



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC:BMvk120324

12 March 2024

Dr James Popple
Chief Executive Officer
Law Council of Australia
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By email: natalie.cooper@lawcouncil.asn.au

Dear Dr Popple,

The Administrative Review Tribunal Bills – Next Steps

Thank you for the opportunity to contribute to the Law Council's submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the Administrative Review Tribunal Bill 2023 (**ART Bill**), the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Bill 2024 (**Consequential and Transitional Bills**).

The Law Society's submission is informed by its Public Law Committee. We reiterate the views set out in our submission to the Law Council of 15 January 2024 in respect of the ART Bill and the first Consequential and Transitional Bill.

We support the Additional Comments by Ms Kate Chaney MP in the House of Representatives Standing Committee on Social Policy and Legal Affairs report into its inquiry on the ART Bills. Ms Chaney suggested that the appointment process and related integrity measures would be improved by:

- the Minister being required to use Assessment Panels rather than the Minister having a discretion to do so;
- the Panels being required to consist of independent individuals with appropriate expertise, so they are not made up of a majority of Australian Government or political employees and contractors;
- the Minister being required to appoint only candidates shortlisted by the relevant Panel unless there are exceptional circumstances, with such an exceptional circumstances appointment only taking effect after the Minister has tabled a statement of reasons for the appointment process in the relevant House of Parliament;
- ensuring that, for integrity reasons, and to prevent the politicisation of the ART, a former member of the Commonwealth parliament should not be eligible to be appointed as a member until completion of a two year cooling-off period from the end of their term;

- requiring publication of details of the qualifications and prior work experience of all members of the ART; and
- requiring all appointees to the ART to resign political party memberships, and to resign from the ART before standing for political party pre-selection.¹

In our view, the requirements above should be embedded in the primary legislation, rather than in regulations. A transparent and merit-based selection process for members of the new ART is key to ensuring independent and high-quality decision-making within the Tribunal.

There should also be a requirement that the Minister make an annual report to Parliament, which includes a statement of the selection process for each appointment completed in the relevant reporting year. We suggest that this would enhance transparency and help to build trust and confidence in the new ART and in its officials.

Finally, we suggest that the performance standards for non-judicial members, as required under proposed clause 202, will further support the integrity of the merit-based selection process and the objective of promoting public trust and confidence in the new ART. We suggest consideration of a new requirement that it be made clear, in any reappointment process, that the member in question has met their performance standards.

We suggest that by implementing, within the ART Bill, the safeguards identified above in respect of the selection process, the Government would be taking the opportunity to demonstrate its commitment to the integrity of the new merits review body, and to position the ART against politicisation (including the potential appearance or allegations of politicisation).

Thank you for the opportunity to provide comments. Questions at first instance may be directed to Vicky Kuek, Head of Social Justice and Public Law Reform, on 02 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,



Brett McGrath
President

¹ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Report on the Inquiry into the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023*, February 2024, 76 online: [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000319/toc_pdf/InquiryintotheAdministrativeReviewTribunalBill2023andtheAdministrativeReviewTribunal\(ConsequentialandTransitionalProvisionsNo.1\)Bill2023.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000319/toc_pdf/InquiryintotheAdministrativeReviewTribunalBill2023andtheAdministrativeReviewTribunal(ConsequentialandTransitionalProvisionsNo.1)Bill2023.pdf).