



# Inquiry into the Administrative Review Tribunal bills

## **House of Representatives Standing Committee on Social Policy and Legal Affairs**

Submission by the Commonwealth Ombudsman, Iain Anderson

**2 February 2024**

I welcome the opportunity to comment on the Administrative Review Tribunal Bill 2023 (ART Bill) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (ART Consequentials Bill). The bills would abolish the Administrative Appeals Tribunal (AAT) and establish a new administrative review body, to be named the Administrative Review Tribunal (the ART).

I support the bills, which among other things, maintain the important linkages between my Office and the new ART, increase the visibility of tribunal decisions and re-enliven the Administrative Review Council (the ARC).

The purpose of the Office of the Commonwealth Ombudsman (the Office) is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly; and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independent and impartial reviewing of complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive
- assisting people to resolve complaints about government administrative action, and providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

## Referrals

The bills maintain the necessary referral mechanisms between my Office, the ART and the Federal Court of Australia. My Office is part of Australia's administrative law system, which helps to ensure that administrative decision making is legal, fair, consistent, transparent, and impartial. My Office's primary function is to provide a free and accessible avenue to resolve complaints received from members of the public about the administrative decisions and actions of government agencies.

Referrals enable different elements of the Commonwealth administrative law scheme to work together to resolve issues of significance to the community.

Clause 288 of the ART Bill would allow the ART to provide an advisory opinion if, for example, my Office referred a matter directly to the ART<sup>1</sup> or recommended the principal officer of an agency we were investigating refer a question to the ART<sup>2</sup>. This would be consistent with the effect of section 59 of the AAT Act and recommendation 21.5 of the Robodebt Royal Commission.

Further, clause 185 of the ART Bill would allow the ART to refer a question of law to the Federal Court of Australia. Allowing for a question of law to be referred to the Federal Court for determination can provide a quick and efficient avenue to resolve issues of significance to the community without needing to wait for appropriate test cases.

## Publication of decisions

Clause 113(2) of the ART Bill would mandate the publication of decisions that involve significant conclusions of law or have implications for Commonwealth policy. Increasing the visibility of tribunal decisions is necessary to strengthen public trust in the transparency and consistency of the administrative review framework and would enhance the normative effect of the ART's decision-making.

## Re-enliven the ARC

The ART Bills would re-enliven the ARC. This would reopen important opportunities for key entities in the administrative law system including my Office (clause 247) to identify and cooperatively explore potential reforms in administrative law and practice.

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<sup>1</sup> Section 10A of the Ombudsman Act refers.

<sup>2</sup> Section 11 of the Ombudsman Act refers.