

Senate Legal and Constitutional Affairs Legislation Committee
Attorney-General's Department

Hearing date: 26 April 2024

Question date: 29 April 2024

Paul Scarr asked the following question:

1. Please refer to paragraphs 9 to 14 of the submission made by Mr Tony Vernier of Counsel dated 19 March 2024. Why does the Loss of Office Determination 2018 not apply to Full-time AAT members not appointed to the ART? Are there any precedents for the Loss of Office Determination not applying in similar cases?
2. Please refer to paragraph 21. Has the Department received advice from the Solicitor-General with respect to the constitutional issues referred to therein? If so, when did the Department seek the advice and when was it received?

The response to the question is as follows:

1. Item 32 of Schedule 16 to the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2024 (Consequential and Transitional Bill No. 1) outlines the compensation arrangements for full-time AAT members who are not appointed to the ART. Full-time AAT members who are not appointed to the Tribunal will be paid an amount equivalent to their salary for 4 months, or, if there is less than 4 months remaining on their term of appointment, for their remaining term. As the Attorney-General noted in the Second Reading Speech for Consequential and Transitional Bill No. 1, Government's intention is to ensure that compensation payments are fair and reasonable but not excessive.

The department is not aware of any similar case where a Commonwealth entity with a very substantial number of statutory office holders has been abolished and replaced, with office holders able to be appointed to the new entity if found suitable through a merit-based assessment process. There are no applicable situations with which to make a direct comparison.

2. Throughout the course of policy development and drafting, the department obtained extensive legal advice on a range of matters within the Bills.