



Australian Government

Attorney-General's Department

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Access to Justice Division

Senator the Hon Ian Macdonald

Chair

Senate Standing Committees on Legal and Constitutional Affairs – Legislation Committee

By email: legcon.sen@aph.gov.au

Dear Senator Macdonald

Re: Inquiry into the Tribunals Amalgamation Bill 2014 (Cth)

I refer to the submission from the Chief Justice of the Family Court of Australia, the Hon Diana Bryant AO, of 3 March 2015 in relation to the inquiry into the Tribunals Amalgamation Bill 2014 (the Bill). The Committee Secretariat has indicated that further information from the Attorney-General's Department about the matters raised by the Family Court would assist in the Committee's consideration of the Bill.

Item 66 of Schedule 4 to the Bill would repeal Division 3 of Part VIII of the *Child Support (Registration and Collection) Act 1988*. In addition, Item 129 of Schedule 1 to the Bill would insert new section 44AAA into the *Administrative Appeals Tribunal Act 1975* (AAT Act). I confirm that the intended effect of these amendments—together with existing section 44 of the AAT Act—is to confer jurisdiction for judicial review of decisions of the amalgamated Tribunal in child support matters on the Federal Court and Federal Circuit Court. It is also intended that appeals from the Federal Circuit Court would be heard by the Federal Court. The Family Court's existing jurisdiction in relation to decisions of the Social Security Appeals Tribunal (SSAT) in child support matters would be removed. Further, the amendments would have the result that the amalgamated Tribunal may refer questions of law arising in child support proceedings to the Federal Court, under existing section 45 of the AAT Act.

In developing the Bill, the Government sought to simplify and standardise provisions relating to the amalgamated Tribunal where appropriate. These outcomes are examples of that approach.

Jurisdiction for child support matters

The Explanatory Memorandum in relation to Item 66 of Schedule 4 of the Bill explains the Government's policy rationale for the change in judicial review pathways from Tribunal decisions in child support matters. I extract it here for your convenience:

The existing regime...has the result that jurisdiction to hear appeals from SSAT decisions in child support matters is conferred on the Family Court, the Federal Circuit Court and certain State and Territory courts. This proliferation of jurisdictions is unnecessary and potentially confusing for applicants, many of whom are unrepresented. In practice the vast majority of matters are heard by the Federal Circuit Court, which has established a specialist child support panel to manage this caseload. The number of matters handled per annum by the Federal Circuit Court is relatively small (42 appeals from the SSAT were filed during 2013-14).

Under Part IVA of the AAT Act, appeals on a question of law lie from decisions of the AAT to the Federal Court. The Federal Court may transfer matters to the Federal Circuit Court, except where the decision was made by the Tribunal constituted by a member who is a judge. The amalgamation provides an opportunity to streamline judicial review pathways for child support matters on AAT first review by repealing Division 3 of Part VIII and applying Part IVA of the AAT Act in its place. This would simplify the options for the parties and create greater consistency on appeals across the amalgamated Tribunal (while noting that judicial review of most migration matters will continue to be governed by the Migration Act).

It is proposed that Part IVA of the AAT Act would be amended to confer jurisdiction on the Federal Circuit Court, in addition to the Federal Court, in respect of AAT first reviews of child support matters only (new section 44AAA, inserted by Item 129 of Schedule 1 of the Bill). This would preserve the availability of the Federal Circuit Court and recognise its existing role in this area of law.

This streamlining of judicial review pathways is a benefit of the amalgamation and will simplify the system for the amalgamated Tribunal and its users. Judicial review of all decisions of the AAT would be conducted by the Federal Circuit Court or the Federal Court. This is appropriate as the matters in question are all administrative law judicial review matters, notwithstanding that they arise from decisions made under a wide range of legislation.

Referrals on questions of law

The Government considers that any referrals on questions of law in relation to child support matters can be handled appropriately by the Federal Court. The power to refer questions of law to a court is rarely used, either by the AAT or the SSAT. Therefore, having different courts consider referrals of questions of law in relation to different subject matters is unnecessarily complex.

Further, the amalgamated Tribunal (including its Social Services and Child Support Division) will have access to members at the AAT Deputy President level, including those members who are also judicial officers. These members will have an advanced knowledge of legal issues arising in administrative review and would be well placed to determine matters that might previously have been considered for referral to a court.

Saving and transitional provisions

In relation to concerns about the effect of the amendments on Family Court proceedings which are on foot at the time of amalgamation, I note that paragraph 7(2)(e) of the *Acts Interpretation Act 1901* will ensure that the status of any pending appeal or reserved judgment of the Family Court is preserved.

Thank you for the opportunity to provide this information. I trust it will assist the Committee.

Yours sincerely

Greg Manning
First Assistant Secretary
Access to Justice Division