THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/PuLC:JBsb100925

10 September 2025

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

By email: [redacted]

Dear Dr Popple,

PROPOSED AMENDMENTS TO THE ADMINISTRATIVE REVIEW TRIBUNAL RULES 2024 – AUTHORISATIONS FOR REGISTRARS AND STAFF

Thank you for the opportunity to provide feedback to the Law Council to inform its submission to the Attorney-General's Department in relation to its proposal to amend the Administrative Review Tribunal Rules 2024 to enable registrars and staff to exercise greater procedural and administrative powers and functions. The Law Society's Human Rights and Public Law Committees contributed to this submission.

The Law Society notes that the Administrative Review Tribunal (**ART**) is experiencing high levels of applications for the review of Government decisions which has resulted in an on-hand caseload of over 110,000 cases.[1] We therefore consider it appropriate for the Tribunal to seek to streamline its pre-hearing case management processes.

We consider the majority of the suggested proposals outlined at p 2 of the Discussion Paper to be uncontroversial. In our view, however, the proposals in relation to the delegation of the following powers and functions should be reviewed to ensure procedural fairness and accountability in the ART. This will also help to ensure that powers involving a significant exercise of discretion that may impact the applicant and/or their matter are appropriately managed.

Functions proposed to be delegated to registrars

- **Section 359A of the *Migration Act 1958* (Cth) (Migration Act)**

Section 359A of the Migration Act requires the ART to give applicants who are seeking review of a reviewable migration decision the particulars of any information that the ART considers **would** be the reason, or a part of the reason, for affirming the decision that is under review, and to invite the applicant to comment on this information (emphasis added). The obligation under s 359A may arise before, during or after a hearing.[2]

[1] Administrative Review Tribunal, Corporate Plan 2025–26, 1: https://www.art.gov.au/sites/default/files/2025-08/ART_Corporate_Plan_2025-26.pdf.
[2] See discussion of what was then s 424A of the Migration Act in *SZBYR v Minister for Immigration and Citizenship* [2007] HCA 26 at [13] per Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ, citing decision in *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 24 which established that the temporal effect of s 424A 'is not limited to the pre-hearing stage'.

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In our view, it should be the final decision maker (i.e., the ART Member) who makes the assessment about the relevant information which would be the reason for affirming the decision and to which the applicant is invited to respond . Without understanding the approach which will be adopted by the final decision maker, it may be difficult for a Registrar to identify the relevant adverse information and communicate to a review applicant why that information would result in a decision being affirmed.

There may be cases where there is a difference of opinion between the Registrar issuing the s 359A notice and the decision-maker regarding the relevant information, which would require the decision maker to issue a supplementary request to the applicant pursuant to s 359A. This may increase the administrative burden on the ART Member, as well as create confusion and uncertainty for the applicant who is issued multiple letters.

Functions proposed to be delegated to staff members

- **Section 68 of the *Administrative Review Tribunal Act 2024* (Cth) (ART Act) - Appointment of an interpreter**

We agree that it is appropriate for staff members to be given powers under the ART Act to appoint an interpreter pursuant to s 68. In our view, however, a staff member should not be able to refuse to appoint an interpreter. As such a refusal could amount to a denial of procedural fairness, we suggest that this power should only be exercised by an ART Member or Registrar.[3]

- **Section 74(1) of the ART Act – Summons to give evidence or produce documents**

We consider it to be inappropriate for a staff member of the ART to be delegated power to issue a summons. Considering a summons places a significant burden on the recipient in terms of requiring them to give the ART documents relating to a review; and/or attend a hearing and give evidence, this power should only be exercised by a Member or Registrar. This is particularly the case given failure to comply with a summons can constitute a criminal offence under s 116 of the ART Act.

Further, s 74(1) requires the person exercising the power to form a view, on reasonable grounds, that the information or document is relevant to a proceeding. We suggest that this discretion requires insight into the nature of the proceedings and therefore would be more appropriately be exercised by a Member or Registrar.

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,

Jennifer Ball

Jennifer Ball
President

[3] See *Cucu v District Court (NSW)* (1994) 73 A Crim R 240 at 243, 244 and 250.