

Our ref: HRC/PuLC:RMs130726

13 July 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON ACT 2612

By email: [REDACTED]

Dear Dr Popple,

ADMINISTRATIVE AND JUDICIAL REVIEW LEGISLATION AMENDMENT BILL 2026 (Cth)

The Law Society of New South Wales is grateful for the opportunity to inform the Law Council of Australia's submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Administrative and Judicial Review Legislation Amendment Bill 2026 (Cth) (**Bill**). The Law Society's Human Rights and Public Law Committees contributed to this submission.

The Law Society recognises that the reforms are intended to address the significant workload of the Administrative Review Tribunal (**ART**) and the Federal Circuit and Family Court of Australia (**FCFCOA**) (Division 2). We note that in seeking to achieve efficiency, however, it remains of the utmost importance to ensure that the integrity of merits and judicial review is maintained. This is not only on account of the fact that executive accountability is a central touchstone of the rule of law, but also because of the way in which administrative actions undertaken under Commonwealth Acts and instruments often have a direct impact on individuals' rights and interests, including vulnerable cohorts of the community.

Part 1 – Authorisations for registrars

The amendments contained in Part 1 of the Bill would allow the President to authorise a registrar of the ART to exercise the power to dismiss an application if there are no reasonable prospects of success. Further, a registrar (as opposed to a Member) will be empowered to make an order requiring the applicant to seek leave of the ART to make any subsequent application. The Explanatory Memorandum to the Bill states:

It is expected that this power would only be exercised by registrars where an application has no reasonable prospects of success based on clear objective criteria, such that an application is bound to fail.¹

We note, however, that the Bill itself does not contain any such criteria to guide the registrar's exercise of discretion. Further, we are concerned that vulnerable applicants in the protection visa refusal or cancellation

¹Explanatory Memorandum, Administrative and Judicial Review Legislation Amendment Bill 2026 (Cth), 8 [31].

jurisdiction may not be in a position to articulate their claim for protection until they are before a decision-maker and are afforded the opportunity to be heard. Given that the Department of Home Affairs does not always interview persons seeking protection, it is possible that this amendment will deny meritorious applicants a hearing because they are unable to articulate their situation in writing. This is of particular concern in respect of protection applications, due to the consequences that can flow from a dismissal of such applications. For example, such applicants may be at risk of genuine persecution or significant harm, including torture, cruel, inhuman or degrading treatment or punishment, or even death if returned to another country. We consider that the Statement on Compatibility with Human Rights accompanying the Bill focuses on the efficiency and flexibility benefits of the change, while failing to address in a satisfactory manner the way in which this change has the potential to curtail the right to a fair hearing.²

For these reasons, in our view, this power should not be extended to registrars. If the amendment proceeds, there should be additional safeguards to what is currently proposed. For example, the registrar should, at a minimum, consult with a Senior Member or the relevant Jurisdictional Area Leader before dismissing an application. We also suggest that, as a matter of fairness and due process, the applicant should be informed of the proposed dismissal of their application and be afforded an opportunity to respond before the power is exercised. This may be particularly important for applicants who face barriers to participating in ART processes, including people with disability, cognitive impairment, low literacy, limited English or other vulnerabilities.

Part 8—Approved forms for Migration Act reviews

Part 8 would amend subsection 347(2) of the *Migration Act 1958* (Cth) (**Migration Act**) to require an applicant for review of a reviewable migration decision or a reviewable protection decision to make the application in the approved form. While we acknowledge this procedural change is being suggested as an efficiency measure, we suggest that it may not enhance one of the statutory objectives set out at section 9 of the ART Act, namely that the ART is accessible and responsive to the diverse needs of parties to proceedings. We are concerned that, if the form is too prescriptive, it may further exacerbate the documented barriers to migration applicants applying to the ART. We note that merits review will be resource-intensive in some circumstances, and the administrative law system requires adequate funding and resourcing to ensure that it can deliver services in a fair and just manner.

Part 10—Notices of Decisions and Reasons

Part 10 of the Bill amends the ART Act and Migration Act to enable the ART to give reasons for decisions orally (excluding reviews relating to social security, veterans' entitlements, aged care, the National Disability Insurance Scheme, or other reviews that may be prescribed by regulations). Where this occurs, the ART would be required to provide a written statement of reasons, if requested by a party. We note this reflects the practice in the former Administrative Appeal Tribunal, which allowed for the delivery of oral reasons, with written reasons available on request.

The delivery of oral reasons may be considered desirable in terms of efficiency. However, we are concerned that there will be unrepresented applicants with particular vulnerabilities who appear before the ART and are unaware of their entitlement to request written reasons.

Our preference would be for oral reasons only to be allowed where the ART proposes to resolve the matter in the applicant's favour. If these amendments are passed, however, we consider that it would be important that before delivering oral reasons, the Member is satisfied that applicant understands that written reasons may be

² Ibid., Statement on Compatibility with Human Rights, 7.

requested and the relevant timeframe. We also emphasise the importance of ensuring that any process for obtaining written reasons is straightforward and accessible.

Part 12—Identity verification requirement for some Migration Act matters

The proposed amendments to Division 4 of Part 5 of the Migration Act introduce a new requirement for applicants who are not in immigration detention and who make an application for review of prescribed reviewable migration decisions or reviewable protection decisions to the ART to verify their identity.

The Law Society notes that there will be a cohort of applicants, who may not have sufficient information to verify their identity. For example, persons applying for protection visas may be barred from accessing certain identifying information from their country of origin or may have lost such information given the nature of the complex cross-border journeys they may have taken to arrive in Australia. Further, we note that verifying the identity of the applicant also often forms a substantive part of the review itself.

For these reasons, we suggest that it is inappropriate and unjust that the consequence of failing to comply with the identity verification requirement would be mandatory dismissal of the application. The legislation should therefore provide the option for applicants who face difficulties meeting the identity requirement to raise this as part of the review process itself.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Ronan MacSweeney', with a stylized flourish at the end.

Ronan MacSweeney
President