



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

Access to Justice
Productivity Commission
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Access to Justice Arrangements: Productivity Commission Issues Paper

Thank you for the opportunity to provide submissions in response to the Access to Justice Arrangements Issues Paper. Given the scope of the inquiry and the particular statutory environment in which the Migration Review Tribunal and Refugee Review Tribunal (the tribunals) operate, the tribunals do not intend to respond in detail to the full range of questions raised in the paper. However, as specialist tribunals, there are a number of observations that may be relevant to Part 10 of the Issues Paper.

By way of background, the tribunals are final tier merits review bodies established under the *Migration Act 1958* (Cth) to review decisions of the Minister of Immigration and Border Protection relating to visas and the capacity of non-citizens to remain in Australia lawfully. Under Parts 5 and 7 of Migration Act, applicants before the tribunals have no right to legal representation, although in the individual circumstances of a case, assistance may be warranted. Applicants may be assisted by another person, but with limited exceptions (close family, parliamentarians etc) only registered migration agents may provide 'immigration assistance' (as defined in s.277 of the Migration Act). In approximately 57% of MRT applications and 73% of RRT applications lodged with tribunals in 2012-13, the applicant was assisted, to varying degrees, by a registered migration agent.

A migration agent, who may or may not also be a lawyer, can be of assistance to the tribunal member in the conduct of a review, but the inquisitorial nature of the review is such that an applicant without legal representation, or other migration assistance, is not disadvantaged. The review process is designed to facilitate unrepresented applicants, with the statutory structure intended to enable applicants to put forward their own case in their own way.

Proceedings are informal in nature, and the tribunals are not bound by technicalities, legal forms or rules of evidence. The tribunals, particularly the RRT, undertake their own enquiries and are not solely dependent upon the evidence presented by or on behalf of the applicant, or constrained by the arguments put to it.

In sum, the statutory scheme under which the tribunals operate is such that whilst applicants can and often do have legal representation, the effective operation of the review process is not predicated upon such representation.

In this light, the tribunals do not consider that applicants are disadvantaged, or their access to justice compromised, by the costs of securing legal representation. We consider the tribunals to be among the effective alternative mechanisms designed to improve equity and access to justice and to achieve lower cost 'dispute' resolution.

If you have any questions in relation to the matters raised in this submission, please contact Ms Sobet Haddad in the first instance

Yours sincerely

Kay Ransome
Principal Member