



Administrative Appeals Tribunal

15 July 2021

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Ms Dunstone

Inquiry into the Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021

Thank you for the invitation to make a submission to the Committee regarding the Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021.

The Administrative Appeals Tribunal (AAT) provides independent merits review of a wide range of administrative decisions made under the laws of the Commonwealth of Australia and of Norfolk Island. Decisions made by Australian Government ministers, departments and agencies and, in limited circumstances, by state government and non-government bodies are reviewed in one of the AAT's 9 divisions: Freedom of Information; General; Migration and Refugee; National Disability Insurance Scheme; Security; Small Business Taxation; Social Services and Child Support; Taxation and Commercial; and Veterans' Appeals. In carrying out its functions, the AAT must pursue the objective of providing a mechanism of review that:

- is accessible
- is fair, just, economical, informal and quick
- is proportionate to the importance and complexity of the matter, and
- promotes public trust and confidence in the decision-making of the Tribunal.

The Immigration Assessment Authority (IAA), a separate office within the AAT's Migration and Refugee Division, provides independent merits review of certain visa decisions. It must pursue the objective of providing a mechanism of review that is efficient, quick and free of bias.

The Bill proposes a range of amendments relating to the operations of the AAT and one amendment relating to the IAA. The AAT worked closely with the Attorney-General's Department in relation to the development of the Bill.

On 1 July 2015, the AAT was amalgamated with the former Migration Review Tribunal (MRT), Refugee Review Tribunal (RRT) and Social Security Appeals Tribunal (SSAT). In general, the procedures that applied to the conduct of reviews in the AAT, MRT, RRT and SSAT were preserved in the amalgamated AAT, embedded in the legislation that governs the operations of the AAT's divisions.

Over time, the AAT has identified areas of difference in the current legislative framework which it believes would benefit from greater harmonisation to improve the operations of the Tribunal and enhance our ability to meet our statutory objective. The 2018 statutory review of the amalgamated AAT conducted by the Hon Ian Callinan AC included recommendations supporting such harmonisation and the AAT has been engaging with the Attorney-General's Department and relevant departments and agencies regarding options for legislative reform.

The AAT welcomes the amendments proposed to the *Administrative Appeals Tribunal Act 1975* (AAT Act) and social services legislation in Part 1 to 3 of Schedule 1 to the Bill which will reduce areas of difference in the legislation applying to reviews in the AAT's Social Services and Child Support Division. Principally, they will:

- extend to non-agency parties in the Social Services and Child Support Division the Tribunal's statutory obligation to give parties a reasonable opportunity to present their case, while retaining the particular rules that limit the involvement of agency parties in reviews in that Division
- enable the Tribunal to hold pre-hearing conferences in appropriate types of cases in the Division such as child support reviews, and
- provide for a single set of powers the Tribunal can use to require parties to give the AAT information or, where considered necessary, to summon a person to give evidence or produce documents for the purposes of a review in the Division.

The proposed changes will have a number of benefits. They will enhance the Tribunal's ability to manage cases effectively and efficiently, improving our flexibility to tailor procedures to best suit the requirements of different cohorts of cases. By reducing complexity in the legislation the AAT must apply, they will make it easier for members and staff to work across divisions and reduce the costs of developing new digital systems to support the review process. The changes will also promote access to justice for users of the AAT's services by standardising procedural fairness requirements and providing for additional, more informal review pathways where appropriate.

The Bill also proposes a number of other administrative and technical amendments which will:

- clarify aspects of the AAT's operations relating to the constitution and reconstitution of the Tribunal (Parts 4 and 5), the time for applying for reinstatement of an application that has been dismissed (Part 6), the AAT's power to tax costs (Part 9) and the parties to the review of certain types of decisions (Parts 11 and 12), and
- provide additional flexibility in relation to the appointment, assignment and/or authorisation of members and officers of the AAT to perform functions under the AAT Act and related legislation (Parts 6, 7 and 8).

These measures will contribute to increased certainty in relation to the AAT's operations and enhance the Tribunal's ability to manage applications effectively and efficiently.

Part 10 of Schedule 1 to the Bill proposes to confer statutory protection and immunity on the IAA's Senior Reviewer and Reviewers in relation to the performance of their duties under Part 7AA of the *Migration Act 1958*. This amendment will ensure they have the same protection and immunity that is available to members and staff of the AAT exercising statutory functions in relation to the review of decisions on the merits.

The Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021 is a welcome step towards realising further benefits from the amalgamation of tribunals in 2015. The AAT will continue to engage with the Attorney-General's Department and other departments in relation to opportunities for further legislative harmonisation, particularly in the Migration and Refugee Division, and other opportunities for legislative change that will support the Tribunal's operations and the achievement of our statutory objective.

Please do not hesitate to contact me if the Committee requires any further information about the matters raised in this letter or if the AAT can be of any further assistance to the Committee in relation to the inquiry.

Yours sincerely,

Sian Leathem
Registrar