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Australians deserve an independent and adequately resourced administrative review system

The Administrative Appeals Tribunal (AAT) must be independent and adequately funded to ensure it can successfully fulfil its functions and objective to provide merits review of government decisions that impact people's lives.

"The AAT is a cornerstone of Australia's administrative law system," Law Council of Australia President, Mr Tass Liveris said. "However, we have concerns that Australia's current administrative law system, including the AAT, is not functioning optimally."

Today, the Senate Legal and Constitutional Affairs References Committee reported that it would rely on its substantive interim report into Australia's administrative review system.

The Law Council supports the recommendations by the majority of the Committee as they relate to the need for a more robust process for the appointment of members to the AAT and the re-funding of the Administrative Review Council.

"For the AAT to effectively perform its functions, it must be accessible, efficient, independent and perceived to be independent, so as to promote public trust and confidence in decision-making" Mr Liveris said. "In the Law Council's view, the AAT's independence has the potential to be undermined if there is a lack of transparency in the appointments process."

"It is critical that appointments to the AAT are conducted through a merit-based process that includes public advertisement, clear and relevant selection criteria, and an independent selection process."

"Merit-based appointments will assist in reducing delays and backlogs. It will also help improve the quality of decisions whilst bolstering the independence of the AAT and fostering public confidence in its impartiality."

The Law Council notes the majority interim report of the Committee calls for the AAT to be disassembled and replaced by a new federal administrative review system.

The Law Council's concerns about the AAT's ability to address delays in the system may be addressed by measures including the appointment of additional qualified and suitable decision-makers across the Divisions with the greatest backlogs to maximise the efficiency and effectiveness of the AAT in achieving its statutory aims. Such appointments must involve consultation with key stakeholders, including the Australian legal profession.

The Law Council's submission to the Committee also outlined areas in which the administrative law system, in particular in relation to the review of migration decisions, must be improved. The accumulation of cases in the Migration Review Division is of significant concern, with the AAT itself acknowledging that without significant change, including an increase in members and staffing, backlogs and delays in finalising cases will continue.

The Law Council looks forward to working closely with the Government as it considers the Committee's recommendations.

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.