Towards a Progressive Future: The Advent of the Administrative Review Tribunal and Its Transformative Impact on Administrative Law

Dr Jason Donnelly*

This article scrutinises the substantial reformation in Australian administrative justice following the projected establishment of the Administrative Review Tribunal (ART), supplanting the Administrative Appeals Tribunal (AAT). It critically assesses two principal recommendations for the ART: the establishment of fundamental statutory objectives and a discourse against the obligation for applicants to substantiate their grounds prior to accessing the ART's jurisdiction. The article foregrounds the imperative of deriving insights from the AAT's jurisprudence and legislative intent to shape the ART's objectives. It engages with the complexities of harmonising principles of fairness, justice, economy, informality, and expediency in tribunal processes. The article posits that the Administrative Review Tribunal Bill 2023 (Cth) (ART Bill) marks a notable progression in administrative law, focusing on fairness, justice, efficiency, and responsiveness. It recognises the challenges inherent in implementing these goals, especially in maintaining a balance between efficiency and thoroughness and in ensuring widespread accessibility and public trust.

INTRODUCTION

In the year 2023, the Commonwealth of Australia initiated a significant reformation in the realm of administrative justice[1] by decreeing the dissolution of the Administrative Appeals Tribunal (AAT) and heralding the inception of the Australian Review Tribunal (ART).[2] The declarative goals for the ART delineated by the government underscore its commitment to crafting a body that epitomises user-centricity, efficiency, accessibility, impartiality, and equitable justice.[3]

This article aims to elucidate and critically evaluate two salient recommendations imperative for the incorporation into the foundational structure of the nascent ART. The initial recommendation interrogates the essential statutory objectives that ought to be codified within the ART's governing framework.

Subsequently, the second recommendation deliberates on the advisability of instituting a continuous, compulsory stipulation for applicants to articulate the grounds upon which they invoke the ART's jurisdiction. The article ultimately posits that it should not be incumbent upon an applicant to provide a compulsory explication of the grounds for their application prior to engaging with the processes of the ART.

This article also provides an evaluation of the proposed statutory objectives outlined in the *Administrative Review Tribunal Bill 2023* (Cth) (referred to as the *ART Bill*). The introduction of the *ART Bill* into the Commonwealth House of Representatives occurred on 7 December 2023. Considering that the proposed legislation has not yet been enacted, there remains an opportunity for modifications to be implemented within the statutory framework.

* Senior Lecturer, Western Sydney University; Barrister-at-Law. This article expands upon a paper presented at the Public Law Conference, hosted by the Australian National University on 27 October 2023.

[1] Grant Hooper, "Judicial Review and Proportionality: Making A Far-Reaching Difference to Administrative Law In Australia or a Misplaced and Injudicious Search for Administrative Justice?" (2017) 88 AIAL Forum 29, 34.

[2] Australian Government, *A New System of Federal Administrative Review* <https://www.ag.gov.au/legal-system/new-system-federal-administrative-review>.

[3] Australian Government, n 3.

Statutory Objectives of the AAT

A rigorous approach to formulating the statutory architecture of the forthcoming ART necessitates a foundational examination of the incumbent statutory objectives governing the AAT.[4] Such an examination should be methodically oriented to dissect and analyse the principles underpinning the AAT's mandate, with a view to extrapolating empirical lessons that could inform the institutional ethos and functional imperatives of the ART.

To this end, a comprehensive discourse analysis of the legislative intent, as embedded within the AAT's statutory provisions, will be instrumental. This should include a careful analysis of s 2A of the *Administrative Appeals Tribunal Act 1975* (Cth) (the *AAT Act*).[5] The degree to which these objectives have been realised in practice can offer a pragmatic blueprint[6] for the ART's developmental trajectory.[7]

In tandem with legislative analysis, it is incumbent upon legal scholarship to incorporate a critical review of pertinent jurisprudence. Judicial interpretations act as both a mirror and a mold for statutory constructs; thus, an exploration of leading cases that have shaped the AAT's operational landscape is paramount.

The jurisprudential pathway serves as an indelible influence on the evolution of administrative law and can often be the catalyst for legislative reform. Furthermore, a nuanced understanding of this body of case law will provide an invaluable perspective on the judicial expectations and standards that have come to bear upon administrative tribunals. As such, the emergent jurisprudential trends[8] are not merely reflective of historical legal evolutions but are also predictive of future exigencies that the ART will need to navigate.

In synthesising these two dimensions – statutory objectives and jurisprudential developments – scholars and practitioners can construct a detailed, prescriptive framework for the ART. This framework should aim not only to rectify the shortcomings identified within the AAT's remit but also to proactively anticipate challenges and innovate in alignment with the dynamic contours of administrative justice.

Through such a detailed and scholarly approach, the establishment of the ART may represent not just the continuation of the AAT's legacy but a forward-looking reimagining of administrative review in Australia.

Section 2A of the *AAT Act* makes plain that the Tribunal is mandated to offer a review mechanism that is readily accessible[9] and operates under principles of fairness and justice.[10] The process should be cost-effective, informal, and expeditious,[11] with a duration and complexity that corresponds appropriately to the significance of the case at hand.[12] Moreover, the Tribunal's decision-making should foster public trust and confidence,[13] ensuring its role as a credible and reliable pillar of administrative justice.

The objectives outlined in s 2A of the *AAT Act*, while laudable in intent, present several challenges. Let us consider them.

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[4] See Editors, "Amendments to the Administrative Appeals Tribunal Act" (2006) 57 *Admin Review* 86.

[5] Sian Leathem and Soo Choi, "The AAT: Impact of Common Law on the Disclosure and Use of Information" (2016) 136 *Precedent* 10.

[6] Clem Lloyd, "Not Peace but a Sword – The High Court Under JG Latham" (1987) 11(2) *Adelaide Law Review* 175, 190.

[7] Peter McDermott, "Pearce, Administrative Appeals Tribunal" (2013) 32(1) *University of Queensland Law Journal* 217, 217–218.

[8] See Mary Crock and Kate Bones, "Australian Exceptionalism: Temporary Protection and the Rights of Refugees" (2015) 16(2) *Melbourne Journal of International Law* 522, 527.

[9] *Administrative Appeals Tribunal 1975* (Cth) s 2A(a).

[10] *Administrative Appeals Tribunal 1975* (Cth) s 2A(b).

[11] *Administrative Appeals Tribunal 1975* (Cth) s 2A(b).

[12] *Administrative Appeals Tribunal 1975* (Cth) s 2A(c).

[13] *Administrative Appeals Tribunal 1975* (Cth) s 2A(d).

Accessibility

The term "accessible" lacks precise legal definition,[14] raising questions about the scope and standard of accessibility required. Accessibility encompasses various dimensions, including physical, financial, and informational, which are not explicitly delineated in s 2A.

Accessibility issues may arise for individuals in remote or rural areas,[15] those with disabilities, or those with limited technological resources. Financial accessibility can be problematic if costs, even if lower than court fees, still present a barrier to low-income individuals.

Fair, Just, Economical, Informal, and Quick

The conflation of these objectives[16] might result in tensions, as the aspiration for quick resolution may compromise thoroughness, and informality might conflict with procedural fairness. There is a further debate on whether an informal process can ensure a level of fairness and justice consistent with more formal judicial proceedings.

Achieving both quickness and fairness can be challenging, especially in complex cases where a careful consideration of evidence and legal principles is required. The economical objective may lead to under-resourcing, which could compromise the quality of decision-making.

Proportionate to the Importance and Complexity of the Matter

The principle of proportionality is inherently subjective,[17] making it difficult to apply uniformly across cases. There is an academic challenge in developing a clear standard for what constitutes proportionality in this context.

Determining the importance of a matter is highly subjective and can lead to inconsistent application. Further, the complexity of a case is not always apparent at the outset, potentially causing procedural adjustments and delays.

Promotes Public Trust and Confidence

Public trust and confidence[18] are multi-faceted constructs that are difficult to measure and operationalise in legal settings. The mandate to promote public trust and confidence places an undefined and potentially unattainable burden on the Tribunal.

Without clear indicators for measuring public trust and confidence,[19] it is challenging to assess the Tribunal's performance against this objective. Decisions that are legally sound but unpopular could erode public confidence,[20] raising the question of whether the Tribunal should prioritise legal correctness or public sentiment.

While the objectives of the Tribunal aim to create an ideal framework for administrative review, they encapsulate inherent academic debates about the interpretation and practicality of legal principles. Moreover, these objectives may lead to practical dilemmas in implementation, requiring a careful balancing act to ensure that the Tribunal fulfills its legislative mandate effectively and equitably.

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[14] *Administrative Appeals Tribunal 1975* (Cth) s 2A(a).

[15] See Loretta de Plevitz and Heron Loban, "Access to Information on Civil Law for Remote and Rural Indigenous Peoples" (2009) 7(15) *Indigenous Law Bulletin* 22.

[16] *Administrative Appeals Tribunal 1975* (Cth) s 2A(b).

[17] Jeremy Kirk, "Constitutional Guarantees, Characterisation and the Concept of Proportionality" (1997) 21(1) *Melbourne University Law Review* 1, 45.

[18] James Allsop, "Technology and the Future of the Courts" (2019) 38(1) *University of Queensland Law Journal* 1.

[19] Robin Creyke, "Administrative Justice – Towards Integrity in Government" (2007) 31(3) *Melbourne University Law Review* 705, 714.

[20] *Bethell v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (No 3)* [2021] FCA 811, [65]–[66].

THE JURISPRUDENTIAL TERRITORY

A scholarly examination of the Australian jurisprudence relating to s 2A of the *AAT Act* is an endeavour of considerable academic value. This legal corpus offers a number of interpretative perspectives that can clarify the effectiveness of the set goals in administrative decision-making.

Through careful examination of the judicial application and interpretive nuances of this provision, scholars and legislative architects can learn key lessons that can deeply inform the formulation of revised statutory objectives for the nascent ART.

A critical analysis of case law clarifies not only how judicial authorities have operationalised the principles of accessibility, fairness, economy,[21] informality, and expedition[22] in administrative review, but also how they have reconciled these principles with the practical needs of judicial proceedings. In addition, case law serves as a barometer for assessing the extent to which these objectives have been actualised within the Tribunal's jurisdiction and offers an evidentiary basis for potential statutory improvements.

Judicial and executive considerations have highlighted multiple limitations within s 2A of the *AAT Act*.

In *Rzepecki v John Holland Group Pty Ltd*,[23] Senior Member JF Toohey highlighted that nothing in s 2A confers on the Tribunal jurisdiction to deal with matters that it does not otherwise have. The Tribunal there went on to observe that this "is so no matter how onerous or inaccessible the proper avenue for relief may be, or even if there is no avenue at all".[24]

In *Fitzgibbon v Prime Minister of Australia*,[25] the Tribunal concluded that s 2A must be considered in light of the mechanism set out in ss 64(1AA) and (1A) of the *Freedom of Information Act 1982* (Cth). Although granting access to counsel for an applicant to documents for which exemption is claimed may place counsel in a better position to assist the tribunal to meet its obligations under s 2A, it was there concluded that s 64 was "clearly intended to restrict access to documents in dispute in FOI matters".[26]

In *May v Military Rehabilitation and Compensation Commission*,[27] the Tribunal determined that it is sometimes the case that the objectives of fairness, justice, economy, informality, and speed are in conflict. This was recognised by the High Court of Australia in *Aon Risk Services Australia Ltd v Australian National University*,[28] now the leading case on the exercise of the judicial discretion in relation to issues of case management.

In *Boscolo v Secretary, Department of Social Services*,[29] the Tribunal made clear that nothing in s 2A or s 33(1)[30] allows the Tribunal to depart from its overriding obligation to afford parties procedural fairness.

In *Fard v Secretary, Department of Immigration and Border Protection*,[31] Griffiths J held that s 2A is properly regarded as aspirational or exhortatory in nature, rather than as a source of directly enforceable rights and obligations. In coming to that view, Griffiths J referred to judicial commentary of Justice Gummow in *Minister for Immigration and Multicultural Affairs v Eshetu*:[32]

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[21] Bernard McCabe, "Perspectives on Economy and Efficiency in Tribunal Decision-Making" (2016) 85 AIAL Forum 40.

[22] Terry Carney, "The New Digital Future for Welfare: Debts without Legal Proofs or Moral Authority?" (2018) *UNSW Law Journal Forum* No 1, 12.

[23] *Rzepecki v John Holland Group Pty Ltd* (2015) 68 AAR 137, [29]; [2015] AATA 876.

[24] *Rzepecki v John Holland Group Pty Ltd* (2015) 68 AAR 137, [29]; [2015] AATA 876.

[25] *Fitzgibbon v Prime Minister of Australia* (2017) 165 ALD 358, [34]; [2017] AATA 502.

[26] *Fitzgibbon v Prime Minister of Australia* (2017) 165 ALD 358, [34]; [2017] AATA 502.

[27] *May v Military Rehabilitation and Compensation Commission* (2011) 55 AAR 550, [15]; [2011] AATA 697.

[28] *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175; [2009] HCA 27.

[29] *Boscolo v Secretary, Department of Social Services* (2017) 72 AAR 108, [25]; [2017] AATA 598.

[30] Peter Billings, "Evaluating the Pedagogic Value of Mooting and 'Nooting' at the Administrative Appeals Tribunal (Cth)" (2017) 43(3) *Monash University Law Review* 687, 704.

[31] *Fard v Secretary, Department of Immigration and Border Protection* [2016] FCA 417, [80].

[32] *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611, [108]; [1999] HCA 21.

> With respect to the interrelation between s 420 and the statutory ground of review in par (a) of s 476(1), Lindgren J in *Sun* concluded that the better view was that s 420 did not establish procedures of the kind identified in the later provision. His Honour described s 420 as containing "general exhortatory provisions, the terms of which do not conform to the common understanding of a 'procedure'". This, to his Honour, signified "the steps, more or less precisely identified, which are or may be involved in particular proceedings". In particular, the direction in s 420(1) that the Tribunal pursue the objective of "providing a mechanism of review that is fair, just, economical, informal and quick" did not amount to a requirement that the Tribunal observe a procedure in connection with the making of a particular decision for the purposes of par (a) of s 476(1).

Thus, provisions such as s 2A of the *AAT Act* have been described by the Tribunal as "general exhortatory provisions" and are "intended to be facultative and not restrictive".[33] In *Moorabbin Airport Corp Pty Ltd v Minister for Infrastructure and Regional Development*,[34] Deputy President suggested that s 2A "is expressing nothing more than is said in s 33(1)(b)".[35] This comment was repeated in *TVGJ v Privacy Commissioner*[36] by the Deputy President.

In *Coonan v Commissioner of Taxation*,[37] writing in the context of s 2A of the *AAT Act*, the Tribunal concluded as follows:

> In performing its functions, the Tribunal must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick (s2A, AAT Act). Those values stand in relation to each other. No one stated objective is to be advanced without reference to and consideration of the other stated objectives. Economy and quickness, however desirable, do not outweigh fairness, but are measured in relation to it. In the circumstances it is proper and fair to permit those seeking standing in these proceedings, whose interests are affected by the decision under review, to present their cases and be heard. It is also proper and fair to bring these proceedings to conclusion without undue delay or any unreasonable increase in costs to the existing parties.[38]

In *Kalafatis v Federal Commissioner of Taxation*,[39] the Tribunal considered the ordinary meaning of relevant expressions in s 2A of the *AAT Act*. In that context, the Tribunal concluded that it is apparent that it may well be impossible to achieve all the objectives all the time.[40] They cannot, therefore, be regarded as prescriptive.[41]

In *El-Chahal v Secretary, Department of Employment*,[42] the Tribunal considered an application that a proceeding be dismissed pursuant to s 42B because it was futile. Given that context, the Tribunal observed that it is difficult to see how the objective of providing a mechanism of review that is proportional as well as fair, just, economical, informal, and quick can be served by allowing an application with no prospect of success to proceed, and in so doing to put the parties and the Tribunal[43] to costs.[44]

Section 420(1) of the *Migration Act 1958* (Cth) previously provided that the Refugee Review Tribunal (the RRT) in carrying out its functions is to pursue the objective of providing a mechanism of review

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[33] *Moorabbin Airport Corp Pty Ltd v Minister for Infrastructure and Regional Development* (2014) 63 AAR 56, [118]; [2014] AATA 101.

[34] *Moorabbin Airport Corp Pty Ltd v Minister for Infrastructure and Regional Development* (2014) 63 AAR 56; [2014] AATA 101.

[35] *Moorabbin Airport Corp Pty Ltd v Minister for Infrastructure and Regional Development* (2014) 63 AAR 56, [119]; [2014] AATA 101.

[36] *TVGJ v Privacy Commissioner* (2015) 66 AAR 84, [65]; [2015] AATA 112.

[37] *Coonan v Commissioner of Taxation* (2006) 43 AAR 29; [2006] AATA 329.

[38] *Coonan v Commissioner of Taxation* (2006) 43 AAR 29, [21]; [2006] AATA 329.

[39] *Kalafatis v Federal Commissioner of Taxation* (2012) 56 AAR 445; [2012] AATA 150.

[40] *Kalafatis v Federal Commissioner of Taxation* (2012) 56 AAR 445, [35]; [2012] AATA 150.

[41] *Kalafatis v Federal Commissioner of Taxation* (2012) 56 AAR 445, [35]; [2012] AATA 150.

[42] *El-Chahal v Secretary, Department of Employment* [2015] AATA 512.

[43] *El-Chahal v Secretary, Department of Employment* [2015] AATA 512, [27].

[44] See also *Hour Glass (Aust) Pty Ltd v Minister for Environment, Heritage and the Arts* (2009) 51 AAR 239, 243 [15]; [2009] AATA 964; *Ego Pharmaceuticals Pty Ltd v Minister for Health and Ageing* (2012) 56 AAR 373, [4]; [2012] AATA 113.

that is "fair, just, economical, informal and quick". This section, it had been held, contained "exhortatory provisions".[45]

It, as with like provisions, is intended to be facultative, not restrictive. Their purpose is to free tribunals, at least to some degree, from constraints otherwise applicable to courts of law, and regarded as inappropriate to tribunals.[46] Section 420 does not delimit the boundaries of jurisdiction.[47]

In *Minister for Immigration and Citizenship v Dhanoa*,[48] Jagot and Foster JJ said that "[f]airness and justice are only meaningful when considered in the context of the interests of all parties and the public at large".[49]

When considering a comparable provision to those in s 2A of the *AAT Act*, Lindgren J observed that such provisions are "troublesome" and that the obligations imposed are "in tension with one another".[50] Similar reasoning was expressed in *Negri v Secretary, Department of Social Services (No 2)*,[51] where Justice Bromberg held that the "need for economy does not trump the need for a fair review conducted according to law".[52]

The requirements of a fair hearing are not to be sacrificed to achieve economy, informality, and speed.[53]

The jurisprudence interpreting s 2A of the *AAT Act* and analogous provisions offers various key lessons that are instructive for the understanding of the statutory objectives governing administrative review bodies. Here are 10 important lessons distilled from the cases mentioned:

(1) *Jurisdictional Limitations*: s 2A does not extend the Tribunal's jurisdiction beyond what is legislatively granted, irrespective of how burdensome or inaccessible the proper avenue for relief may be.[54]
(2) *Statutory Context*: s 2A should be construed in the context of other statutory mechanisms which may impose restrictions that can impact the Tribunal's capacity to fulfil the objectives of s 2A.[55]
(3) *Conflicting Objectives*: There is inherent conflict between the objectives of fairness, justice, economy, informality, and speed, recognising that these goals may sometimes be at odds with one another in practice.[56]
(4) *Procedural Fairness*: The objectives in s 2A must not compromise the overarching requirement of procedural fairness[57] in the Tribunal's processes.[58]

[45] *Sun Zhan Qui v Minister for Immigration and Ethnic Affairs* [1997] FCA 324.

[46] *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611, 628, [49]; [1999] HCA 21.

[47] *SZMDL v Minister for Immigration and Citizenship* [2008] FCA 1673, [12]. See also *Kinabula Investments v Commissioner of Patents* (2007) 46 AAR 98, [14]; [2007] AATA 1460; *Apache Energy Pty Ltd v Chief Executive Officer of the National Offshore Petroleum Safety and Environmental Management Authority* (2012) 57 AAR 164, [13]; [2012] AATA 298; *Sun v Minister for Immigration and Border Protection* (2016) 243 FCR 220, [56]; [2016] FCAFC 52.

[48] *Minister for Immigration and Citizenship v Dhanoa* (2009) 180 FCR 510; [2009] FCAFC 153.

[49] *Minister for Immigration and Citizenship v Dhanoa* (2009) 180 FCR 510, [61]; [2009] FCAFC 153.

[50] *Telstra Corp Ltd v Australian Competition and Consumer Commission* (2008) 171 FCR 174, [160]–[161]; [2008] FCA 1436.

[51] *Negri v Secretary, Department of Social Services (No 2)* (2016) 70 AAR 238; [2016] FCA 112.

[52] *Negri v Secretary, Department of Social Services (No 2)* (2016) 70 AAR 238, [7]; [2016] FCA 112. See also *Murray v Repatriation Commission (No 2)* (2016) 70 AAR 410, [4]; [2016] FCA 1216.

[53] *Chandra v Queensland Building and Construction Commission* [2014] QCA 335, [69].

[54] *Rzepecki v John Holland Group Pty Ltd* (2015) 68 AAR 137; [2015] AATA 876.

[55] *Fitzgibbon v Prime Minister of Australia* (2017) 165 ALD 358; [2017] AATA 502.

[56] *May v Military, Rehabilitation and Compensation Commission* (2011) 55 AAR 550; [2011] AATA 697; *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175; [2009] HCA 27.

[57] Matthew Groves, "Waiver of Natural Justice" (2019) 40(3) *Adelaide Law Review* 641.

[58] *Boscolo v Secretary, Department of Social Services* (2017) 72 AAR 108; [2017] AATA 598.

(5) *Aspirational Nature of Objectives*: Various cases cast s 2A as comprising aspirational goals[59] rather than creating directly enforceable rights and obligations, thereby suggesting these are guiding principles rather than strict rules.[60]
(6) *Balance of Objectives*: The objectives listed in s 2A must be balanced against each other, with none having inherent primacy, emphasising that the pursuit of economy and speed must not come at the expense of fairness.[61]
(7) *Non-Prescriptive Goals*: There is a practical impossibility of always achieving all the objectives of s 2A simultaneously, suggesting that these goals should inform the Tribunal's approach rather than dictate exact procedures.[62]
(8) *Facilitative Purpose*:[63] As noted in relation to s 420 of the *Migration Act*, these provisions are designed to offer tribunals flexibility and free them from some of the formal constraints binding courts of law, without outlining jurisdictional boundaries.[64]
(9) *Consideration of Interests*: Fairness and justice must be assessed with regard to the interests of all parties involved and the public interest.[65]
(10) *Tensions and Prioritisation*: Finally, while the need for economical and expedient reviews is significant, these considerations should not override the necessity for a fair process conducted according to law.[66]

Collectively, these lessons indicate a judicial approach that favours the interpretation of s2A as a set of guiding principles that must be balanced and applied pragmatically, considering the specific circumstances of each case, while ensuring that the essential tenets of fairness and procedural justice are upheld.

Legislative Objects of the Administrative Review Tribunal

The objectives established by the *Tribunals Amalgamation Act 2015* (Cth) have created a foundational framework for tribunal operations that have been largely effective. However, given the dynamic nature of legal disputes and societal needs, there is an opportunity for refinement to these objectives, which would allow them to more adeptly respond to the multifarious nature of modern legal challenges and to uphold and enhance public confidence[67] in the tribunal's role.

Enhancing Accessibility

The ART should become a beacon of accessibility, drawing on best practices like those found in the *South Australian Civil and Administrative Tribunal Act 2013* (SA). This includes not only physical access to tribunal services but also ensuring that language barriers do not impede understanding.

The ART must streamline its administrative processes to ensure clarity and ease of use, incorporating comprehensive guidelines, and providing resources that demystify legal jargon. In addition, it should develop and provide standardised forms and information to assist users in navigating the review process.

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[59] Alison Christon, "The 'Good' Tribunal Member – An Aretaic Approach to Administrative Tribunal Practice" (2009) 28(2) *University of Queensland Law Journal* 339.

[60] *Fard v Secretary, Department of Immigration and Border Protection* [2016] FCA 417; *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611; [1999] HCA 21; *Sun Zhan Qui v Minister for Immigration and Ethnic Affairs* [1997] FCA 324.

[61] *Coonan v Commissioner of Taxation* (2006) 43 AAR 29; [2006] AATA 329.

[62] *Kalafatis and Federal Commissioner of Taxation* (2012) 87 ATR 585; [2012] AATA 150; *El-Chahal v Secretary, Department of Employment* [2015] AATA 512.

[63] See Stephen Bottomley, "The Notional Legislator: The Australian Securities and Investments Commission's Role as a Law-Maker" (2011) 39(1) *Federal Law Review* 1, 14.

[64] *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611; [1999] HCA 21.

[65] *Minister for Immigration and Citizenship v Dhanoa* (2009) 180 FCR 510; [2009] FCAFC 153.

[66] *Negri v Secretary, Department of Social Services (No 2)* (2016) 70 AAR 238; [2016] FCA 112.

[67] Peter Britten-Jones, "The Administrative Appeals Tribunal: Why We Are Here" (2021) 102 AIAL Forum 67.

Strengthening Public Trust

The renewed objectives should incorporate a deliberate emphasis on cultivating public trust and confidence, paralleling the intent behind statutes such as the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and the *ACT Civil and Administrative Tribunal Act 2008* (ACT). This goes beyond the confines of tribunal proceedings to encompass the broader specter of government decision-making, positioning the ART as a vital component in the architecture of public trust.

Leveraging Tribunal Expertise

Tribunal members, through their tenure, accumulate significant expertise[68] that equips them with a distinctive viewpoint on legislative application and policy interpretation. Their profound understanding and experience place them in a unique position to provide the Commonwealth Attorney-General with insightful feedback on recurring or systemic issues encountered in the administration of laws, a role that resonates with the precedent set by s 6(h) of the *ACT Civil and Administrative Tribunal Act 2008* (ACT).

Incorporating Proactive Oversight

The objectives for the ART should include explicit calls for transparency and independent decision-making, thereby reinforcing accountability[69] within the wider government apparatus. Tribunal members should not only be decision-makers but also guardians of the public interest, flagging potential systemic issues for higher-level review and reform.

Prioritising Dispute Resolution

With the judicial landscape shifting towards alternative dispute resolution (ADR),[70] it is imperative that the ART's legislation acknowledges this development. It should explicitly endorse ADR methods such as mediation[71] as a first recourse, with formal adjudication as a secondary step, following the lead of provisions like s 8(1)(c) of the *South Australian Civil and Administrative Tribunal Act*.

Fostering Flexibility

The ART must be designed to be inherently flexible, capable of adapting to the complex and diverse range of cases it will address. Its legislative framework should celebrate procedural versatility, tailored to meet the specific demands and nuances of individual matters.

Ensuring Cost-Effectiveness

The principle of cost-effectiveness should be a cornerstone of the ART's legislative architecture, ensuring justice is affordable and equitable. The new statute should prioritise minimising expenses for all parties, reducing economic barriers to legal recourse, and promoting an equitable legal system.

Affirming the Right to Affordable Justice

A commitment to affordability in the ART's objectives will underscore the principle that justice should not be contingent upon financial capacity. It will reaffirm the notion that the legal system is a public good accessible to all.

[68] Rachel Pepper and Amelia van Ewijk, "Making Sure that Curiosity Does Not Kill the CAT: The Use of Expert Evidence in Merits Review Fora Where the Rules of Evidence Do Not Apply" (2019) 97 AIAL Forum 37.

[69] Robin Creyke and Graeme Hill, "A Wavy Line in the Sand: Bond and Jurisdictional Issues in Judicial and Administrative Review" (1998) 26(1) *Federal Law Review* 15.

[70] Robin Creyke and Matthew Groves, "Administrative Law Evolution: An Academic Perspective" (2010) 59 *Admin Review* 20.

[71] Aneita Browning and Esme Wong, "The Right Fit: Non-adversarial Dispute Resolution in the AAT" (2017) 141 *Precedent* 36.

Promoting Exemplary Public Administration

The ART should exemplify the finest in public administration. The objectives should mandate a commitment to the highest quality and consistency in decision-making, embracing transparency and procedural fairness.[72] This commitment would serve to not only elevate the tribunal's effectiveness but also to reinforce the community's trust in its operations.

Emphasising Procedural Fairness and Transparency

Adherence to procedural fairness must be paramount, ensuring that each participant in the tribunal process is afforded a fair hearing. Transparency should be intrinsic to the ART's operations, providing clear, understandable, and publicly accessible insights into its processes.

Conclusionary Comments

The objectives of the AAT, as set out in the *Tribunals Amalgamation Act*,[73] provided a strong and effective framework for the Tribunal's operations. However, the ever-changing landscape of legal disputes and societal expectations requires that these goals evolve to keep pace with modern needs.

Improving accessibility is key to this development, with the ART aspiring to set the gold standard in providing clear and understandable pathways to justice. By adopting practices that simplify legal processes and language, the ART not only helps those it serves understand their rights and procedures, but also breaks down barriers and ensures that justice is not denied due to the complexity of the system.

In addition, the ART must emphasise the development of public trust and confidence, which is essential to the integrity of both the tribunal and the wider government decision-making process. By leveraging the expertise of its members, the ART can offer invaluable advice on legislative, and policy matters to improve the administration of justice. Embedding proactive oversight and fostering flexibility in the tribunal's operations are key to maintaining its relevance and effectiveness. A flexible approach[74] coupled with a commitment to the ADR ensures that the tribunal continues to adapt to the complexity of cases and promotes solutions that are both amicable and fair.

Finally, the requirement to ensure economy and affirm the right to accessible justice[75] cannot be overstated. In this way, the ART would agree with the principle that access to justice should be universally available, regardless of financial situation. In addition, the ART must be committed to the highest standards of public service[76] by promoting exemplary public administration and emphasising procedural fairness and transparency. These values not only strengthen the tribunal's effectiveness, but also foster community trust[77] and confidence in its work.

In short, the ART's objectives must continue to adapt and respond to contemporary challenges and ensure that the tribunal remains a beacon of fairness, accessibility, and trust within the community it serves.

Essential Prerequisite for Articulating Rationale in Application

A peremptory provision under s 29(1)(c) of the *AAT Act* stipulates that any application lodged for a decision review must encompass an explicit exposition of the reasons prompting the application. It is crucial to underscore the import of this provision; non-compliance precipitates invalidity, as explicated

[72] Emily McDonald and Maria O'Sullivan, "Protecting Vulnerable Refugees: Procedural Fairness in the Australian Fast Track Regime" (2018) 41(3) *UNSW Law Journal* 1003.

[73] Robin Creyke, "Tribunal Amalgamation 2015: An Opportunity Lost?" (2016) 84 AIAL Forum 54.

[74] Anthony Mason, "Administrative Law – Form Versus Substance" (1995) 6 AIAL Forum 1, 4.

[75] Piers Gooding et al, "Unfitness to Stand Trial and the Indefinite Detention of Persons with Cognitive Disabilities in Australia: Human Rights Challenges and Proposals for Change" (2017) 40(3) *Melbourne University Law Review* 816, 859–865.

[76] Morne Olivier, "Some Thoughts on Judicial Diversity in the New Supreme Court Era" (2008) 16 *Waikato Law Review* 46, 52.

[77] David Webber et al, "Community Participation in Emergency Planning: NSW State Emergency Service Case Study" (2017) 32(2) *Australian Journal of Emergency Management* 28, 32.

in the precedential cases of *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*[78] at first instance and the Full Court.

The Miller Litigation

The applicant[79] lodged an application for review with the AAT.[80] However, in the application for review, the applicant did not state the reasons for the application.[81] The applicant's migration agent incorrectly[82] filed a document (form eM2) that did not meet the requirements[83] for instituting a review of the decision.[84] The correct form would have prompted for reasons why the decision was believed to be wrong.[85]

Derrington J held that the application to the Tribunal was invalid in failing to comply with s 29(1)(c) of the *AAT Act*.[86] Derrington J held:

> The requirement in s 29(1)(c) that an application must contain a statement of reasons for the application is essential to the making of valid application. In this case no valid application was made and the Tribunal had no jurisdiction to hear and determine it.[87]

Before the Full Court, Thawley, Halley and O'Sullivan JJ dismissed the applicant's appeal.[88] The Full Court determined:

> Accepting this context, s 29(1)(c) should be construed as containing a requirement, non-compliance with which has the result that the application is invalid with the consequence that the Tribunal's jurisdiction is not engaged. The statutory scheme reveals that the requirement is one of some importance in identifying the issues at an early stage.[89]

The applicant lodged a special leave application. On 15 September 2023, Chief Justice Kiefel and Justice Gleeson granted the applicant special leave to appeal.[90] The Court called upon the Minister at the commencement of the special leave application.[91] The Court did not even wish to hear from the applicant's senior counsel.[92]

At the time of writing, the matter remains to be argued before the Full Court of the High Court of Australia.[93] This is a good example of the separation of powers model in action.[94]

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[78] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489 and *Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2022) 295 FCR 254; [2022] FCAFC 183.

[79] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489.

[80] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489, [13].

[81] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489 at [15].

[82] Susan Harris, "Another Salvo Across the Bow: Migration Legislation Amendment Bill (No 2) 2000 (Cth)" (2000) 23(3) *UNSW Law Journal* 208, 216.

[83] See Savitri Taylor, "Should Unauthorised Arrivals in Australia Have Free Access to Advice and Assistance?" (2000) 6(1) *Australian Journal of Human Rights* 34, 36–37.

[84] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489, [13].

[85] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489, [14].

[86] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489, [80].

[87] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 489, [80].

[88] *Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2022) 295 FCR 254, [65]; [2022] FCAFC 183.

[89] *Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2022) 295 FCR 254, [64]; [2022] FCAFC 183.

[90] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCATrans 126.

[91] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCATrans 126.

[92] *Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCATrans 126.

[93] See further *Deacon v National Disability Insurance Agency* [2022] AATA 3209, [20].

[94] See Greg Weeks, "Soft Law and Public Liability: Beyond the Separation of Powers?" (2018) 39(2) *Adelaide Law Review* 303, 320.

The imperatives imposed by s 29(1)(c) are uncompromising, brooking no latitude for discretionary judgment.[95] Regrettably, the statute does not confer upon the Tribunal any discretionary authority to excuse non-compliance with this mandate or to grant an extension thereof. This inelasticity has the unintended potential to discriminate, especially against those applicants who struggle with linguistic complexities or who may be disadvantaged[96] by limited legal resource access due to situational factors like incarceration or protracted immigration detention.

Migration and Refugee Division

An evident point of contention is the dissonance between s 29(1)(c) of the *AAT Act* and s 347 of the *Migration Act*. Section 347 of the *Migration Act* delineates statutory criteria for the lodgment of an application for a Part 5 reviewable decision within the Migration and Refugee Division (hereinafter "the MRD") of the Tribunal.[97]

Contrary to s 29(1)(c) of the *AAT Act*, s 347 eschews the imposition of an unequivocal directive that necessitates the articulation of the application's underlying rationale. It is important to recognise that while the MRD presides over Part 5 reviewable decisions, which differ from the scope of applications under s 29(1) of the *AAT Act*, the discrepancy between these provisions prompts questions about the consistency and uniformity of administrative review requirements.

It is of paramount importance to highlight that both the General Division and the MRD are charged with adjudicating review applications that encompass a myriad of dimensions within Australian migration law. Upon diligent scrutiny, the legislative dichotomy between s 29(1)(c) of the *AAT Act* and s 347 of the *Migration Act* lacks a persuasive justification, calling for a thorough review to foster legislative uniformity and coherence within administrative review procedures.

There is a compelling rationale for the re-examination and possible moderation of the conditions set forth in s 29(1)(c) of the *AAT Act*, as part of the legislative developments that will establish the ART.

Tribunal's Review Function

The Tribunal's merits review capacity[98] is aptly conceived as a re-evaluation process[99] in which the Tribunal reassumes the role of the original decision-maker to independently determine the most judicious decision within the parameters of the delegated authority.[100] This principle is enshrined in the jurisprudence of *Frugtniet v Australian Securities and Investments Commission*.[101] Consequently, the Tribunal is not inherently bound to identify errors in the initial decision-making process.

To elucidate, the Tribunal's function is to re-examine[102] and, where necessary, reassess determinations initially made by the original decision-making body, as exemplified in *Shi v Migration Agents Registration Authority*.[103] In this vein, the absence of a stated rationale for the application should not

[95] Savitri Taylor, "Guarding the Enemy from Oppression: Asylum-Seeker Rights Post-September 11" (2002) 26(2) *Melbourne University Law Review* 396, 420–421.

[96] Jane Mathews, "Assisting Unrepresented Parties in the Aat" (1998) 72 *Australian Law Reform Commission Reform Journal* 38, 42.

[97] Mary Crock, "Judicial Review and Part 8 of the Migration Act: Necessary Reform or Overkill?" (1996) 18(3) *Sydney Law Review* 267.

[98] Robin Creyke, "Tribunals – 'Carving Out the Philosophy of Their Existence': The Challenge for the 21st Century" (2012) 71 AIAL Forum 19.

[99] Tom Smythe, "Miscellaneous Front Matter" [2009] *Edited Legal Collections Data* 3; in Robin Creyke, (ed), *Tribunals in the Common Law World* (Federation Press, 2009) ix.

[100] Matthew Groves, "The Duty to Inquire in Tribunal Proceedings" (2011) 33(2) *Sydney Law Review* 177, 178–180.

[101] *Frugtniet v Australian Securities and Investments Commission* (2019) 266 CLR 250, 271 [51]; [2019] HCA 16.

[102] Mark Smyth, "Inquisitorial Adjudication: The Duty to Inquire in Merits Review Tribunals" (2010) 34(1) *Melbourne University Law Review* 230.

[103] *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286, 315 [100]; [2008] HCA 31.

constitute an insurmountable barrier to the Tribunal's exercise of jurisdiction. Generally, there is no stringent requirement to underscore faults in the primary decision.[104]

Moreover, within the spectrum of administrative proceedings, the motives for an application typically become more defined as the matter progresses within the Tribunal's cognisance. Ordinarily, litigants are obligated to provide a comprehensive account of the facts, core issues, and their contentions prior to a contested hearing, as made plain in *LRMM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*.[105]

During the Tribunal's deliberations, documents are often submitted in accordance with procedural directives, and testimony is elicited in both documentary and oral forms within the adversarial hearings. Fundamentally, the substantive reasons for an application usually emerge through the Tribunal's meticulous adjudicative process. Even if this assertion were to be contested, it is plausible that the Tribunal could reach a determination that differs from that of the original decision-maker based on its assessment of the evidentiary corpus and the arguments presented.[106]

The requirement for a mandatory inclusion of a statement delineating the reasons for the application to the Tribunal necessitates reconsideration. Should the Tribunal assume jurisdiction and the party fails to comply with a Tribunal directive regarding the submission of a statement of facts, key issues, and arguments, the Tribunal should possess the discretionary capacity to conclude the proceedings at that point. Such a procedural adaptation would ensure a more equitable framework for all parties involved.

Hence, it is advisable that the current statutory provision delineated in s 29(1)(c) of the *AAT Act* should not be transposed as an obligatory stipulation within the governance structure of the newly formulated ART. Rather, the provision that constitutes the jurisdictional threshold as per s 29(1)(c) should be reconceived as a facultative consideration within the legislative corpus that will provide the foundation for the ART's proceedings.

Section 34 of the *ART Bill*. Since the original drafting of this article, the *ART Bill* was made public on 7 December 2023. Section 34 of the *ART Bill* provides as follows:

> (1) An application to the Tribunal may be made in writing or in any other manner specified for the application in the practice directions.
> (2) An application to the Tribunal must include the information specified for the application in the practice directions.
> Note 1: A fee may be payable in respect of the application (see rules made for the purposes of section 296). An application may be dismissed if the fee is not paid within the time prescribed by the rules (see section 98).
> Note 2: The legislation under which a reviewable decision is made may contain other requirements for applications for review of that type of decision.
> (3) A failure to comply with subsection (2) does not affect the validity of the application.

In summary, s 34 of the *ART Bill* outlines the procedure for applying to the Tribunal. Applications can be made in writing or as specified in the practice directions. They must include information detailed in the practice directions. While fees may be required and applications can be dismissed for non-payment, non-compliance with these instructions does not invalidate the application. Additionally, there may be other requirements for specific types of reviewable decisions as dictated by the relevant legislation.

The proposed s 34 represents a significant advancement in addressing the procedural shortcomings highlighted by the *Miller* litigation. Section 34 has the effect that an applicant's failure to articulate the reasons for challenging the original decision-maker's decision does not render an application to the Tribunal invalid. This provision ensures a more equitable and reasonable approach to application validity, enhancing the Tribunal's accessibility and effectiveness in administrative review processes.

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[104] Terry Carney, "Automation in Social Security: Implications for Merits Review?" [2020] *University of Sydney Law Research Series* 6.

[105] *LRMM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCA 1039, [21].

[106] Narelle Bedford and Greg Weeks, "Doping in Sport: What Role for Administrative Law?" [2016] *University of New South Wales Faculty of Law Research Series* 65, 2.

THE ART BILL

Section 9 of the *ART Bill* provides as follows:

> The Tribunal must pursue the objective of providing an independent mechanism of review that:
>
> (a) is fair and just; and
> (b) ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits; and
> (c) is accessible and responsive to the diverse needs of parties to proceedings; and
> (d) improves the transparency and quality of government decision-making; and
> (e) promotes public trust and confidence in the Tribunal.

The objectives of the *ART Bill* and the *AAT Act* manifest a shared vision for enhancing the efficacy, accessibility, fairness, and public trust in administrative review processes. However, a discerning analysis uncovers subtle yet significant divergences in their strategic focus and priorities.

Fairness and Justice

The *ART Bill* articulates a robust commitment to ensuring that proceedings are fundamentally "fair and just". This expansive directive underlines a principled, holistic approach to justice, potentially enabling a more adaptable interpretation of fairness across diverse legal scenarios.

In contrast, the *AAT Act* also underscores the importance of fairness and justice but intertwines these ideals with economic efficiency and the imperative for informality and expedited processes. This amalgamation suggests a pragmatic orientation where the principles of fairness are meticulously balanced with the demands of procedural expediency.

Efficiency and Formality

The *ART Bill* champions the swift and cost-effective resolution of applications, but crucially, only to the extent that it does not compromise the meticulous consideration of the matters at hand. This stance underscores a prioritisation of comprehensive, accurate decision-making, acknowledging that this might occasionally necessitate extended timelines or heightened formality.

On the other hand, the *AAT Act* overtly advocates for a modus operandi that is "economical, informal, and quick", signifying a pronounced inclination towards procedural swiftness and efficiency, potentially at the sacrifice of exhaustive case analysis.

Accessibility and Responsiveness. The ART Bill distinctly recognises the imperative of being "accessible and responsive to the diverse needs of parties to proceedings." This explicit emphasis on inclusivity and adaptability demonstrates an acute awareness of and sensitivity to the varied requirements of different stakeholders involved in legal proceedings. While the AAT Act does prioritise accessibility, its lack of specific reference to responsiveness to diverse needs might imply a more universal, less customized approach to ensuring accessibility.

Transparency and Government Decision-Making

A notable facet of the *ART Bill* is its focus on "improving the transparency and quality of government decision-making". This goal signifies an ambition to not merely adjudicate decisions but to actively contribute to the enhancement of governmental decision-making processes. In contrast, the *AAT Act* does not specifically address the improvement of these processes, concentrating more on the functionality of the review mechanism itself.

Public Trust and Confidence

Both statutes are dedicated to fostering public trust and confidence, yet the *ART Bill* uniquely extends this objective to encompass confidence in the Tribunal itself. This distinction mirrors a profound cognisance of the Tribunal's influential role in shaping the public's perception of the justice system.

The *AAT Act*, aiming similarly to bolster public trust and confidence, does not particularly emphasise the Tribunal's image, suggesting a broader approach to cultivating faith in administrative proceedings.

In summation, while the *ART Bill* and the *AAT Act* converge on their overarching objectives of fairness, efficiency, and public trust, the *ART Bill* delineates a more pronounced emphasis on the integrity and transparency of government decision-making and attentiveness to the specific needs of diverse parties. In comparison, the *AAT Act* appears more oriented towards the practicalities of efficiency and economic considerations within the review process, underscoring a pragmatic approach to administrative justice.

Considering the preceding analysis, it is now pertinent to engage in a detailed examination of potential critiques associated with the *ART Bill*. This critical assessment aims to explore and elucidate areas within the Bill that may warrant further scrutiny and thoughtful consideration.

Vagueness in "Fair and Just"

The objective of ensuring that the Tribunal's proceedings are "fair and just" as stated in the *ART Bill* is commendable for its emphasis on equitable justice. However, this goal may encounter challenges due to the inherent subjectivity of these terms.

"Fair" and "just" can be interpreted differently by various stakeholders, leading to potential inconsistencies in their application. This ambiguity could also pose difficulties in establishing clear standards and metrics for assessing whether the Tribunal's decisions meet these criteria.

Efficiency v Thoroughness

The Bill's aim to resolve applications swiftly and with minimal formality, while ensuring proper consideration of matters, presents a complex balancing act. While efficiency is crucial in reducing backlogs and minimising costs, there is a risk that it might compromise the depth and thoroughness needed in complex cases. This tension might lead to concerns about the Tribunal's ability to provide a comprehensive review, particularly in cases that require detailed examination and consideration.

Accessibility and Responsiveness

The objective to make the Tribunal accessible and responsive to the diverse needs of parties in proceedings is an important step towards inclusivity. However, implementing such a responsive system can be challenging. Ensuring genuine accessibility to people from diverse backgrounds, with different abilities and needs, requires not just procedural adjustments but also significant resource allocation and ongoing commitment. There is a risk that without adequate resources and commitment, this objective may not be fully realised.

Transparency and Decision-Making Quality

The goal of improving the transparency and quality of government decision-making is ambitious and vital for public accountability. However, achieving this objective involves more than procedural changes; it requires a systemic shift in how decisions are made and communicated. This shift may necessitate substantial structural changes within the government, which could be challenging to implement and sustain. Moreover, there might be resistance from within the system due to the increased scrutiny and accountability that such transparency demands.

Public Trust and Confidence

The Bill's emphasis on promoting public trust and confidence in the Tribunal is crucial for its legitimacy. Building trust goes beyond procedural reforms; it requires cultivating a culture of integrity and transparency within the Tribunal and its interactions with the public. This is a complex process that involves not only consistent and fair decision-making but also effective communication and engagement with the public. There is a risk that without a comprehensive approach that addresses these broader cultural and institutional factors, this objective might not be fully achieved.

CONCLUSION

The inauguration of the ART presents the Commonwealth Government with a seminal opportunity to sculpt an innovative adjudicatory entity that epitomises fairness, justice, and transparency, thereby enhancing the architecture of Australian public law. This endeavour is particularly salient as it affords a platform to rectify extant constraints and imbue the decision-making process with refined jurisprudential insights.

The deficiencies observed in the AAT over its nearly half-century[107] of operation provide a rich repository of lessons and serve as a compass for navigating the complexities inherent in statutory interpretation and application.[108]

Academic discourse[109] and legal practice stand on the cusp of a transformative epoch, as the ART's establishment ushers in a milieu ripe for scholarly analysis and practical innovation. The vast expanse of jurisprudence that has accumulated since the AAT's[110] inception offers a robust framework upon which to develop a more nuanced and sophisticated understanding of the principles underpinning administrative review. This jurisprudential heritage,[111] marked by pivotal cases and evolving doctrines, provides a critical vantage point from which to envisage and advocate for reform.

Public law academics[112] and practitioners are thus uniquely positioned at the vanguard of this legal renaissance. As stewards of the legal system, they bear the responsibility to not only critique and analyse the emerging tribunal but also to contribute actively to its jurisprudential and procedural evolution.

The dynamism of this decade in public law[113] presents unparalleled prospects for both theoretical enrichment and the pragmatic advancement of administrative justice.[114] Engaging with this process requires an incisive understanding of past legal challenges, a forward-looking vision for the ART, and a commitment to fostering a tribunal that embodies the principles of due process,[115] equity, and responsiveness to the needs of the citizenry it serves.

In conclusion, the *ART Bill* represents a significant stride towards enhancing the administrative review process, emphasising fairness, justice, efficiency, and responsiveness. It ambitiously seeks to balance these objectives with the practicalities of administrative law. However, challenges such as the subjective interpretation of fairness and justice, the tension between efficiency and thoroughness, and the implementation of accessibility and responsiveness measures remain. These issues, alongside the goal of improving governmental transparency and cultivating public trust, highlight the complexity of actualising the Bill's noble intentions and underscore the need for careful, nuanced application in practice.

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[107] Garry Downes, "Making the AAT More Relevant – Reflections on Its 30th Anniversary" (2008) 59 AIAL Forum 67.

[108] Michael Donald Kirby, "Administrative Law Reform in Action" (1977) 2(3) *UNSW Law Journal* 203.

[109] See Paul Craig, "Judicial Power, the Judicial Power Project and the UK" (2018) 36(2) *University of Queensland Law Journal* 355, 362.

[110] Dennis Pearce, "The Australian Government Administrative Appeals Tribunal" (1976) 1(3) *UNSW Law Journal* 193.

[111] Justice Geoff Lindsay, "Perspective from the Equity Bench – Young Lawyers Civil Litigation Law 2013 Annual Seminar" [2013] *New South Wales Judicial Scholarship* 12, 24–25.

[112] Margaret Allars, "The Rights of Citizens and the Limits of Administrative Discretion: The Contribution of Sir Anthony Mason to Administrative Law" (2000) 28(2) *Federal Law Review* 187.

[113] See Matthew Groves, "Substantive Legitimate Expectations in Australian Administrative Law" (2008) 32(2) *Melbourne University Law Review* 470.

[114] Simon Halliday and Colin Scott, "A Cultural Analysis of Administrative Justice" [2009] *University of New South Wales Faculty of Law Research Series* 3.

[115] William Bateman, "Procedural Due Process under the Australian Constitution" (2009) 31(3) *Sydney Law Review* 411.