



NSWCCL SUBMISSION

SENATE STANDING COMMITTEES ON LEGAL AND CONSTITUTIONAL AFFAIRS

ADMINISTRATIVE REVIEW TRIBUNAL BILL 2023 [PROVISIONS] AND RELATED BILLS

7 March 2024

Acknowledgment

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (NSWCCL) welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs in regard to the Administrative Review Tribunal Bill 2023 [Provisions] and related bills.

The NSWCCL endorses the sentiment and recommendations made by many of the other civil society and advocacy organisations who submitted to the Inquiry into the Administrative Review Tribunal Bill 2023 (ART Bill) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (Consequential and Transitional Bill), including the Centre for Public Integrity, the Refugee Council of Australia, Liberty Victoria and The Australia Institute.

We welcome the introduction of the ART with the following caveats which have been clearly articulated by the organisations we reference above.

The ART Bill requires that positions be publicly advertised. We agree. However, there should be specified requirements for the minimum number of days for which an advertisement must be available.

To ensure that the appointments procedure to the ART is robust and merit-based, we support the recommendation from the Centre for Public Integrity:

- I. to mandate the use of appropriately-constituted assessment panels in the appointments process; and
- II. preferably, require that the Minister makes appointments from a shortlist created by these panels; or
- III. alternatively, in the case that that option (II) cannot be achieved, require that the Minister table a statement of reasons in any case where an appointment is made against panel advice.¹

We support the recommendation made by The Australia Institute that all appointees:

- I. do not work as lobbyists;
- II. have not worked for a government department whose decisions are reviewed by the ART within the last four years; and
- III. are not serving members of the defence force, or currently employed or contracted by the government.²

We agree that the procedures in the new ART Bill should apply equally to migration and refugee cases, and that the separate set of procedures under the Migration Act 1958 should be removed from the Consequential and Transitional Provisions Bill. We support the recommendations from the Refugee Council of Australia that the ART:

- I. should regularly review the refugee caseload to ensure there are sufficient staffing arrangements and resources to address the current caseload.
- II. review all cases upheld by the Immigration Assessment Authority IAA In light of changed country circumstances and the unfairness of the IAA process, all people who have had their cases upheld by the IAA and are still in Australia should have the opportunity to have their application reviewed again through a fair and competent review process.³

¹ Submission 17, Centre for Public Integrity, Inquiry into the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023

² Submission 19, The Australia Institute, , Inquiry into the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023

³ Submission 25, Refugee Council of Australia, , Inquiry into the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023

NSWCCL also advocates for proper resourcing for the ART to ensure that decisions are made within 6 months of filing an application.

The ART Bill outlines a transparent and merit-driven process for appointments, offering a chance to rebuild trust in administrative review. This would mark a significant departure from the politicized and opaque approach currently employed in AAT appointments.

However, there remains a pressing need to further refine the appointments procedure. It is essential to guard against replacing a broken system with a model that will ultimately not restore public trust and not achieve the stated aims for the ART. There remains a pressing need to further refine the appointments procedure.

We trust this short submission will be useful to the committee.

Yours sincerely,

Tim Roberts
Secretary
NSW Council for Civil Liberties

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