



Josephite Justice Office
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**SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE**

COURTS AND TRIBUNALS LEGISLATION AMENDMENT BILL

(2021 Measures no.1) Bill 2021

Submitted by
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Contact
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SUBMISSION TO SELECT COMMITTEE

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INTRODUCTION

This submission is presented on behalf of the Josephite Justice Office, a ministry of the Congregations of the Sisters of St Joseph. We welcome the opportunity to provide a submission to the Inquiry into the Courts and Tribunals Legislation Amendment Bill. Our response focusses on Parts 8, 10 and 15 of the Bill.

The Sisters of St Joseph and our Associates (numbering approximately three thousand women and men) were founded in the mid-nineteenth century by Mary MacKillop and Julian Tenison Woods to work with those suffering from poverty and social disadvantage. We serve, educate, advocate and work for justice, for earth and for people, and especially for those pushed to the margins of our world.

From our beginnings, the Sisters of St Joseph have served with people new to this country. Throughout this time we have seen Australia shift from a country regarded to be at the forefront of the protection of the rights and dignity of those seeking a new life in this land, to one which is consistently seen as ignoring International human rights, if not deliberately undermining them. For these reasons, we have become suspicious of law, and amendments to law, which are claimed to be “accessible, fair, just, economical, informal and quick”. The amendments proposed in this Bill would certainly be economical, informal and quick. We question however the extent to which they are accessible, fair and just.

Appointment processes to the Administrative Appeals Tribunal (AAT)

The presenters of the **Courts and Tribunals Legislation Amendment Bill (2021 Measures No.1) Bill 2021** claim that it does not introduce fundamental changes to the way the legal system operates, but rather, simply proposes some incremental changes to streamline and clarify existing processes in the federal courts and the AAT. We believe it to be much more than this, and that therefore, their claim, at best, is misleading and requiring significant examination and review.

The proposal that the role of the Governor General in the appointment processes of the AAT be replaced and given to the Minister will remove both safeguards and objectivity within the current process. It will remove any independence in the appointment process and transfer unwarranted and direct power to the Minister.

Already, the appointment processes to the AAT fail to safeguard strong, impartial, independent practices. This proposed amendment further reduces the objectivity, oversight and independence of the appointment process.

The AAT was established as an independent statutory body to review Ministerial decisions. For this reason alone, it is totally inappropriate for the Minister to be given direct and, we believe, unwarranted and unjustifiable power over this body.

Proposed Immunity for Immigration Assessment Authority (IAA)

This amendment proposes to remove liability for their actions from the reviewers of the IAA. The proposal that the IAA be given immunity appears an unnecessary and unjustified protection. Members of this Authority are public servants who are appointed to undertake fast track reviews for people seeking protection in this country. These reviews are designed to be efficient and free from bias. We believe that these employees need to be held accountable and liable for the performance of their duties, as are other public servants.

In the long term it is apparent to many organisations working with people seeking protection that the IAA needs to be abolished and replaced by a body designed to provide justice, protection and the right for those appealing to have their appeals responsibly and fairly heard. The current “refusal culture” of the IAA, and the summary treatment of vulnerable people is opposed to all that we claim as justice in this country.

The Proposal for Short-form Judgements for the Federal Court

This proposal would allow the Federal Court to provide judgements in abbreviated form to further the efficient management of cases, when the Court believes it is reasonable to do so.

Every person has the right to full and reasoned judgements in response to a case before the Federal Court. People seeking a review of migration decisions are already disadvantaged in the justice system. They are victims of negative IAA decisions, they are often unrepresented, and they come with limited knowledge of the Australian legal system.

There is clear evidence that the Federal Court is pressured by a heavy workload. We believe however that the solution lies in dealing with this problem and providing greater resources, rather than further victimising vulnerable people.

RECOMMENDATIONS AND SUMMARY

The effects of Australia's failure to exercise justice and compassion in its treatment of people seeking protection are real and corrosive. We believe that the amendments discussed in this submission are designed to further bolster politically expedient policies and continue the victimisation of those already at risk, hectoring and threatened.

We therefore urge the Senate

1. To reject the proposal that the role of the Governor General be removed in AAT processes and be replaced by the Minister. It is totally inappropriate for the Minister to be given direct unwarranted and unjustifiable power over the AAT, which, we know, was established as an independent statutory body to review Ministerial decisions;
2. To reject the proposed amendment to remove liability for their actions from employees of the IAA, so that reviewers are constrained to accept responsibility for their decisions and performance;
3. To reject the proposal to allow the Federal Court to provide short-term and abbreviated judgements, which could negatively and adversely affect the outcome of a particular judgement and reduce the opportunity for individuals to seek an appeal.

We find ourselves at a decisive turning point in our country's history. The challenges we face provide us with new possibilities for developing an approach, which can demonstrate clearly our commitment to the international law and the rights of each person. This commitment will be seen in the way we respond to issues such as those facing us in this Bill. The question for all of us must be faced. What sort of country and planet will our children, grandchildren and great grandchildren inherit, if we do not choose justice and compassion over short-term political and administrative gain?

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