



21 January 2005

Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

By Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Secretary,

### **Inquiry into the Administrative Appeals Tribunal Amendment Bill 2004**

The Australian Lawyers Alliance, formerly the Australian Plaintiff Lawyers Association, is an association of lawyers and other professionals dedicated to the protection and promotion of justice, freedom and the rights of the individual.

Over the last ten years the Lawyers Alliance and its predecessor have made many submission to government inquiries concerned with law reform. A recurring theme in our submissions has been support for the principles and institutions of our common law system, which serve to ensure equality and fairness before the law and a fearless independent judiciary free from political influence, as required under the Westminster system of government. Confidence in this system requires that there be a perception of adherence to these principles, as well as adherence in fact.

The proposed reforms to the Administrative Appeals Tribunal (AAT) involve broad procedural modifications aimed at increasing efficiency. Given our members' historical interest in personal injury and other areas of tort law, we are not in a position to offer detailed comment on these procedural changes.

However, the proposal to modify the requirement for appointment as President of the AAT is of great concern to the Lawyers Alliance. Taken together, the capacity to appoint a legal practitioner of only five years standing and removal of the obligation to provide tenure mean that the current high standard of judicial independence enjoyed by Presidents and Presidential Members of the Tribunal will be seriously eroded.

With respect, the Lawyers Alliance can see no valid reason why the standard of judicial independence in the AAT – Australia’s highest administrative tribunal – should be any lower than that guaranteed to judges of Federal courts.

This erosion of the independence of the President will be compounded by the new rules allowing the President to remove members from hearings in a particular matter: s23(2)(b)(iii). While it is clear that the rules are intended to preserve the interests of justice, it seems inevitable that the erosion of Presidential independence caused by the loss of tenure will create at least the perception of political influence. The removal of a Tribunal member by a President whose appointment was publicly perceived to be political could create a scandal impugning the prestige and credibility of the AAT.

The amendment of section 19 to allow the Attorney General, rather than the Governor General, the right to move members from one division to another also represents increased political control of the work of the Tribunal.

The Lawyers Alliance supports the initiative to modernise the working of the AAT. However, in our view, no efficiency or fiscal imperative should supersede the interests of justice – both in fact and in perception. The erosion of judicial independence all stems from the removal of guaranteed tenure for Presidential Members. The Lawyers Alliance respectfully submits that these changes to tenure of Presidential members should not proceed.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Eva Scheerlinck', written in a cursive style.

Eva Scheerlinck  
Chief Executive Officer.