2004-2005-2006

The Parliament of the Commonwealth of Australia

THE SENATE

Presented and read a first time

Migration Amendment (Review Provisions) Bill 2006

No. , 2006

(Immigration and Multicultural Affairs)

A Bill for an Act to amend the Migration Act 1958, and for related purposes
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Schedule 1—Review processes of the Migration Review Tribunal and the Refugee Review Tribunal

Migration Act 1958

3
A Bill for an Act to amend the *Migration Act 1958*, and for related purposes

The Parliament of Australia enacts:

1 **Short title**

This Act may be cited as the *Migration Amendment (Review Provisions) Act 2006*.

2 **Commencement**

This Act commences on the day after it receives the Royal Assent.

3 **Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule
concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Review processes of the
Migration Review Tribunal and the
Refugee Review Tribunal

Migration Act 1958

1 At the end of section 357A

Add:

(3) In applying this Division, the Tribunal must act in a way that is fair and just.

2 After section 359

Insert:

359AA Information and invitation given orally by Tribunal while applicant appearing

If an applicant is appearing before the Tribunal because of an invitation under section 360:

(a) the Tribunal may orally give to the applicant clear particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review; and

(b) if the Tribunal does so—the Tribunal must:

(i) ensure, as far as is reasonably practicable, that the applicant understands why the information is relevant to the review, and the consequences of the information being relied on in affirming the decision that is under review; and

(ii) orally invite the applicant to comment on or respond to the information; and

(iii) advise the applicant that he or she may seek additional time to comment on or respond to the information; and

(iv) if the applicant seeks additional time to comment on or respond to the information—adjourn the review, if the Tribunal considers that the applicant reasonably needs
Schedule 1 Review processes of the Migration Review Tribunal and the Refugee Review Tribunal

3 Subsection 359A(1)

Omit “subsection (2)”, substitute “subsections (2) and (3)”.  
Note: The heading to section 359A is replaced by the heading “Information and invitation given in writing by Tribunal”.

4 Paragraph 359A(1)(a)

After “circumstances,”, insert “clear”.

5 Paragraph 359A(1)(b)

Repeal the paragraph, substitute:

(b) ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to the review, and the consequences of it being relied on in affirming the decision that is under review; and

6 Paragraph 359A(1)(c)

After “comment on”, insert “or respond to”.

7 After subsection 359A(2)

Insert:

(3) The Tribunal is not obliged under this section to give particulars of information to an applicant, nor invite the applicant to comment on or respond to the information, if the Tribunal gives clear particulars of the information to the applicant, and invites the applicant to comment on or respond to the information, under section 359AA.

8 Paragraph 359A(4)(b)

After “application”, insert “for review”.

9 After paragraph 359A(4)(b)

Insert:

(ba) that the applicant gave during the process that led to the decision that is under review, other than such information that was provided orally by the applicant to the Department; or
10 Paragraph 359B(1)(b)

After “comment on”, insert “or respond to”.

Note: The heading to section 359B is replaced by the heading “Requirements for written invitation etc.”.

11 Subsection 359B(1)

Omit “or the comments”, substitute “, or the comments or the response.”.

12 Subsection 359B(2)

Omit “or comments” (first occurring), substitute “, or comments or a response.”.

13 Subsection 359B(2)

Omit “or comments” (second occurring), substitute “, or the comments or the response.”.

14 Subsection 359B(3)

Omit “or comments”, substitute “, or comments or a response.”.

15 Paragraph 359C(2)(a)

After “comment on”, insert “or respond to”.

Note: The heading to section 359C is altered by omitting “or comments” and substituting “, comments or response in response to written invitation”.

16 Paragraph 359C(2)(b)

After “the comments”, insert “or the response”.

17 At the end of section 422B

Add:

(3) In applying this Division, the Tribunal must act in a way that is fair and just.

18 After section 424

Insert:
Schedule 1  Review processes of the Migration Review Tribunal and the Refugee Review Tribunal

424AA  Information and invitation given orally by Tribunal while applicant appearing

If an applicant is appearing before the Tribunal because of an invitation under section 425:

(a) the Tribunal may orally give to the applicant clear particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review; and

(b) if the Tribunal does so—the Tribunal must:

(i) ensure, as far as is reasonably practicable, that the applicant understands why the information is relevant to the review, and the consequences of the information being relied on in affirming the decision that is under review; and

(ii) orally invite the applicant to comment on or respond to the information; and

(iii) advise the applicant that he or she may seek additional time to comment on or respond to the information; and

(iv) if the applicant seeks additional time to comment on or respond to the information—adjourn the review, if the Tribunal considers that the applicant reasonably needs additional time to comment on or respond to the information.

19  Subsection 424A(1)

Omit “subsection (3)”, substitute “subsections (2A) and (3)”.

Note: The heading to section 424A is replaced by the heading “Information and invitation given in writing by Tribunal”.

20  Paragraph 424A(1)(a)

After “circumstances,“, insert “clear”.

21  Paragraph 424A(1)(b)

Repeal the paragraph, substitute:

(b) ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to the review, and the consequences of it being relied on in affirming the decision that is under review; and
22 Paragraph 424A(1)(c)

After “comment on”, insert “or respond to”.

23 After subsection 424A(2)

Insert:

(2A) The Tribunal is not obliged under this section to give particulars of information to an applicant, nor invite the applicant to comment on or respond to the information, if the Tribunal gives clear particulars of the information to the applicant, and invites the applicant to comment on or respond to the information, under section 424AA.

24 Paragraph 424A(3)(b)

After “application”, insert “for review”.

25 After paragraph 424A(3)(b)

Insert:

(ba) that the applicant gave during the process that led to the decision that is under review, other than such information that was provided orally by the applicant to the Department;

26 Paragraph 424B(1)(b)

After “comment on”, insert “or respond to”.

Note: The heading to section 424B is replaced by the heading “Requirements for written invitation etc.”.

27 Subsection 424B(1)

Omit “or the comments”, substitute “, or the comments or the response,”.

28 Subsection 424B(2)

Omit “or comments” (first occurring), substitute “, or comments or a response,”.

29 Subsection 424B(2)

Omit “or comments” (second occurring), substitute “, or the comments or the response,”.

30 Subsection 424B(3)
Schedule 1  Review processes of the Migration Review Tribunal and the Refugee Review Tribunal

1 Omit “or comments”, substitute “, or comments or a response,”.

31 Paragraph 424C(2)(a)

After “comment on”, insert “or respond to”.

Note: The heading to section 424C is altered by omitting “or comments” and substituting “, comments or response in response to written invitation”.

32 Paragraph 424C(2)(b)

After “the comments”, insert “or the response”.

33 Application

The amendments made by this Schedule apply to an application made, after this item commences:

(a) under section 347 of the Migration Act 1958 for review of an MRT-reviewable decision; or

(b) under section 412 of the Migration Act 1958 for review of an RRT-reviewable decision.