Media Release

Law Council
OF AUSTRALIA

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Law Council flags fairness concerns in ART reform bill

Efficiency is important, but procedural fairness and access to justice must also be preserved in any reforms to the Administrative Review Tribunal (ART), the Law Council of Australia said today.

Appearing before the Senate Legal and Constitutional Affairs Legislation Committee as part of its inquiry into the Administrative and Judicial Review Legislation Amendment Bill (2026), the Law Council acknowledged the pressures faced by ART.

“The workload of the ART is significant and the number of applications to it is growing,” Law Council of Australia President, Tania Wolff said. “We understand why steps to improve the efficiency of the ART are necessary and support a range of measures outlined by this Bill.

“However, efficiency cannot come at the cost of procedural fairness. We have concerns with several aspects of the draft legislation.

“The Bill gives additional powers to registrars; including the power to dismiss an application if they are satisfied it has no reasonable prospect of success.

"Our position is that this power is more appropriately exercised by ART members, who are subject to rigorous merits-based appointment requirements that registrars are not.

“Applicants to the ART include vulnerable cohorts for whom dismissal of an application without a hearing can have serious implications. Dismissal should only be exercised carefully in exceptional circumstances. The Bill lacks clear, objective criteria to guide the registrar’s discretion.

“If Parliament proceeds with this measure regardless, additional safeguards are needed at a minimum to mitigate the risk of inappropriate dismissals and prevent injustice occurring – including qualification requirements for registrars exercising the power, and a right for applicants to be heard before their application is dismissed.”

The Bill also provides the ART with the discretion to give oral decisions in certain kinds of reviews with written statements of reasons provided only on request, rather than as a matter of course. This could impact an applicant’s understanding of why a decision was made and their ability to seek legal advice to determine whether there are grounds for further review.

“Unlike social security, veterans' affairs, aged care and NDIS matters — where written reasons remain mandatory under the Bill — this protection is not extended to migration matters, despite many applicants in this jurisdiction facing similarly vulnerable circumstances," Ms Wolff said.

In addition, there is a marked lack of detail about the proposed identity verification processes in Part 12 of the Bill, which is left to regulation, and may disadvantage genuine applicants with limited access to identity documents. This includes, for example, protection visa applicants who may have fled their home country without documents, or who are stateless.

“To promote fairness, the ART should have the power to waive these requirements, as the Bill allows the Federal Circuit and Family Court of Australia to do,” Ms Wolff said.

“Legislative reform is not the only lever available to Government.” Ms Wolff said. “If efficiency is the primary purpose of the Bill, we also encourage the Government to ensure the ART is adequately resourced and address the structural funding crisis affecting legal assistance services across Australia.”

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