

Committee: Senate Legal and Constitutional Affairs Legislation Committee

Inquiry: Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2024; Administrative Review Tribunal (Consequential and Transitional Provisions No.2) Bill 2024; Administrative Review Tribunal Bill 2024

Question: 01

Reference: 26 April 2024, Hansard page 8

Committee member: Senator Green (Chair)

QUESTION 01:

CHAIR: Thank you. Perhaps you could take on notice any feedback you've received from your members about the current legislative process. I anticipate that the uncertainty around the bill is probably having an impact on your members, so, if you've got any direct feedback about whether they would like to see it passed quickly, could you take that on notice.

ANSWER 01:

CPSU members and other AAT staff have regular meetings with the President and Registrar where they can raise issues regarding the establishment of the new Tribunal. Delegates of the union meet bi-monthly with the ART Reform Transition Team and the AGD Taskforce to raise issues on behalf of CPSU members. There is a widespread acceptance that this Machinery of Government change is on foot, with an assurance that all current ongoing staff will have a role in the new Tribunal with equivalent terms and conditions.

One impact of the current legislative process is that the Teams tasked with implementation of transition within the Tribunal are limited in their ability to progress, including to provide transparency and certainty to employees, users and other stakeholders of the Tribunal. This includes in terms of structure, changes to the duties some staff may undertake, employment status for members, higher duties status for some staff and a range of other factors.

In addition, there is growing concern over the limited availability of time to consult internally prior to implementation as a result.

The CPSU members of the AAT have no other feedback on the desirability of a quick passage of this legislation.

This is an historic opportunity to create lasting change and our members tell us that they are less concerned with the quick passage of the Bills than they are with ensuring that the job is done well.

Committee: Senate Legal and Constitutional Affairs Legislation Committee

Inquiry: Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2024; Administrative Review Tribunal (Consequential and Transitional Provisions No.2) Bill 2024; Administrative Review Tribunal Bill 2024

Question: 02

Reference: 26 April 2024, Hansard page 8

Committee member: Senator Scarr

QUESTION 02:

Senator SCARR: Thank you to the witnesses. I've got a very, very short period of time; I'd like to spend more time with each of you, but, unfortunately, I don't have that time. How many outstanding cases of bullying complaints do you have—or cases that you're acting on on behalf of members—in relation to members of the AAT? So how many complaints do you have which are on foot which either haven't been resolved or aren't the subject of investigation? It's just to give me a feel as to the current status with respect to those important matters you raised.

Ms Donnelly: Unless my colleague has more information than me, I don't have that. We can provide some information to that end on notice.

Senator SCARR: Can you give us any general guide? Is it 10, is it one or is it two—any ballpark figure?

Ms Donnelly: I don't have that information before me; I don't want to speculate. What we have spoken to today is the general views and feedback we have had from our members over a number of years. I'm happy to provide some further information to you on notice.

Senator SCARR: But you do understand, Ms Donnelly, there are hundreds of members of the AAT. Do you understand that? Do you appreciate that?

Ms Donnelly: Yes, of course.

Senator SCARR: So, when comments are made of a serious nature, which you made—and I accept they're made in good faith by an industrial organisation that's doing its best to represent its members, particularly vulnerable members who may be subject to bullying—it does tend to cast a slur on hundreds of members. That is why I'm seeking to drill down into particulars to better define the extent of the issue and whether or not we're talking about a number of cases—a number of individuals who may well have been the subject of numerous complaints—or whether or not we're talking about dozens of members. When we don't get the particularity of the data, it is somewhat problematic in terms of not providing the appropriate context for our deliberations. So could you please take that on notice? I'm very keen to receive as much data as you can provide us in relation to the number of bullying complaints where you've been acting on behalf of your members, the number of members—on an anonymised basis, so not identifying members—of the AAT who've been the subject of those complaints, and the number of complaints outstanding as at the date of this hearing or as at the end of the year, whatever attributes of reporting suit in terms of how you report these things. Is that something you could take on notice, given the gravity of the nature of the claims which are made?

ANSWER 02:

The issues related to bullying and harassment by AAT members have been publicly reported.

AAT officials stated at Senate Estimates on 7 November 2022 that 19 members had faced multiple bullying or harassment complaints since 2016 including senior members and a deputy president¹.

At that time, 17 of those members remained at the AAT including one who had received 5 complaints².

We also refer to the AAT's own evidence provided to this Committee on 26 April 2024 that there have been 36 complaints against 24 members about bullying, harassment and discrimination since 1 July 2016 to 9 February 2024. Of those, two remain open³.

In a survey of AAT Associates conducted by the CPSU in October 2021, 46% of respondents answered "sometimes" and 7% answered "often" to the question "*have you ever experienced or witnessed a Member behaving inappropriately towards yourself or another associate?*"

The APS Employee Census 2023 results for the AAT showed that 11% of respondents had been subjected to harassment or bullying in the workplace in the past 12 months and 52% did not report the behaviour⁴.

The CPSU has a central database of member cases where members seek support and/or representation from the union's Member Service Centre. Assistance provided directly by a delegate or an organiser is not centrally recorded. As at 6 May 2024, the CPSU MSC is providing assistance to 16 members in the AAT. Of those matters, 5 relate to informal or formal concerns about bullying and harassment or inappropriate workplace behaviour.

¹ Legal and Constitutional Affairs Legislation Committee 7 November 2022, Estimates: Administrative Appeals Tribunal, Official Committee Hansard p. 71.

² Legal and Constitutional Affairs Legislation Committee 7 November 2022, Estimates: Administrative Appeals Tribunal, Official Committee Hansard p. 73.

³ Legal and Constitutional Affairs Legislation Committee 26 April 2024, Administrative Appeals Tribunal Bills 2024, Official Committee Hansard p. 25.

⁴ Australian Public Service Commission 2023, APS Employee Census 2023 for the AAT, Unacceptable Behaviour: Harassment and Bullying, p.19, < <https://www.aat.gov.au/about-the-aat/working-at-the-aat/aps-employee-census-results>>

Committee: Senate Legal and Constitutional Affairs Legislation Committee

Inquiry: Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2024; Administrative Review Tribunal (Consequential and Transitional Provisions No.2) Bill 2024; Administrative Review Tribunal Bill 2024

Question: 03

Reference: 26 April 2024, Hansard page 8

Committee member: Senator Scarr

QUESTION 03:

With respect to independent appointments of ART members, what gives an appointing panel independence, from your perspective? How do we, as legislators, assess whether or not an assessment panel, which you would seek to mandate, is independent of government?

Ms Donnelly: I think across government there are in existence a range of mechanisms to look at panel processes and independence. I think the first step is separation from the applicant, in a direct conflict-of-interest way. I think it goes to the qualifications and experience of the assessment panel in understanding the criteria—the skills, attributes and experience—that the would-be member needs to bring to the role to be successful. So I think it's about separation and I think it's about the qualifications and the—

Senator SCARR: Okay. I've got limited time—I don't want to be rude in terms of jumping in. So that separation from the applicant is incredibly important. What about separation from the executive government?

Ms Donnelly: I think that separation, in terms of making an independent decision, is important, including from government.

Senator SCARR: So you wouldn't consider a secretary of a department or their delegate to be an independent member of an independent panel?

Ms Donnelly: I think secretaries should be relatively independent of government. They obviously serve the government of the day, but they need to do that in an apolitical way. The CPSU hasn't necessarily turned its mind to this kind of detail about who should be on the panel, but I'm not sure ruling out all secretaries would be required.

Senator SCARR: That surprises me somewhat. A delegate of the Attorney-General: would that be 'independent'?

Ms Donnelly: I guess we haven't turned our minds to those matters, in terms of who should appear, but independence does, I think, need to be from both the applicant and the government, in terms of how they approach that. If you want feedback from staff about what they think of the assessment panel, we could also provide some further information to you.

Senator SCARR: Right. Do you think the same process of independence should apply to reappointment of existing members of the AAT, whether or not they should be reappointed, to the ART as should apply to the appointment of new members to the ART? Should the same independence process be applied?

Ms Donnelly: Yes, I think a similar process should apply in terms of reappointments. I think that is logically consistent with moving to this model.

Senator SCARR: I agree.

ANSWER 03:

CPSU AAT staff members are strongly supportive of an assessment panel process that is independent of government. They are strongly of the view that there should be separation from the applicant to avoid direct or perceived conflicts of interest, that appointments should be based on the principle of merit and having regard to the selection criteria. Members of the panel must have the qualifications and experience to understand the skills, attributes and experience required of an applicant in order to be successful.

Committee: Senate Legal and Constitutional Affairs Legislation Committee

Inquiry: Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2024; Administrative Review Tribunal (Consequential and Transitional Provisions No.2) Bill 2024; Administrative Review Tribunal Bill 2024

Question: 04

Reference: 26 April 2024, Hansard page 10

Committee member: Senator Shoebridge

QUESTION 04:

Senator SHOEBRIDGE: One matter that I think you say should be unambiguously included in the act is that, if the tribunal raises a systemic issue with a government department or with the executive, there needs to be an obligation for there to be a response. Should the response come from the minister? Should the response come from the secretary? How do you think that should work?

Ms Donnelly: I think it probably depends on the issue. When you look at robodebt and what occurred in that circumstance, where there were issues being raised and they were routinely ignored at every stage, where our submission comes from is that experience and our members' experience dealing with that program. There should be a requirement, when systemic issues are formally raised, that there has to be a review and there has to be a response rather than those just being ignored. As to whether that is the department or agency or the minister, I think it probably depends on the circumstances.

Senator SHOEBRIDGE: Do you want to come back on notice with what you think a good structure in that place would look like? You—I think quite rightly—say there should be a review and a response. Could you come back with what a good structure would look like and what, maybe, a reasonable time frame would be? I think that unless you make it quite explicit—I think you can probably see, from how the executive responds to Senate committee reports, other parliamentary committee reports or independent reports, that being specific actually assists in holding the executive to account. So, if you could give some more detail on that on notice, I'd appreciate it.

ANSWER 04:

The CPSU believes it appropriate for a response to systemic issues raised by the Tribunal to be supplied by either a Departmental Secretary or a Minister. Systemic issues should also be raised with the resurrected Administrative Review Council, which would be responsible for inquiring into and reporting on systemic challenges in administrative law.

What constitutes a reasonable time frame will be influenced by the complexity of the systemic issues and procedural fairness.

The CPSU notes that under the Freedom of Information Act 1982, an agency or Minister has a statutory obligation to acknowledge the request within 14 days of receiving it and is required to

take all reasonable steps to enable a response within 30 days after receiving a request unless as an extension is granted.

Drawing on this, the CPSU believes adopting similar statutory obligations to begin the response process and a statutory obligation to provide an estimated timeframe for the review and response in the Act should be considered.