

25 January 2005

Ms Kelly Paxman  
Acting Secretary  
Senate Legal and Constitutional Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Paxman

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

On 1 December 2004, the Senate referred the provisions of the Administrative Appeals Tribunal Amendment Bill 2004 to the Senate Legal and Constitutional Legislation Committee (“the Committee”) for inquiry and report by 10 March 2005. The Committee has invited written submissions to its inquiry by 21 January 2005 (extended to 25 January 2005). We note that the Committee is particularly interested in any concerns relating to the effects the Bill might have on the independence of the Tribunal, and on impacts of procedural changes on the AAT process.

The Law Council of Australia provided submissions to the Attorney-General on exposure drafts of the Bill, dated 30 March 2004 and 16 June 2004. Those submissions are attached for reference.

I am pleased to enclose the attached submission, prepared by the Administrative Law Committee of the Law Council’s Federal Litigation Section. The Customs & International Transactions Committee of the Business Law Section has also seen and endorsed these comments.

Please note that due to time constraints these comments have not been considered by the Executive or Directors of the Law Council.

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read "J. Webb." The signature is written in a cursive style with a large, looping initial "J" and a period at the end.

**Peter Webb**  
Secretary-General

**COMMENTS ON**  
**THE ADMINISTRATIVE APPEALS ACT AMENDMENT BILL 2004**

While the Law Council supports most of the proposed amendments contained in the Bill (in particular the Law Council supports the procedures dealing with alternative dispute resolution) it has concerns with some aspects of the Bill.

The Law Council is opposed to the expansion of the qualification requirements for appointment as President of the AAT to include a legal practitioner enrolled for at least five years in an Australian jurisdiction, in addition to a Judge (or former Judge) of the Federal Court or the Supreme Court of a State or Territory (amended subsection 7(1)). The Law Council considers that the President should be selected from a pool consisting of Judges or ex-Judges of the Federal Court, and does not support the proposed extension. It is the Law Council's view that a sitting Federal Court Judge is the appropriate person to head the Tribunal. Any appointment less than this, in particular of a legal practitioner with no judicial experience, downgrades the Tribunal as a whole. The President has duties which are akin to those exercised by a Judge, such as the requirement that the President consent to any referral of a question of law to the Federal Court of Australia (item 176 in the Bill). The important role of the President of the Tribunal is also highlighted by:

- the powers presently granted by section 20 of the AAT Act and the proposed amendments to this section contained in item 40 of the Bill; and
- the new proposed section 23A providing for reconstitution of the Tribunal.

These powers highlight why a practising Federal Court Judge with tenure is the most appropriate person to lead the Tribunal.

The Law Council is opposed to the repeal of subsections 8(1) and 8(2), which is designed to ensure that all future appointments to the AAT will be for fixed terms only, and that tenured appointments will no longer be possible. It is the Law Council's view that this amendment also downgrades the Tribunal as a whole and has the potential to seriously undermine its independence. The result of such a proposal could be short terms of appointment and, combined with the proposal for eligibility for reappointment, the actual and perceived independence from the Executive of the members of the AAT would be diminished. Generally the Law Council supports longer terms of appointment and believes that the alternative of tenured appointments to the age of 70 years should be available where appropriate in order to secure good appointments.

The Law Council does not support in its entirety the amendment to allow a multi-member tribunal to operate without the current requirement of the presence of one presidential or senior member (item 47 of the Bill, repealing section 21(1AB) of the Act). The Law Council believes that in the case of multi-member tribunal hearings, owing to the legal complexities usually associated with such cases, that at least one member of the tribunal should be legally qualified.

The Law Council is concerned by the amendments which will enable a Tribunal to require an applicant to amend an insufficient statement made in an application for review of a decision, by notice (item 95 of the Bill). The Law Council considers that one of the great benefits of the AAT is its informal character, a feature highlighted by the fact that anybody can make application to the AAT for review of an administrative decision. Accordingly, the introduction of this proposal could disadvantage litigants who have no means of acquiring professional assistance. The Law Council believes there is ample opportunity later in the process for refinement of an applicant's case and identification of the relevant issues to be determined at a hearing. The Law Council would not object to an

amendment which provided that the Tribunal may request an amended statement from an applicant later in the process, at the earliest, after the applicant has had the opportunity to attend a preliminary conference.

The Explanatory Memorandum says that the proposed new subsection 29(1B) (set out in item 95) enables the Tribunal to obtain a further statement of reasons from the applicant if the Tribunal is of the opinion that the statement provided with the application does not assist the Tribunal in identifying why the applicant believes the decision is not the correct or preferable decision. The Explanatory Memorandum also makes the further important point that the request for a further statement by the Tribunal would not, of itself, mean that the original application was not a valid application. If the amendment is otherwise to be made this latter point should be made explicit in the legislation itself rather than in the Explanatory Memorandum only. Further, if there is not an equivalent provision for the Tribunal to give notice to the respondent so as to elucidate the respondent's statements of reasons then that power should be given to the Tribunal.

The Law Council wishes to make some further comments on particular items of the Bill, as set out below.

**Item 40** proposes a new subsection 20(2)(e), which enables the President to give directions regarding "the conduct of reviews by the Tribunal". While this appears to be aimed at general practice and procedure, it is not qualified. An earlier concern that the Law Council conveyed in response to the exposure Bill was that such a power should not extend to "the manner in which individual members of the Tribunal might conduct reviews as this would tend to undermine their independence".

**Item 73** provides for the insertion of a new subsection 25(4A) which, by its terms, suggests that the Tribunal may itself decide to limit the scope of the review of the decision. The proposed subsection states that the Tribunal may determine the scope of the review of a decision by limiting the

questions of fact, the evidence and the issues that it considers. On its face, this provision could not be supported. The Explanatory Memorandum for item 73 puts a quite different light on what is proposed. It is there explained that the power is directed to cases where parties call upon the Tribunal to consider or make determinations on evidence or issues of law and fact that are not relevant to the decision that is under review. It is further stated in the Explanatory Memorandum that “[i]t is not intended that this section will allow the Tribunal to limit its own jurisdiction conferred by the Act or other legislation”.

The problem is that the terms of the proposed amendment do not coincide with the mischief explained in the Explanatory Memorandum. Either the proposed provision is unnecessary, or the mischief to which the provision is directed should be more clearly expressed in the Bill. This is particularly important given that the AAT Act, and the jurisdiction which it confers, is used by and intended to be used by non-lawyers and by people with little or no legal training.

**Item 74** proposes to substitute subsections dealing with the modification of certain provisions of the AAT Act by other enactments. It would be preferable if those exclusions or modifications were effective only if the other enactment expressly referred to the relevant provisions of the AAT Act.

**Item 106** proposes to add subsection 33(1AA) so as to impose an obligation on the person who made the decision to use his or her best endeavours to assist the tribunal to make its decision in relation to the proceeding. This proposed amendment is supported but it may be improved if the words “correct or preferable” are also included in the proposed amendment so that the obligation on the decision-maker is not only to assist the Tribunal to make its decision, but to assist the Tribunal to make the correct or preferable decision. As drafted the proposed section could be construed as limited to facilitating merely the decision-making processes of the Tribunal.

**Items 173 and 174.** Although perhaps not a matter for the legislation, we would expect that the Federal Court and the Federal Magistrates Court may have to amend their Rules to put in place a procedure to deal with the possibility of further evidence being received for the purposes of making any findings of fact.

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**Annexure A – Submissions of the Law Council, dated 30 March 2004**



**LAW COUNCIL OF AUSTRALIA**

**ADMINISTRATIVE LAW COMMITTEE**

**COMMENTS OF THE ADMINISTRATIVE LAW COMMITTEE**  
**OF THE LAW COUNCIL ON THE**  
**SUMMARY OF PROPOSED PROVISIONS OF THE**  
**ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 2004**

1. The Administrative Law Committee of the Law Council has not been provided with the Administrative Appeals Amendment Bill 2004 but only a summary of proposed amendments to it. Although this summary is expressed, in the letter from the Attorney-General of 17 February 2004, to be “detailed”, in a number of instances it is not expressed with enough detail to enable the Committee either to provide its conclusive comments or in some instances to provide any comment at all.
2. The Committee would like to be able to comment on the detail of the drafting when it becomes available.
3. There might be other matters which warrant legislative attention – see for example the decision of the Full Federal Court in relation to the issue of remitter in *Commissioner of Taxation v Zoffanies Pty Ltd* [2003] FCAFC 236.
4. Please find attached the Committee’s comments, adopting the form of the Schedule annexed to the Attorney-General’s letter.

<b>No.</b>	<b>Comments of the Administrative Law Committee of the Law Council on the proposed amendments</b>
1	It is not possible usefully to comment without seeing the terms of the proposed objects clause.
2	We support this proposal.
3	We would support the availability of alternative dispute resolution techniques. We would also support a power that enabled the Tribunal to compel mediation in appropriate circumstances. However, it should be noted that in the context of some administrative decisions the flexibility of a decision-maker to mould its responses may be limited. At all times it is bound to act in accordance with the relevant statutory regime.
4	We support proposals such as these which add flexibility.
5	We support this proposal.
6	We support this proposal.
7	We support this proposal.
8	If this is of a technical nature and if the result is to make the AAT Act more “user friendly” then the proposal is supported.
9	The Law Council in its “Submission to the Senate Legal and Constitutional Legislation Committee Inquiry into the Administrative Review Tribunal Bill 2000” (a copy of which is enclosed) (“Senate Submission”) expressed its concern that the President of the ART might not have appropriate, or indeed any, legal skills. The Council noted that the strength of the AAT has been attributable to the quality of its Presidents. While there might be something to be said for the proposal that the President be drawn from a pool consisting of Judges or ex-Judges, the Council, having given further consideration

<b>No.</b>	<b>Comments of the Administrative Law Committee of the Law Council on the proposed amendments</b>
	to the matter, would not support an extension to a Federal Magistrate or legal practitioner of 5 years standing. It is the Council's view that a sitting Federal Court Judge is probably the best placed person to head the Tribunal.
10	The proposal to require appointments of <b>all</b> members of the AAT to be for terms of <b>up to 7</b> years is not supported. The result of such a proposal could be very short terms of appointment including for Deputy Presidents and Senior Members and, combined with the proposal for eligibility for reappointment, the actual and perceived independence from the Executive of the members of the AAT would be undermined if not diminished. The Law Council repeats its comments at section 5.1-2 of its Senate Submission.
11	We support this proposal.
12	We support this proposal.
13	We support this proposal.
14	We would not like to comment on proposals relating to remuneration in the abstract, other than to note that we would oppose any suggestion which would be likely to diminish the status of the AAT.
15	This is not opposed provided that the relevant Minister is the Attorney-General. If it is to be proposed that the Minister administering the portfolio relevant to the area of the Tribunal's jurisdiction would make the relevant appointments we would oppose that proposal as tending to undermine the independence of the Tribunal.

No.	Comments of the Administrative Law Committee of the Law Council on the proposed amendments
16	The proposal to expand the powers of the President to issue directions cannot usefully be commented on in the abstract. We would not support a power in the President to issue directions if that power were to extend to the manner in which the <b>individual members</b> of the Tribunal might conduct reviews as this would tend to undermine their independence.
17	We support the first part of the proposal. As to the suggestion that the President should be entitled to reconstitute the Tribunal to assist its “expeditious” and “efficient” conduct we would like to see the details of that proposal before we comment.
18	We support this proposal.
19	We are not sure why this amendment needs to be made.
20	This proposal is to insert a provision that the Tribunal may limit the scope of the review. It is not at all clear what this means and further comment is not possible until details of this proposal are available.
21	We do not support a requirement which would limit an applicant to the grounds outlined in the reasons for the application for review. First, this would disadvantage applicants who had no professional assistance. Secondly, there is plenty of opportunity later in the process, whether by way of statements of issues or otherwise, and including through the preliminary conference process, for the issues that are to be determined at a hearing to be adequately identified. Thirdly, it may sometimes be quite difficult to lay down at the outset with any precision why a decision is wrong, particularly if the applicant has not at the stage of the

<b>No.</b>	<b>Comments of the Administrative Law Committee of the Law Council on the proposed amendments</b>
	application had access to the reasons for the decision.
22	The expression of an obligation on a decision-maker to assist the Tribunal is probably sensible but we would want to see the details of this proposal before commenting further.
23	We support this proposal.
24	In providing documents to the Tribunal we agree that the test of relevance should be an objective one rather than a subjective one. One matter which might need to be considered is the effect (if any) on a decision-maker having to make available any legal advice it received as part of its decision-making process.
25	We query whether it is intended that the obligation on a Respondent to provide copies of all medical and expert reports is intended to apply only to such documents once they are final and signed or whether it is intended to apply to drafts and extend to all communications with potential experts and is intended to discourage a Respondent from “shopping” for experts. We would like to understand further the details of the proposal and the rationale for it before commenting in more detail.
26	The proposal to impose a time limit on decision makers when reconsidering a decision that the Tribunal has remitted to them is supported. Consideration may need to be given to prescribing a time and having some flexibility for that time to be extended – at the same time ensuring that the Tribunal is not functus officio.
27	The Council would like to see the detail of the proposed

<b>No.</b>	<b>Comments of the Administrative Law Committee of the Law Council on the proposed amendments</b>
	amendment before it comments.
28	We support this proposal.
29	We support this proposal.
30	We support this proposal.
31	The proposal to allow persons summonsed to produce documents be paid fees for compliance with the summons to appears sensible but careful thought may need to be given to the scale of fees payable especially in circumstances where in most of the Tribunal's jurisdictions if an applicant is ultimately successful it will not be able recover any of its fees including fees which were necessarily expended so that documents would be produced by third parties. Consideration might be given to inserting appropriate provisions in the Federal Proceedings (Costs) Act 1981.
32	We support this proposal.
33	We support this proposal.

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**Annexure B – Submissions of the Law Council, dated 18 June 2004**



18 June 2004

The Hon Philip Ruddock MP  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney-General

### **REFORM OF THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)**

I refer to the Law Council's correspondence of 30 March 2004 in which a copy of our comments in relation to proposals to reform the Administrative Appeals Tribunal (AAT) were provided.

The Law Council has been pleased to review a copy of the exposure draft of the *Administrative Appeals Tribunal Amendment Bill 2004* ("the Draft Bill") which was released in late May, and supports almost all of the proposed changes. However, the Law Council remains concerned by the following matters:

- The Law Council is opposed to the expansion of the qualification requirements for appointment as President of the AAT to include a federal magistrate, a former judge, a former federal magistrate or a legal practitioner enrolled for at least five years in an Australian jurisdiction, in addition to a Judge of the Federal Court (items 16 and 23 of the Draft Bill). The Law Council considers that the President should be selected from a pool consisting of Judges or ex-Judges of the Federal Court, and does not support any extension to a Federal Magistrate or legal practitioner of 5 years standing. It is the Law Council's view that a sitting Federal Court Judge is the appropriate person to head the Tribunal, and that such appointments are essential in order to continue to recognise the status, independence and effective functioning of the Tribunal. Any appointment less than this downgrades the Tribunal as a whole. Furthermore, the Law Council notes that the President has duties which are akin to those exercised by a Judge, such as the requirement that the President consent to any referral of a question of law to the Federal Court of Australia (items 142 and 142A in the Schedule to the Draft Bill).

Law Council of Australia Limited - ABN 85 005 260 622

GPO Box 1989, Canberra,  
ACT 2601, DX 5719 Canberra

Telephone +61 2 6246 3788  
Facsimile +61 2 6248 0639

19 Torrens St Braddon ACT 2612  
[www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

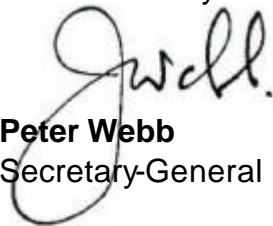


- The proposal to allow a multi-member tribunal to operate without the current requirement of the presence of one presidential or senior member (items 40-41 of the Draft Bill), is not supported in its entirety . The Law Council believes that in the case of multi-member tribunal hearings, owing to the legal complexities usually associated with such cases, that at least one member of the tribunal should be a lawyer.
- The proposal to require appointments of all members of the AAT to be for terms of up to 7 years is not supported (items 18-21 of the Draft Bill). The result of such a proposal could be very short terms of appointment and, combined with the proposal for eligibility for reappointment, the actual and perceived independence from the Executive of the members of the AAT would be diminished. Generally the Law Council supports longer terms of appointment and believes that the alternative of tenured appointments to the age of 70 years should be available where appropriate in order to secure good appointments.
- The Law Council is concerned by the proposals which will enable a Tribunal to require an applicant to amend an insufficient statement made in an application for review of a decision, by notice (item 81 of the Draft Bill). The Law Council considers that one of the great benefits of the AAT is its informal character, a feature highlighted by the fact that anybody can make application to the AAT for review of an administrative decision. Accordingly, the introduction of this proposal could disadvantage litigants who have no means of acquiring professional assistance. The Law Council believes there is ample opportunity later in the process for refinement of an applicant's case and identification of the relevant issues to be determined at a hearing. In light of item 60 of the Draft Bill, the Law Council would not object to an amended proposal which provided that the Tribunal may request an amended statement from an applicant later in the process, at the earliest, after the applicant has had the opportunity to attend a preliminary conference.

The Law Council would welcome your review of these matters. A copy of our previous submission is **attached** for reference.

Thank you for the opportunity to comment upon this important piece of legislation and I look forward to receiving your further advice on this matter.

Yours sincerely



**Peter Webb**  
Secretary-General



Law Council  
OF AUSTRALIA

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# Proposals to reform the Administrative Appeals Tribunal

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**Law Council of Australia submission to  
the Australian Attorney-General**

30 March 2004

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GPO Box 1989, Canberra,  
ACT 2601, DX 5719 Canberra

Telephone **+61 2 6246 3788**  
Facsimile +61 2 6248 0639

19 Torrens St Braddon ACT 2612  
[www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

## **EXECUTIVE SUMMARY**

1. The Law Council of Australia supports any reforms which will improve the efficiency of tribunals such as the Administrative Appeals Tribunal (AAT).
2. However, it is the strong view of the Law Council and its constituent bodies that such reforms should not be pursued at the expense of the overall integrity of the administrative appeals process.
3. Many of the reforms, as outlined in limited form to the Law Council of Australia, seek to improve the efficiency of the AAT, and Law Council supports many of these (as detailed below).
4. However, one major concern for the Law Council and its constituent bodies are a series of reforms which we believe suggest an underlying trend toward diminishing the current status of the AAT. Primarily this relates to the proposed reform which will downgrade the position of the President of the AAT by removing the requirement that they be a Judge of the Federal Court of Australia.
5. While the Law Council would not oppose the selection of the President from a pool consisting of Judges or ex-Judges of the Federal Court, the Council would not support an extension to a Federal Magistrate or legal practitioner of 5 years standing. It is the Law Council's view that a sitting Federal Court Judge is the best placed person to head the Tribunal, and that it is essential for its independent and effective functioning that this continue to be the case.
6. The Law Council has a number of other concerns in relation to practical aspects of the reform proposals which are detailed below.
7. The Law Council urges the Attorney-General to give careful and detailed consideration to these concerns.

## **THE LAW COUNCIL**

8. The Law Council of Australia is the peak national representative body of the Australian legal profession. The Law Council was established in 1933. It is the federal organisation representing approximately 40,000 Australian lawyers, through their representative Bar Associations and Law Societies (the "constituent bodies" of the Law Council).
9. The constituent bodies of the Law Council are, in alphabetical order:
  - ACT Bar Association;
  - Bar Association of Queensland;
  - Law Institute of Victoria;
  - Law Society of the ACT;
  - Law Society of NSW;
  - Law Society of the Northern Territory;
  - Law Society of South Australia;
  - Law Society of Tasmania;
  - Law Society of Western Australia;

- New South Wales Bar Association;
  - The Northern Territory Bar
  - Queensland Law Society
  - the Western Australia Bar; and
  - the Victorian Bar.
10. The Law Council notes that in relation to this discussion paper separate submissions may be lodged by some of these bodies.
  11. The Law Council speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

## **BACKGROUND**

12. The *Administrative Appeals Tribunal Act 1975* (AAT Act). The AAT Act and the *Administrative Appeals Tribunal Regulations 1976* (AAT Regulations) set out the powers and functions of the AAT. It is the function of the Tribunal to independently review, on their merits, administrative decisions made by the Australian (and, in limited circumstances, State) Government ministers and officials, authorities and other tribunals.
13. The Tribunal is also sometimes involved in conducting reviews into administrative decisions made by some non-government bodies.
14. In some circumstances, the Tribunal only hears matters after an internal review by a department or agency has been conducted in respect of the primary decision. In other cases, review by the Tribunal is only available after intermediate review by a specialist tribunal, such as the Social Security Appeals Tribunal (SSAT).
15. The jurisdiction of the Tribunal to conduct reviews is conferred by the legislation under which the original decision was made.
16. The Tribunal's membership consists of a President, Presidential Members (including Judges and Deputy Presidents), Senior Members and Members. The President is a Judge of the Federal Court of Australia. Some Presidential Members are Judges of the Federal Court or Family Court of Australia. All Deputy Presidents are lawyers. Senior Members may be lawyers or have special expertise in other areas. Members have expertise in areas such as accountancy, actuarial skills, administration, aviation, engineering, environment, insurance, law, medicine, military affairs, taxation, social welfare and valuation.
17. In September 2003 the Law Council wrote to the Attorney-General inquiring as to whether the Australian Government had any plans to make reforms to the federal merits review system. In response, the Attorney-General wrote to the Law Council of Australia in February 2004 seeking its input into a number of proposed amendments to the AAT Act. In his correspondence the Attorney-General indicated that the reforms were desirable in order to improve the efficiency of the AAT.

18. The Law Council has not yet received a copy of the draft Bill, but it has been provided with a list of reform proposals, upon which this submission is based.
19. The comments of the Law Council and its constituent bodies provided in the following submission should be viewed within this context. The Law Council reserves the right to refine its comments and make further submissions when the Bill is released publicly or introduced into the Federal Parliament.

## **THE PROPOSED REFORMS**

20. The reforms, as provided to the Law Council, are contained in table form at **Attachment A**.

## **LAW COUNCIL CONCERNS AND COMMENTS IN RELATION TO THE PROPOSALS**

21. The Law Council welcomes amendments which aim to improve the effective operation of the AAT.
22. We support reforms aimed at increasing the use of alternative dispute resolution (as outlined at point 3), including the power to compel such proceedings in appropriate cases. However, we wish to examine this proposal in more detail when the Bill is finalized, to ascertain how it intends dealing with unwilling parties.
23. We also generally support the proposals outlined in point 4 and note their potential to improve the flexibility of the AAT. This will be pronounced in some states and territories such as Tasmania, where there is greater potential for delays because of unavailability or conflict in schedules of part-time members. Some clarification may be needed in relation to the issue costs orders in light of the fact the AAT is not a Chapter III court.
24. However, the related proposal outlined at point 18, to allow a multi-member tribunal to operate without the current requirement of the presence of one presidential or senior member, is not supported in its entirety. The Law Council believes that in the case of multi-member tribunal hearings, owing to the legal complexities usually associated with such cases, that at least one member of the tribunal should be a lawyer. Indeed, in the case of matters in specialist areas, such as customs, compelling grounds exist for requiring all members of the multi-member tribunal to be lawyers.
25. The resounding consensus among our constituent bodies is that they are strongly opposed to the reforms relating to the expansion of the qualification requirements for appointment as President, to include a Federal Magistrate, a former Federal Magistrate or a legal practitioner enrolled for at least 5 years in an Australian jurisdiction (as outlined at point 9). However, the Law Council would not oppose the selection of the President from a pool consisting of Judges or ex-Judges of the Federal Court.
26. It is argued that it is necessary to preserve the current requirement that the AAT President be a Federal Court Judge on a number of fronts. Firstly, it is needed to

ensure the proper independence of the AAT from the Executive arm of Government.

27. Secondly, there are also distinct advantages in the one person having the capacity to determine applications for merits review and judicial review in the same or related matters. Those advantages include efficiency, the avoidance of delay, consistency of approach and savings in times and cost. If the President of the Tribunal is not a judge of the Federal Court, those potential advantages will be prejudiced if the number of Federal Court judges who are also members of the AAT overall is reduced by one.
28. Finally, the Law Council believes it beneficial for the current status of the AAT Presidency position that it be restricted to a pool of applicants comprising either current or former judges of the Federal Court. It is important in relation to both the functioning and status of the AAT, that this important position not be downgraded as contemplated in the current proposals.
29. The proposal to require appointments of all members of the AAT to be for terms of up to 7 years (at point 10) is not supported. The result of such a proposal could be very short terms of appointment and, combined with the proposal for eligibility for reappointment, the actual and perceived independence from the Executive of the members of the AAT would be diminished.
30. The proposals outlined in regard to remuneration (at point 14), are not matters which the Law Council wishes to comment upon extensively. However, we would question how this proposed reform will improve the quality and status of the AAT's membership and therefore its effective functioning. Such matters might be better considered by an appropriate remuneration tribunal.
31. There are a number of other proposals which also suggest a trend toward diminishing the current status and independence of the AAT. This includes a proposal (outlined at point 15) to give the Minister the power to assign members to Divisions directly, rather than the Governor General as is currently the case. While it is noted that the Governor General will act on the advice of the Government of the day in relation to such matters, the amendment will only serve to undermine the actual and perceived independence of the AAT. The Law Council believes this amendment is unnecessary and it would be strongly opposed to referring such powers to an applicable Minister responsible for administering the Act most frequently the subject of the business of a particular Division. If this aspect of the reforms is to proceed, such powers should not be referred to any Minister other than the Attorney-General.
32. It is unclear as to the extent of the reforms considered at point 16, which suggest expanding the powers of the President to issue directions in relation to the operation of the tribunal. The Law Council would not support proposals which sought to undermine the independence of individual members by allowing directions as to the manner in which the members conduct or hear reviews.
33. The Law Council is not opposed to issuing the President with power to reconstitute a tribunal in circumstances where a member becomes unavailable. However, we wish to see further detail on this proposal to ensure that such a power is limited to circumstances of this nature.

34. We consider that the proposals in relation to time limits (at point 19) seek to spell out what is already implicit in the legislation. We question whether this is necessary, having regard for the current approach (reflecting the common law position) which provides a fair and accountable basis for the extension of out of time appeals.
35. The proposal in relation to limiting the scope of a review (at point 20) is supported to the extent that it seeks to allow the tribunal to confine itself to matters raised by the parties. However, if this proposal contemplates a broader power, then the Law Council will need to consider this matter further when the Bill is released.
36. The Law Council is very concerned by the reform proposals aimed at limiting an applicant's case to the grounds listed in their application. The Law Council considers that one of the great benefits of the AAT is its informal character, a feature highlighted by the fact that anybody can make application to the AAT for review of an administrative decision. A provision limiting an applicant to the grounds in the reasons for the application for review would severely disadvantage litigants who have no means of acquiring professional assistance. The Law Council believes there is ample opportunity later in the process for refinement of an applicant's case and identification of the relevant issues to be determined at a hearing.
37. We support the reforms associated with imposing obligations on decision makers (at point 21) but urge that some regard is had for the difficulties which may be imposed upon decision makers when drafting the provision.
38. The Law Council believes that, in relation to the proposal requiring respondents to provide the tribunal with all relevant documents to the review of the decision (at point 24), it is implicit in the current legislative scheme that the test for relevance is an objective one. However, we do not oppose making this clear. We are generally supportive of the further proposals in relation to expert reports (at point 25), though we wish to consider this matter further when we receive the further detail on the proposal.
39. In relation to proposal 26, whilst the Law Council does not oppose the imposition of time limits, it is suggested that such a limit be prescribed and that further provision should be made to allow for decision makers to apply for an extension of time in an appropriate case.
40. Given the reform at point 27 relates to the ARC report, compiled some years ago, and in light of the great substance of the proposed reform, the Law Council wishes to examine the proposal more thoroughly when the precise wording of the intended reform is made available.
41. While the Law Council is not opposed to the reforms in relation to the payment of fees for compliance with a summons (as outlined at point 31), it notes that careful consideration will need to be given to the scale of any such fees. Consideration will also need to be given as to whether the fees will extend to matters such as legal advice.