

How will the new Administrative Review Tribunal work?



By [Jason Donnelly](#) - Jul 02, 2024 4:20 pm AEST

Snapshot

- The imminent reform, replacing the long-standing *Administrative Appeals Tribunal Act 1975* (Cth), heralds a significant transformation in the administrative law landscape of Australia.
- The new Bill aims to modernise and streamline the administrative review process, ensuring fairness, efficiency and transparency in the review of governmental decisions.
- This analysis explores the key features, objectives, structure, and implications of the Administrative Review Tribunal and the associated Administrative Review Council.

The [Administrative Review Tribunal Bill 2024](#) (Cth) ('the **ART Bill**') was introduced to address the growing need for a more efficient and transparent administrative review system and will commence before the end of 2024. Over the years, the complexity and volume of administrative decisions have increased, necessitating a robust framework to handle appeals and reviews effectively while addressing some of the failures of the current Administrative Appeals Tribunal ('AAT'). The Bill's passage through both Houses of Parliament underscores its importance in the contemporary legal landscape.

Objectives of the Bill

The primary objectives of the ART Bill are multifaceted.

1. *Establishment of a unified tribunal.* The Bill establishes the Administrative Review Tribunal ('ART') as the central body for reviewing administrative decisions. This unification aims to eliminate the fragmentation seen in previous systems.

2. *Simplification and accessibility.* The Bill seeks to simplify the procedures involved in administrative reviews, making the process more accessible to the general public. It emphasises inclusivity and the need for accommodations to ensure effective participation by all individuals, regardless of their circumstances.
3. *Efficiency and transparency.* By outlining clear procedures and responsibilities, the Bill aims to enhance the efficiency of the review process. Transparency is ensured through detailed provisions on the notification of parties, submission of documents and the conduct of hearings.

Structure of the ART

The ART is structured to include a diverse range of members with various roles and responsibilities. The President oversees the overall functioning of the ART and is responsible for constituting it for specific proceedings. Deputy Presidents, which include Judicial Deputy Presidents and Non-Judicial Deputy Presidents, assist the President in managing the ART's workload and ensuring the quality of its decisions. Senior Members and General Members are appointed based on their expertise and experience, contributing significantly to the Tribunal's decision-making process.

Members of the ART are appointed through a new merit-based selection process. The assessment considers candidates' skills, expertise, experience and the need for diversity within the ART. Terms and conditions of appointment, including remuneration, leave and other benefits are clearly outlined in the Bill to maintain transparency and accountability.

Procedures and processes

The process for applying for a review under the ART is designed to be straightforward and accessible. Any person whose interests are affected by a reviewable decision can apply to the ART for a review, ensuring that individuals and organisations can seek redress for administrative decisions impacting them.

Once an application is made, the decision-maker and other potential parties are notified. The decision-maker is required to provide the ART with all relevant documents and reasons for the decision under review.

The ART's procedures for conducting proceedings emphasise flexibility and informality. The President constitutes the ART for each proceeding by selecting appropriate members based on the nature and complexity of the case. The ART conducts hearings and gathers evidence while maintaining discretion over procedural aspects. It is not bound by the strict rules of evidence, allowing for a more flexible approach to fact-finding and decision-making.

The ART employs various dispute resolution processes, such as mediation and conciliation, to resolve matters amicably wherever possible. This approach helps reduce the adversarial nature of proceedings and encourages cooperative resolution.

The decision-making process of the ART is robust and transparent. The ART reviews decisions on their merits, considering all relevant evidence and arguments. It has the authority to affirm, vary or set aside the original decision. If the ART sets aside a decision, it can make a substitute decision or remit the matter back to the original decision-maker with specific recommendations for reconsideration.

After a decision is made, the ART provides a written statement of reasons to the parties involved, including findings on material questions of fact, the evidence considered and the reasons for the

decision.

The Bill includes special provisions for certain types of reviews and appeals to ensure comprehensive coverage of all administrative review scenarios. Special rules apply when the ART's powers are exercised in relation to intelligence and security decisions, with additional confidentiality and security measures to protect sensitive information.

A Guidance and Appeals Panel is established to handle significant issues and appeals, ensuring that complex or precedent-setting cases receive thorough consideration and appropriate guidance. Additionally, the Attorney-General has the power to intervene in proceedings for public interest reasons, and the ART can issue public interest certificates to restrict the publication or disclosure of sensitive information, balancing transparency with national security concerns.

The ARC's role is designed to ensure the administrative law framework remains dynamic and responsive to emerging challenges.

Re-establishment of the Administrative Review Council

In addition to the ART, the Bill re-establishes the Administrative Review Council ('ARC'), which plays a crucial role in overseeing the administrative law system and ensuring its continuous improvement. The ARC consists of several key members, including the President of the ART (who serves as a key member of the Council), the Commonwealth Ombudsman (who brings insights from handling complaints about government administration), and the Australian Information Commissioner (who provides expertise in information rights and privacy). Additionally, there are appointed members selected by the Governor-General based on their expertise and experience in administrative law.

The ARC's functions are multifaceted. It has an advisory role, providing advice to the government on administrative law matters and suggesting improvements to the system. It also conducts inquiries into specific issues and prepares reports with recommendations for reform. Furthermore, the ARC monitors the operation of the administrative law system and evaluates its effectiveness in achieving its objectives.

To enhance accountability and transparency, the ARC is required to submit an annual report to the government. This report details the ARC's activities, findings and recommendations which ensures its work is subject to public scrutiny.

Transition from the AAT

The transition from the AAT to the ART is designed to be smooth and efficient, minimising disruption to ongoing cases and proceedings. Existing cases and proceedings under the AAT will be transferred to the ART which will adopt the decisions and practices of the AAT where necessary to ensure continuity in the review process.

Transitional provisions in the Bill provide for the transfer of responsibilities, assets and liabilities from the AAT to the ART. The ART will build on some of the better practices of the AAT, incorporating lessons learned and improvements identified over the years. This approach ensures that the ART operates at the highest standards of fairness, efficiency and transparency from the outset.

Implications of the reform

The ART Bill has far-reaching implications for administrative law and justice in Australia:

1. *Enhanced access to justice.* The Bill makes it easier for individuals and organisations to seek reviews of administrative decisions which ensures that justice is accessible to all.
2. *Improved efficiency.* By streamlining procedures and clarifying responsibilities, the Bill enhances the efficiency of the administrative review process. This reduces delays and ensures reviews are conducted in a timely manner.
3. *Greater transparency.* The detailed provisions on notifications, documentation and decision-making processes ensure transparency in the ART's operations. This builds public trust and confidence in the administrative review system.
4. *Protection of sensitive information.* The special provisions for intelligence and security decisions, along with public interest certificates, strike a balance between transparency and the need to protect sensitive information.
5. *Continuous improvement.* The establishment of the ARC ensures ongoing oversight and continuous improvement of the administrative law system. The ARC's advisory role and annual reporting enhance accountability and drive reforms.

Conclusion

The ART Bill represents a landmark reform in Australia's administrative law, addressing the need for a more unified, efficient and transparent review process. By establishing the ART and the ARC, the Bill aims to modernise the framework for administrative decision reviews and embed accessibility, fairness and accountability in its processes.

The ART's structure and processes are designed to simplify and streamline the review procedure, making it more inclusive and user-friendly. The merit-based selection of members, coupled with the flexible and informal procedural approach, aim to help the ART effectively handle the complexity and volume of modern administrative decisions. The inclusion of dispute resolution processes, special provisions for sensitive cases and the establishment of a Guidance and Appeals Panel further enhance the ART's capability to deliver just and timely outcomes.

The ARC's role in advising the government, conducting inquiries and monitoring the system is designed to ensure the administrative law framework remains dynamic and responsive to emerging challenges. Its annual reporting obligations foster transparency and public trust in the administrative review process.

Transitioning from the AAT to the ART is facilitated by comprehensive transitional provisions with the goal of maintaining continuity and minimising disruption. This shift underscores the commitment to maintaining high standards of fairness and efficiency from the outset.

In essence, the ART Bill's implications are profound. They promise enhanced access to justice, improved efficiency, greater transparency and continuous improvement in Australia's administrative law system. By balancing the need for transparency with the protection of sensitive information, the Bill attempts to strike a new equilibrium that serves the interests of justice and national security. The ART and ARC together symbolise a forward-thinking approach to administrative justice, poised to meet the demands of contemporary governance and public administration.



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