our submission that these incompatible review application requirements currently prevent any true common single contact point for review applicants at first instance. In many respects these complexities are entirely unnecessary and serve no apparent policy or practical purpose. It is our submission that legislative reform is required to simplify and better align the requirements for review applicants to engage each of the AAT's divisions' jurisdictions. We discuss this issue further below.

C. Whether the Tribunal is meeting the statutory objectives contained in section 2A of the Administrative Appeals Tribunal Act 1975

14. Prior to the amendment made by the TA Act, s 2A provided that the AAT's statutory objective was limited to:

[...] providing a mechanism of review that is fair, just, economical, informal and quick.

15. Section 2A of the AAT Act, as amended by the TA Act, relevantly provides:

In carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that:

- (a) is accessible; and*
- (b) is fair, just, economical, informal and quick; and*
- (c) is proportionate to the importance and complexity of the matter; and*
- (d) promotes public trust and confidence in the decision-making of the Tribunal.*

16. The Revised Explanatory Memorandum to the relevant amending Bill states that the policy intent of broadening the AAT's statutory mandate in this manner was follows:

*The addition of these objectives reflects the diversity of the amalgamated Tribunal's jurisdiction, which would range from simple to highly complex matters, and **reiterates the importance of the Tribunal continuing to be, and to be seen to be, an independent forum for review of the merits of Government decisions.** [emphasis added]*

17. We also note that the Review's terms of reference state that particular regard is to be given to:

- *the objective to promote public trust and confidence in the decision-making of the Tribunal, including:*
 - *the extent to which decisions of the Tribunal meet community expectations; and*
 - *the effectiveness of the interaction and application of legislation, Practice Directions, Ministerial Directions, guides, guidelines and policies of the Tribunal;*

18. In relation to the AAT's statutory objectives in s 2A, we submit that the AAT-MRD and AAT-GD has largely failed to both pursue and achieve these objectives both in substance and in practice regarding those issues detailed below. We contend that these issues

currently prohibit the Tribunal from being capable of consistently complying with these statutory objectives.

Review application fees

19. For many decisions reviewable by the Tribunal, in order to lodge a valid application for review the legislation requires an application fee to be paid. The legislation further provides that for some selected reviews no fee is payable⁴, for others there is a reduced concessional fee payable.⁵ Case law states that where a prescribed fee is payable and the fee is not paid in full the application for review is invalid and the Tribunal has no jurisdiction to review the decision.⁶ It is our experience that the application fee is a significant barrier to accessing review for many vulnerable people, particularly those without representation, those held in immigration detention or correctional facilities and those suffering financial hardship.
20. Currently, the prescribed fee for an application for review by the AAT-GD under s 500 of the *Migration Act 1958 (Migration Act)* is \$920 but this is reduced to \$100 in circumstances including (but not limited to) if:
 - They hold a Commonwealth concession card;
 - They are an inmate of a prison or is otherwise lawfully detained in a public institution;
 - They are a child under the age of 18 years; and
 - The payment of an amount would cause, or has caused, financial hardship to the applicant.
21. Currently, the prescribed fee for applications for review by the AAT-MRD under Part 5 of the Migration Act (general migration reviews) is \$1,764 but this is reduced by half to \$882 if the payment of the full fee has caused, or is likely to cause, severe financial hardship to the review applicant. The only exception to this is for applications for review of decisions to refuse or cancel a bridging visa where the person is in immigration detention as a consequence of that decision, where there is no application fee.
22. Critically, other than the one exception outlined above, neither the AAT-MRD nor the AAT-GD provide for circumstances in which no review application fee is payable (such as where a fee exemption may be available). In our longstanding experience this can lead to vulnerable would-be applicants being denied access to merits review. In the migration and refugee administrative decision context the consequences of being precluded access to merits review of a primary decision can often be grave and permanent. These consequences may include:
 - Where the person has been found to be owed protection in Australia but has had a visa cancelled or refused:
 - indefinite detention in a locked immigration detention facility without any prospect of release; or
 - forced return to the country in relation to which they have been found by the Australian government to be at a real risk of serious human rights abuses; and/or
 - Immigration detention followed by forced relocation to another country; and/or

⁴ For example: r 22, *Administrative Appeals Tribunal Regulation 2015*.

⁵ For example: r 21, *Administrative Appeals Tribunal Regulation 2015*; and r 4.13, *Migration Regulations 1994*.

⁶ In the AAT-MRD context see: *Akpata v Minister for Immigration, Multicultural and Indigenous Affairs* [2004] FCA 913; *Taylor & Ors v Minister for Immigration, Multicultural and Indigenous Affairs* [2005] FMCA 281; *Hamad v Minister for Immigration, Multicultural and Indigenous Affairs* [2006] FMCA 1510; and *Zhang v Minister for Immigration and Citizenship* (2007) 210 FLR 268.

- Permanent separation from immediate family, including Australian citizen children and/or spouses; and/or
- A permanent bar on returning to Australia.

23. It is our longstanding experience that immigration detainees are prohibited as a matter of government policy from accessing financial assets or other means of payment while in detention. Similar issues affect those held in correctional facilities, including youth justice facilities. For this reason, these people are entirely reliant on support people in the community willing to pay the fee for them, in order to be able to make a valid application for review to the AAT. Where they are unable to find someone in the community to pay the fee for them they are precluded access to merits review. This situation is often compounded by the short and non-extendable deadlines for applying to the AAT for merits review.

24. In recent months Refugee Legal has also identified an increase in the number of minors seeking our assistance for AAT immigration-related merits review processes. It is our experience that these clients are generally at heightened risk of encountering this barrier to access to merits review. The following illustration is a compelling case in point.

Case Study 1

*Richard is a 16 year old New Zealand citizen who moved to Australia with his mother a few months after he was born when his mother was escaping an abusive relationship with his father. Recently, Richard was convicted of a number of drug-related offences and sentenced to a period of detention in a youth justice centre. Shortly after, a delegate of the Minister for Immigration and Border Protection cancelled his visa under s 116(1)(e) of the Migration Act on the basis that he might be a risk to the safety or good order of the Australian community. The Department of Home Affairs (**the Department**) sent the notification letter to the youth justice centre by facsimile but there was a delay of 4 days before Richard's youth justice caseworker provided him with the documents. The following day Richard contacts a community legal centre for legal advice and is told he must lodge his application for merits review with the AAT-MRD within 7 working days of the fax being sent to the youth justice centre and pay the Tribunal \$1,764 before that date, or \$882 and lodge a fee reduction request.*

Richard's mother is unemployed and lives in public housing. She does not have any savings and is unable to help Richard pay the application fee. They try contacting family members and their local church but are unable to obtain \$882 prior to the 7 day period expiring. They are advised by the Tribunal that it is unable to provide further time, irrespective of how compelling the circumstances might be.

Richard is now liable to removal to New Zealand immediately upon his youth justice sentence expiring. This is despite him having no family in that country. Richard is also told that he will be barred from ever returning to Australia due to the manner in which his visa was cancelled.

25. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible" and "fair".

Recommendation 1

The AAT adopt a uniform fee exemption across all divisions for all applicants who are: detained in a public institution; or aged under 18 years of age.

Prescribed time periods to apply for review

26. Currently, s 29(7) of the AAT Act provides the Tribunal with a discretion to extend the time for making an application for review if it is satisfied that it is reasonable in all the

circumstances to do so. This discretion does not apply to all reviews by the AAT and does not include reviews by the AAT-MRD or the AAT-GD under s 500 of the Migration Act.

27. The AAT-MRD, and the AAT-GD in relation to reviews under s 500 of the Migration Act, both require applicants to lodge review applications within a fixed non-extendable time-period in order to engage the Tribunal's jurisdiction. These time periods prescribed in legislation can be as little as 2 working days after he or she is deemed (which differs from actual notification) to be notified of the primary decision.⁷ Critically, unlike for other reviewable decisions by the Tribunal, in these matters the Tribunal does not have a discretionary power to extend the time period or otherwise accept an application made out of time.
28. The grave implications of a barrier to merits review has already been detailed above in relation to the application fee. Furthermore, for protection visa-related reviews, there can be no policy justification for the gravity of the potential consequences and denial of Australia's fulfilment of international treaty obligations that are separately and expressly incorporated into domestic law (i.e., in the Migration Act).
29. This manifest injustice is illustrated by the following case study.

Case Study 2

Nadia is a Syrian citizen who come to Australia on a partner visa in 2013. Her relationship broke down in 2014 and by this time the conflict in her home area in Syria had escalated further. Prior to her partner visa ceasing, she was assisted by a distant relative to lodge a protection visa application. She was under the impression that this relative would call her when he received important correspondence about her visa application. The department subsequently sent an invitation to attend an interview to the relative's email address but this message was caught by his email account's spam filter and he never saw it. One week after Nadia failed to appear at her interview a delegate made a decision to refuse her protection visa application. That notification was also sent to the relative's email address and was not seen by him for the same reason.

One month after Nadia's protection viaa was refused she contacted the Department and was informed of this decision and that she was now unlawful Nadia sought advice from an immigration lawyer who advised her that because she had not applied to the AAT-MRD for merits review within 28 days she is unable to apply for merits review of that decision. That lawyer also advised her that she is barred from applying again for a protection visa and due to her being without a visa she is liable to being placed in locked immigration detention and thereafter being removed from Australia.

30. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible" and "fair".

Recommendation 2

Legislative change be undertaken to broaden the discretion in s 29(7) of the AAT Act to extend the time to lodge an application for review, to apply to all decisions reviewable by the AAT.

Bar on the AAT-GD considering evidence

31. For specified reviews undertaken by the AAT-GD under s 500 of the Migration Act the legislation compels the Tribunal to disregard "any document submitted in support of the

⁷ As is the case for a cancellation of a Bridging visa under ss 116 or 109 of the *Migration Act 1958* where that person is in immigration detention as a consequence of that application: s 347(1)(b)(iii) of the *Migration Act 1958*; r 4.10(2)(a), *Migration Regulations 1994*.

person's case unless a copy of the document was given to the Minister at least 2 business days before the Tribunal holds a hearing".⁸ This provision operates particularly harshly in practice for review applicants who are unable to access legal representation and those who choose to represent themselves or be assisted by a family member/friend. In our experience, it is not uncommon for relevant material and compelling factual matters to be struck out on this basis.

Case Study 3

Mohamed arrived in Australia as a refugee from Eritrea in 2011, when he was 17 years old. In 2018 he had his visa cancelled under s501 of the Migration Act on character grounds for multiple offences of driving without a licence. He applied for a review of the decision to the AAT within the prescribed time period and paid the required application fee. He submitted his evidence and supporting documents to the AAT within the prescribed time period. However, one day before the hearing, he has compelling and material new evidence, being a report from his psychiatrist about his Post-traumatic Stress Disorder, which, according to the report, developed after experiencing torture at the hands of the Eritrean authorities when he was 15 years old. This is highly relevant evidence for the decision maker to consider, but by operation of the prescribed time-limits, the new evidence about Mohamed's mental health condition would not be able to be considered by the AAT. The AAT Member would have no discretion to take the report into account when making a decision on review.

32. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible", "informal" and "fair".

Recommendation 3

Legislative change be undertaken to provide the AAT-GD with a statutory discretion to consider documentary evidence submitted less than 2 business days before a hearing where it would be reasonable to do so.

84 day time limit for specified AAT-GD decisions

33. When exercising its jurisdiction under s 500 of the Migration Act, the AAT-GD is compelled to make a decision within 12 weeks, or by 84 days, of the notification decision, otherwise the decision is taken to be affirmed.⁹ The Tribunal has no discretion to extend this time period.
34. In practice, this non-extendable time-period can assist in some circumstances to ensure the Tribunal's reviews are "quick", consistent with one of the statutory objectives under s 2A(b). However, particularly in cases where an applicant is unable to access legal representation or is otherwise highly vulnerable (for example, due to financial hardship, mental health, remote location of detention, illiteracy and/or non-English speaking background), it can more often lead to the applicant ultimately being denied a fair hearing of their case. Often in these cases, more time is needed for the applicant to access representation or otherwise prepare their case with the assistance of others.
35. We note that this statutory requirement can lead to the AAT having to divert member resources away from other review matters with an equal or greater compelling need for a timely decision. The number of review applications of this kind rose from 77 in 2015–16 to 183 in 2016–17.¹⁰ Forty-six per cent of these applications were required to be dealt with

⁸ s 500(6)

⁹ s 500(6L), *Migration Act 1958*.

¹⁰ Administrative Appeal Tribunal, Annual Report 2016/17, at p26, available at:

<http://www.aat.gov.au/AAT/media/AAT/Files/Reports/AR201617/AAT-Annual-Report-2016-17.pdf> [accessed 21 August 2018].

on an expedited basis and finalised within 12 weeks after the applicant was notified of the decision, and “[t]hese cases are prioritised over other types”.¹¹

Case Study 3

James arrived in Australia when he was two years old with his parents who migrated from New Zealand. James was diagnosed with a number of serious mental health conditions when he was in his late teens, including schizophrenia. Last year he was charged with a number of criminal offences, including theft of a motor vehicle and assault of a police officer, that occurred while he was suffering from psychosis. He was subsequently convicted but the judge ordered that he be subject to a Community Corrections Order as opposed to a period of imprisonment. Following this, a delegate of the Minister for Border Protection cancelled James’ visa under s 501 of the Migration Act on the basis that, in the event the person were allowed to enter or to remain in Australia, there is a risk that he would engage in criminal conduct in Australia.¹² James was immediately detained by Australian Border Force officers and transferred to Christmas Island Immigration Detention Centre.

James is an only child and both of his parents are on the Aged Pension and did not have the financial capacity to assist to secure him legal representation for his review by the AAT-GD. One month after the Tribunal hearing James managed to secure pro bono legal assistance from a distant relative. However, prior further evidence could be provided, and one day prior to the 84 day period elapsing, the Tribunal affirmed the delegate’s decision.

36. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is “accessible”, “informal” and “fair”.

Recommendation 4

Legislative change be undertaken to provide the AAT-GD with a statutory discretion to extend the 84 day period in s 500(6L) of the Migration Act, where it would be reasonable to do so.

Dismissal of AAT-MRD applications

37. Under the Migration Act the AAT-MRD may make a decision without taking any further action or dismiss an application entirely without considering the merits of a case, where the applicant fails to attend a hearing.¹³ Despite the Tribunal having a discretion to reinstate an application that has been dismissed, the applicant affected must make that request within 14 days and the Tribunal is precluded from considering requests received after this time.¹⁴ This provision and the lack of a discretion to extend the time period can deny vulnerable and unrepresented applicants a fair hearing of their case. In practice there can be many reasons why an unrepresented applicant may not attend a hearing, including mental health issues, criminal detention, incorrect advice and negligent assistance from a migration agent.

Case Study 4

Julie is an Australian citizen whose husband (Xan) applied for a partner sponsored by her in 2014. In 2016 that application was refused by a delegate and Xan was forced to remain in China while Julie applied to the AAT-MRD for merits review. In June 2018 the Tribunal invited Julie to attend a hearing to give evidence but due to a mistake by Australia Post she never the hearing invitation letter. Following this the Tribunal dismissed her review application under s 362B(1A) without considering

¹¹ Ibid.

¹² s 501(6)(d)(i), *Migration Act 1958*.

¹³ ss 362B(1A) and 426A(1A), *Migration Act 1958*.

¹⁴ ss 362B(1B) and 462A(1B), *Migration Act 1958*.

the merits of her case. Three weeks later Australia Post delivers the hearing invitation but by that stage the 14 day period to apply for reinstatement of the application had already expired. The only option now available to them is to lodge another partner visa costing another \$7,000 and taking a further 2 or 3 years to process. Julie is 6 months pregnant with Xan's child.

38. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is “accessible”, “informal” and “fair”.

Recommendation 5

Legislative change be undertaken to provide the AAT-MRD with statutory discretions under ss 362B(1B) and 462A(1B) of the Migration Act to extend the period for requesting reinstatement of an application dismissed under ss 362B(1A) and 426A(1A), where it would be reasonable to do so.

Travel expenses for AAT-MRD and AAT-GD parties

39. It is our understanding that the Tribunal's Social Services and Child Support Division can in some circumstances fund reasonable travel expenses to attend hearings for applicants and other related parties.

40. In our experience many AAT-MRD review applicants are experiencing financial hardship, including due to a denial of the right to work and an inability to access government funded financial assistance. Further, while the Migration Act does grant power to the AAT to summon a person to the AAT¹⁵ to give evidence, and the *Administrative Appeals Tribunal Regulation 2015* does specify that fees for that person to appear will be paid by the Commonwealth¹⁶, there are no similar provisions for applicants or provisions for where applicants would like the AAT to take evidence from a person.

Case Study 4

Mehdi is an asylum seeker from Iran and a Christian convert, who lives in Shepparton. He applied for a protection visa while on a student visa. The Department refused his application, finding that he was not a refugee. Mehdi appealed the decision to the AAT-MRD. Mehdi wrote to the Tribunal to inform them that he is homeless and being accommodated in emergency housing, is unemployed and is no longer eligible for government financial assistance. He also requested the Tribunal take evidence at the hearing from his pastor. Under the current rules, Mehdi would not only have to cover his costs of travelling from Shepparton to Melbourne for the AAT hearing, but there would be no provision for the Commonwealth to pay for his pastor's travel costs. Conversely, if Mehdi had an unrelated application before the Social Services and Child Support Division, the Commonwealth would pay for his and his pastor's travel expenses from Shepparton to Melbourne.

41. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is “accessible” and “fair”.

Recommendation 6

Provision be made for AAT-MRD and AAT-GD to fund travel to hearings for applicants and witnesses.

¹⁵ See the *Migration Act*, sections 363(3)(a) or 427(3)(a).

¹⁶ *Administrative Appeals Tribunal Regulation 2015*, section 14(3).

Referral for legal assistance

42. It is our understanding that unrepresented applicants make up a significant proportion of the AAT's caseload. However, it is our experience that the procedural frameworks governing the AAT-GD and AAT-MRD, including those detailed above, are highly incompatible with self-representation. In our experience, applicants subject to reviews by these divisions are often vulnerable, including due to them being affected by such issues as financial hardship, English literacy, health (mental and physical) and geographical isolation (such as those in immigration detention and correctional facilities).
43. The Tribunal has in some instances proactively engaged with legal aid commissions and community legal centres to arrange pro bono representation for self-represented applicants. However, these positive developments are also somewhat limited. As noted by the AAT Annual Report from 2016/17, "[a] solicitor attends the AAT and provides advice and minor assistance to self-represented parties in certain types of cases, particularly reviews of Centrelink decisions."¹⁷
44. While the Attorney-General has the power to order legal financial assistance under s 69 of the AAT Act, this power excludes any applications in the AAT-MRD and the Social Services and Child Support Division.¹⁸ Further, the legal financial assistance is limited to disbursement costs, rather than legal representation costs, and matters where the "legal proceedings that involve the deportation of the applicant."¹⁹
45. There is no apparent policy justification for this different approach, particularly when you consider what is at stake. We submit that the AAT's pro bono referral program be expanded to include other categories of review applications concerning vulnerable applicants, including reviews undertaken by the AAT-MRD and reviews by the AAT-GD under s 500 of the Migration Act.
46. It is also proposed that the AAT be granted the capacity to refer an unrepresented applicant for pro bono legal assistance, similar to the scheme developed in the Federal Court of Australia. As with the Federal Court scheme, the AAT's discretion would only be engaged where it is "in the interests of justice to do so" and that presiding members would be required to take into account factors such as the financial circumstances of the applicant, the type and complexity of the proceeding and whether the applicant has access to other sources of legal assistance.²⁰ We note that Justice Connect currently administers this scheme in Victoria for the Federal Court. Alternatively, and particularly for more complex visa cancellation matters requiring Counsel, the AAT Members should be given the discretion to make a referral to the Duty Barristers' Scheme in Victoria.²¹
47. It is submitted that the absence of a legal assistance referral framework for the AAT-MRD and AAT-GD is inconsistent with the Tribunal's statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible" and "fair".

Recommendation 7

¹⁷ AAT, Annual Report 2016/17, Table 3.8: Cancellation Caseload overview, 2016-17, at 30, available at: <http://www.aat.gov.au/AAT/media/AAT/Files/Reports/AR201617/AAT-Annual-Report-2016-17.pdf> [accessed 21 August 2018].

¹⁸ See section 69(3) of the *Administrative Appeals Tribunal Act 1975* (Cth).

¹⁹ Commonwealth Guidelines for Legal Financial Assistance 2012, Division 2, section 5.2(2), available at: <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Commonwealthlegalfinancialassistance/Documents/commonwealth-guidelines-for-legal-financial-assistance-2012.pdf> [accessed 21 August 2018].

²⁰ See: Federal Court of Australia, *Court Referral for Legal Assistance*, available at: <http://www.fedcourt.gov.au/going-to-court/i-am-a-party/help-with-legal-problem/court-referral-assistance> [accessed 21 August 2018].

²¹ Victorian Bar, *Duty Barristers' Scheme*, available at: <https://www.vicbar.com.au/public/community/duty-barristers-scheme> [accessed 21 August 2018].

The Tribunal be granted the capacity to refer an unrepresented applicant for legal assistance, and its pro bono referral program be expanded to include reviews undertaken by the AAT-MRD and AAT-GD.

Multiple applicant AAT-MRD hearings

48. For some time now the AAT-MRD has been conducting ‘accelerated multiple applicant’ hearings for both general migration reviews under Part 5 of the Migration Act and also for protection visa reviews under Part 7 of the Migration Act. For general migration reviews this involves a large number of unrelated review applicants attending a hearing at the same time. The hearing is conducted with all of the applicants in the hearing room at the same time, with the presiding Tribunal member taking evidence from each of them in turn in an expedited manner. For protection visa reviews these hearings begin in a similar manner but then, in purported compliance with the requirement that such hearings be conducted in private, the presiding member takes evidence from each review applicant in private, but again this evidence is sought in an expedited manner.
49. It is our observation that for migration review applicants whether they are invited to participate in an ‘accelerated multiple applicant’ is determined by the category of visa in question (for example, a student visa). For protection visa reviews this is determined by the review applicant’s country of nationality is (for example, Malaysia).
50. In addition to denying the applicant a fair hearing of their case, we submit that in many instances the expedited manner in which these expedited hearings are conducted are entirely disproportionate to the importance and complexity of the matters. The substantive and procedural legal frameworks governing these reviews are highly complex and the consequences for the person of the Tribunal getting the decision wrong is grave, particularly for protection visa reviews (which could wrongly lead to the individual being exposed to serious human rights abuses and in breach of Australia’s international non-refoulement obligations).
51. Further, it is our submission that reaching a preconceived view of the level of complexity of a protection visa review based solely on the nationality of the applicant is not only highly concerning but also entirely inconsistent with best practice refugee status decision making and disproportionate with the potential grave risks for the applicant if the wrong decision is made. It is fundamental that all people who seek Australia’s protection be afforded a procedurally fair individual risk assessment having regard to their particular circumstances. In this regard, the current ‘accelerated multiple applicant’ hearing process for protection visa reviews is fundamentally and inherently incompatible with this.

Case Study 5

Mandeep is an Indian national who travelled to Australia on a student visa with her husband. While in Australia Mandeep’s relationship with her husband broke down due to family violence. At around the same time as she was forced to move into a women’s family violence refuge she applied for a further student visa to remain in Australia to finish her study. However, she failed to provide sufficient evidence of her personal finances to meet the financial capacity criteria and her visa was refused. She applied to the Tribunal and was subsequently invited to a hearing. Upon attending the hearing she found that there were around 10-15 other review applicants in the same hearing room with her, and many of them were men of Indian nationality. After very briefly questioning five or six of them the Tribunal member turned to her and asked her why she hadn’t provided all of the financial information required for her visa. Mandeep did not feel comfortable explaining in the company of the others the family violence she suffered and how she needed more time to explain her situation to her family in India so they can finance her visa. Mandeep instead said she was having problems and needed more

time. The Tribunal member refused to provide further time and affirmed the delegate's decision without taking further evidence from Mandeep.

52. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is “proportionate to the importance and complexity of the matter”, “accessible” and “fair”.

Recommendation 8

The AAT-MRD cease its practice of undertaking ‘accelerated multiple applicant’ hearings.

Transparent merit-based member appointment/reappointment process

53. The AAT plays an integral role within our justice system and to preserve and promote public confidence its decision-making it is demanded that rigorous safeguards are in place to ensure its independence from government, including in the processes for appointing members. Due to the role of the AAT as an adjudicator of disputes, often where the Executive is a party or has a policy or political interest in the outcome, it is absolutely essential that it and its members are both impartial and perceived as such by the public. Impartiality requires that they are free of improper personal and political influences and pressures to decide cases in a particular way.

54. It is our submission that the appointment process for AAT members should not only be consistent with ensuring public confidence in that impartiality, but should also serve to promote it. Currently there is no publically available transparent merit-based procedural framework for the appointment and re-appointment of members to the AAT. We also note that there does not appear to have been any form of merit-based appointment/re-appointment process for the AAT-MRD (and MRT-RRT) since 2013.²²

55. In recent years there have been a number instances where the impartiality and integrity of members appointed to the AAT has been called into question publically, including on the basis that the appointment/reappointment processes have been politicised. On this basis, we further submit that the absence of a transparent open merit-based recruitment process also adversely affects the perceived integrity of the Tribunal's and whether they are seen to meet community standards.

56. It is contended that a permanent and formal institutional framework be implemented providing for an open, merit-based and transparent appointment and re-appointment process for members. It is essential that criteria for appointment and re-appointment prioritise the following (in no particular order):

- Qualifications/experience;
- Attributes required for effective performance in the role;
- Knowledge, expertise and experience needs of the Tribunal;
- Gender balance and diversity; and
- Public interest considerations as to whether the appointment may undermine public confidence in the Tribunal.

57. In this regard, we refer to, and support, the model proposed by the Australasian Council of Tribunals' *Tribunal Independence in Appointments - Best Practice Guide, August*

²² And this is supported by an absence of any reference to a merit-based process in the MRT-RRT and AAT-MRD Annual Reports from 2013-14 onwards compared with the reports for the periods 2007-08 to 2012-13.

2016.²³ To further ensure this framework will be better protected and be subject to Parliamentary scrutiny it recommended it be provided for in primary legislation.

58. As provided in the Revised Explanatory Memorandum accompanying the TA Act's amending bill, Parliament's intent in expanding the AAT's statutory objective in s 2A of the AAT Act was to reiterate the importance of the Tribunal continuing to be, and to be seen to be, an independent forum for review of the merits of Government decisions.²⁴
59. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that "promotes public trust and confidence in the decision-making of the Tribunal".

Recommendation 9

Legislative change be undertaken to provide for a statutory framework ensuring an open and transparent merit-based appointment and re-appointment process for AAT members. It is further recommended this framework be consistent with the model proposed in the Australasian Council of Tribunals' Tribunal Independence in Appointments - Best Practice Guide, August 2016.

Caseload backlog

60. It is also our observation that in recent years the consistent increase in lodgements of review applications in the AAT-MRD has not corresponded with the appointment of more members to this division. The AAT reports that in the period 1 July 2016 to 30 June 2017 the AAT-MRD received 26,604 review application lodgements (18,518 migration and 8,086 refugee). However, in the shorter subsequent period 1 July 2017 to 31 May 2018 this amount rose to 34,867 (23,985 migration and 10,882 refugee). Compare this with the 2014-15 financial year preceding the amalgamation of the MRT-RRT and the AAT on 1 July 2015 when the former received a total of 18,534 lodgements (14,398 migration and 4,136 refugee). Similarly, the AAT reports that at the end of the 2014-15 financial year the MRT-RRT had 13,397 applications still on hand, and compare this with 31 May 2018 when the Tribunal had 43,159 active cases on hand.
61. We submit that public trust and confidence in the decision-making of the Tribunal is directly affected by the average processing times of review applications. It is our experience that when clients decide whether to apply for merits review of a general migration decision or make a further primary application, this decision can often be influenced by the likely processing time by the AAT.
62. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "promotes public trust and confidence in the decision-making of the Tribunal" and is "quick".

Recommendation 10

The number of members appointed to the AAT-MRD and AAT-GD be increased to reflect the significant growth in application lodgements in those divisions.

²³ Australasian Council of Tribunals, *Tribunal Independence in Appointments - Best Practice Guide, August 2016*, available at: http://www.coat.gov.au/images/Tribunal-Independence-in-Appointments_COATBestPracticeGuide-2016-Final-web-interactive.pdf [accessed 24 August 2018].

²⁴ Revised Explanatory Memorandum to the Tribunals Amalgamation Bill 2014 at [119], p19.

The Tribunal increase investment in training and capacity building of newly appointed members, particularly for those appointed to the AAT-MRD.

Non-disclosure certificates

63. The Migration Act provides for the portfolio Minister (delegate) to certify that restrictions apply to the provision of certain information by the Minister/Department of Home Affairs to the AAT-MRD.²⁵ These disclosure certificates often capture documents which the Department has deemed should not be released to the applicant for reasons including due to it being contrary to the public interest. In many instances these documents are highly materially relevant for the applicant's case. The Full Federal Court decision in *Singh*²⁶ in which the Full Court held that common law procedural fairness required the Tribunal to disclose to the review applicant the existence of a non-disclosure certificate to provide the applicant with an opportunity to challenge its validity. The Full Court further observed on the facts of that case that the existence of the non-disclosure certificate 'has an immediate and adverse impact on an applicant's entitlement to participate in the hearing.'²⁷
64. In our experience appearing before the AAT-MRD, the process by which an applicant is advised of the presence of a disclosure certificate varies from member to member. Some members will advise the legal representative of the existence of a disclosure certificate in writing prior to a hearing. Other members will put the disclosure certificate to a legal representative during the hearing. These inconsistencies and the absence of a transparent publically available policy or President's Direction leads to the following increased procedural complexity and uncertainty for review applicants.
65. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible", "informal" "economical" and a "quick".

Recommendation 11

The AAT President make a direction under s 18B of the AAT Act guiding AAT-MRD members on a consistent procedure for dealing with non-disclosure certificates issued to it by the Department.

AAT-GD non-publication and non-disclosure orders

66. The AAT-GD has discretionary powers to make non-disclosure and non-publication orders in respect of individual reviews and decisions. However, it is our experience that these statutory discretions are applied inconsistently between AAT-GD members undertaking reviews under s 500 of the Migration Act (character-related visa refusals and cancellations). For example, in one instance, where non-publication and non-disclosure orders had earlier been made, a member sought to re-visit them following the hearing of evidence and immediately prior to the proposed publishing of the decision. Such actions undermine the confidence of witnesses to provide evidence before the Tribunal and know that their evidence will not be published.
67. These inconsistencies and the absence of a transparent publically available policy or President's Direction leads to the following increased uncertainty for review applicants as

²⁵ s 375 [AAT-MRD migration reviews]; s 437 [AAT-MRD protection/refugee reviews]; s 376 [AAT-MRD migration reviews]; s 438 [AAT-MRD protection/refugee reviews]; and s 375A [AAT-MRD migration reviews].

²⁶ *Minister for Immigration and Border Protection v Singh* [2016] FCAFC 183.

²⁷ *Ibid* at [51].

well as for other parties, such as witnesses, who may have concerns about their evidence being published.

68. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is “accessible”, “fair” and “promotes public trust and confidence in the decision-making of the Tribunal”.

Recommendation 12

The AAT President make a direction under s 18B of the AAT Act guiding AAT-GD members on a consistent procedure for making non-disclosure and non-publication orders under s 35 of the AAT Act.

AAT-MRD directions hearings

69. Recently the AAT-MRD has sought to mirror the procedure of the AAT-GD by listing certain matters for a directions hearing prior to the formal substantive hearing. We understand that this process is intended to assist with ensuring that review applications are ready for hearing and that applicants have provided appropriate information relevant to the review.
70. Unlike for AAT-GD directions hearings, the AAT-MRD does not permit parties to appear by telephone and instead require both the applicant and representative to appear in person. It is also our understanding that the Tribunal’s practice in this regard is to invite a number of applicants and their representatives to attend the Tribunal registry on the same date and at the same time. The parties are then called separately to give evidence and it can often take considerable time after the time specified in the notice before an applicant is heard.
71. There is considerable benefit in holding a directions hearing in circumstances where an applicant is unrepresented. For this reason, we are strongly supportive of this procedure for this category of review applicants as it allows the Tribunal to explain the review process in-person and provide an explanation of what the key issues are in their case ahead of the formal hearing. In this way, a directions hearing makes the Tribunal more accessible to self-represented litigants and provides for potential efficiency gains.
72. With these benefits in mind for unrepresented applicants, we are also mindful that there are inevitable resource constraints for representatives, applicants (if paying fees for representation) and the Tribunal and the need to balance these considerations with the benefits for all parties.
73. Having regard to the above matters, solely in relation to represented review applicants, it is contended that in some respects the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is “economical” and “quick”.

Recommendation 13

The AAT-MRD amend its policy guidelines governing its directions hearings to ensure:

- ***Representatives be consulted by telephone prior to determining a directions hearing is required; and***
- ***Representatives be permitted to appear by telephone and without the need for the review applicant to be present (as is the practice for the AAT-GD).***

Hearing attendance

74. The AAT-MRD, and the AAT-GD exercising its jurisdiction under s 500 of the Migration Act, have discretionary powers to provide for a review applicant to appear in-person at a hearing before the Tribunal, as opposed to by video-link if they are in a correction facility, immigration detention centre or otherwise located in a different location than the member constituted to the application. However, it is our experience that these powers are often applied inconsistently between members. Also, it is our submission that for immigration detainees, on occasions there is a lack of communication between the Tribunal and Australian Border Force (**ABF**) and its security contracting partners such as SERCO. This can lead to some, or all, of the relevant parties (being the review applicant, the representative, the Tribunal registry, the presiding member, ABF and SERCO) not being adequately informed or provided sufficient notice of how the hearing is proposed to proceed, being in-person or by video-link. This issue has been further exacerbated in recent times by ABF refusing to permit review applicants in immigration detention to attend hearings in-person at the Tribunal registry.
75. It is our experience is that for the AAT-GD undertaking reviews under s 500 of the Migration Act, the presiding member *generally* (but not always) directs the Minister to bring the applicant to the hearing to attend in-person. However, this is reliant on each individual member exercising his or her discretion in this regard. It is also our experience that this issue is much more uncertain and procedurally complex for AAT-MRD reviews.
76. In some cases this issue can lead to review applicants being denied a fair hearing of their case and/or lead to unnecessary delays for their case, and for some, further time in immigration detention. Even where the review applicant is ultimately permitted to attend in-person, the preceding period of uncertainty can greatly affect the preparation of a review applicant's case and cause unnecessary mental stress and anxiety for the applicant and his or her family.
77. Further, in our experience these review applicants are not informed that they may ask the Tribunal for permission to appear in-person. For this reason this issue has particularly serious consequences for unrepresented.
78. This inconsistent, and in many cases procedurally unfair, practice demands a transparent publically available policy or President's Direction to provide certainty for all parties. It is also our submission that for many review applications before the AAT-MRD and AAT-GD the factual and legal complexity and sensitivity of issues are entirely incompatible with a video-link hearing.
79. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible", "fair, just, economical, informal and quick" and "proportionate to the importance and complexity of the matter".

Recommendation 14

Legislative change be enacted to compel ABF and the Department to facilitate an in-person hearing with the Tribunal for immigration detainees. In the interim, the AAT enter into a Memorandum of Understanding with ABF and the Department requiring this.

Gender issues

80. We note that the current President's Direction governing constitutions of review applications²⁸ provides for gender related issues being taken into account when constituting review applications to members in the Tribunal.²⁹ We also refer to the AAT-MRD's policy guidelines on gender.³⁰ This reflects the reality that many review applicants are survivors of sexual and gender based violence, particularly in protection visa reviews and family violence-related partner visa reviews. However, it is our experience that the Tribunal does not give sufficient weight to these matters when constituting such reviews to its members.
81. Refugee Legal lawyers have on a number of occasions made formal requests to the AAT-MRD that a particular protection visa review application with sensitive gender-based claims be reconstituted/constituted to a female member. However, in some instances we have been advised that this request had been refused for reasons including because there was a shortage of female members available.
82. Further, in our experience the AAT-MRD has failed on occasions to provide a female interpreter for a hearing for a female review applicant who is required to give evidence on highly sensitive issues related to sexual and gender based violence.
83. We submit that this lack of female member capacity in the AAT-MRD and inability to secure gender appropriate interpreters greatly heighten the risk of review applicants being denied a real and meaningful hearing on their case. Particularly in the case of protection visas, the consequence of this cannot be graver (including being returned to a country where they are at risk of serious human rights abuses and death).

Case Study 6

Santhi is a Sri Lankan national of Tamil ethnicity who applied for a protection visa. She is a victim of multiple instances of sexual and gender based violence that occurred in Sri Lanka and again in a transit country while travelling to Australia. Santhi does not read/write English and her protection visa was prepared with assistance from a senior male community member in the Sri Lankan Tamil community. For cultural reasons Santhi did not disclose to the man who assisted her with her application, the past instances of sexual and gender based violence she suffered in Sri Lanka. She was interviewed by a male delegate of the Minister with the assistance of a male Tamil interpreter and again she did not feel comfortable to disclose the past harm she suffered. The delegate refused her protection visa application and she applied to the AAT-MRD for merits review. Sometime later Santhi was invited to attend a Tribunal hearing with a male Tribunal member, at which time she managed to access pro bono legal representation from a female lawyer at a community legal centre. Santhi disclosed her personal history to the female lawyer and following this the lawyer made a formal request to the Tribunal to have the application reconstituted to a female Tribunal member, and provided a detailed statement addressing the new information relating to the past harm she suffered and why she had not previously disclosed it. The Tribunal subsequently advised that currently no female Tribunal members were available but the existing member would consider the new information carefully. Santhi attended the hearing but when she was questioned on the events surrounding her new claims her evidence was described by the member as vague and lacking in detail. Santhi advised her legal representative after the hearing that she felt too scared to describe the relevant events in any detail due to the shame she felt. The lawyer provided post-hearing written submissions to the Tribunal explaining this.

²⁸ President's Direction: Constituting the Tribunal (14 July 2015), made under s/ 19A of the *Administrative Appeals Tribunal Act 1975*.

²⁹ *Ibid*, at paragraphs 3.10, 3.11, 4.1(i).

³⁰ Administrative Appeals Tribunal (Migration and Refugee Division), Guidelines on Gender (July 2015).

The Tribunal subsequently affirmed the delegate's decision, relevantly finding that it did not accept Santhi's further claims provided to the Tribunal due to them not having been articulated before the Department and due to her vague and inconsistent evidence at the hearing on those issues.

84. Having regard to the above matters, it is contended that the Tribunal has failed to comply with its statutory mandate in s 2A of the AAT Act to pursue the objective of providing a mechanism of review that is "accessible", "fair" and "just".

Recommendation 15

The AAT-MRD implement a policy of seeking comments from review applicants on whether a specific gender member is required prior to that review applicant being constituted.

The AAT-MRD appoint more female members.

D. The degree to which legislation, processes, grounds, scope, and levels of review in, and from, the Tribunal promote timely and final resolution of matters

85. We refer to our earlier submissions and recommendations above.

E. Whether the Tribunal's operations and efficiency can be improved through further legislative amendments or through non-legislative changes.

86. We refer to our earlier submissions and recommendations above.

F. Whether the arrangements for funding the operations of the Tribunal are appropriate, including ensuring consistent funding models across divisions.

87. We choose not to comment on this issue.

Recommendations

88. In reference to the Review's terms of reference our recommendations are summarised as follows:

- 1. Review application fees: The AAT adopt a uniform fee exemption across all divisions for all applicants who are: detained in a public institution; or aged under 18 years of age.***
- 2. Prescribed time periods to apply for review: Legislative change be undertaken to broaden the discretion in s 29(7) of the AAT Act to extend the time to lodge an application for review, to apply to all decisions reviewable by the AAT.***
- 3. Bar on the AAT-GD considering evidence: Legislative change be undertaken to provide the AAT-GD with a statutory discretion to consider documentary evidence submitted less than 2 business days before a hearing where it would be reasonable to do so.***
- 4. 84 day time limit for specified AAT-GD decisions: Legislative change be undertaken to provide the AAT-GD with a statutory discretion to extend the 84 day period in s 500(6L) of the Migration Act, where it would be reasonable to do so.***
- 5. Dismissal of AAT-MRD applications: Legislative change be undertaken to provide the AAT-MRD with statutory discretions under ss 362B(1B) and 462A(1B) of the Migration Act to extend the period for requesting reinstatement***

of an application dismissed under ss 362B(1A) and 426A(1A), where it would be reasonable to do so.

6. **Travel expenses for AAT-MRD and AAT-GD parties:** *Provision be made for AAT-MRD and AAT-GD to fund travel to hearings for applicants and witnesses.*
7. **Referral for legal assistance:** *The Tribunal be granted the capacity to refer an unrepresented applicant for legal assistance, and its pro bono referral program be expanded to include reviews undertaken by the AAT-MRD and AAT-GD.*
8. **Multiple applicant AAT-MRD hearings:** *The AAT-MRD cease its practice of undertaking ‘accelerated multiple applicant’ hearings.*
9. **Transparent merit-based member appointment/reappointment process:** *Legislative change be undertaken to provide for a statutory framework ensuring an open and transparent merit-based appointment and re-appointment process for AAT members. It is further recommended this framework be consistent with the model proposed in the Australasian Council of Tribunals’ Tribunal Independence in Appointments - Best Practice Guide, August 2016.*
10. **Caseload backlog:** *The number of members appointed to the AAT-MRD and AAT-GD be increased to reflect the significant growth in application lodgements in those divisions. The Tribunal increase investment in training and capacity building of newly appointed members, particularly for those appointed to the AAT-MRD.*
11. **Non-disclosure certificates:** *The AAT President make a direction under s 18B of the AAT Act guiding AAT-MRD members on a consistent procedure for dealing with non-disclosure certificates issued to it by the Department.*
12. **AAT-GD non-publication and non-disclosure orders:** *The AAT President make a direction under s 18B of the AAT Act guiding AAT-GD members on a consistent procedure for making non-disclosure and non-publication orders under s 35 of the AAT Act.*
13. **AAT-MRD directions hearings:** *The AAT-MRD amend its policy guidelines governing its directions hearings to ensure:*
 - *Representatives be consulted by telephone prior to determining a directions hearing is required; and*
 - *Representatives be permitted to appear by telephone and without the need for the review applicant to be present (as is the practice for the AAT-GD).*
14. **Hearing attendance:** *Legislative change be enacted to compel ABF and the Department to facilitate an in-person hearing with the Tribunal for immigration detainees. In the interim, the AAT enter into a Memorandum of Understanding with ABF and the Department requiring this.*
15. **Gender issues:** *The AAT-MRD implement a policy of seeking comments from review applicants on whether a specific gender member is required prior to that review applicant being constituted. The AAT-MRD appoint more female members.*

Refugee Legal:
Defending the rights of refugees

26 August 2018

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