Senate Legal and Constitutional Affairs Legislation Committee

Attorney-General's Department

Hearing date: 26 April 2024

Hansard page: 32

Paul Scarr asked the following question:

Senator SCARR: Well, you can have an assessment panel, right? But it's not necessarily going to be independent. It will certainly be an assessment panel, and it will conduct an assessment. But one of the key policy points underlying this bill is that the assessment panel needs to be independent, and one cannot judge whether or not an assessment panel is independent unless one knows what the qualifications are for the people who sit on the assessment panel. At the moment, the bill provides that the composition of the assessment panels is contained in the regulations, so there's absolutely nothing on the face of the bill that would provide safeguards with respect to the independence of the assessment panel.
The thing that disturbs me about the evidence I'm hearing today is that you seem to be defaulting to the guidelines and saying that the guidelines meet the intention of the bill but, when I look at the guidelines, there are delegates of executive government sitting on those assessment panels, which potentially undermines at least the perception of the independence of those assessment panels. So are you saying that the existing assessment panel under the guidelines is independent and would be the model of an assessment panel moving forward?
Ms Samios: The Attorney-General has indicated his intention that the regulations pick up the effect of the guidelines as they currently exist, noting there's no current power to make regulations. The nomination or delegation of panel members by various persons under the guidelines does not mean that those people are not acting independently. Indeed, they were acting independently in performing those functions; they were assigned those roles and then asked to reach an independent judgement.
Senator SCARR: But they're not independent of government, are they? I mean, it's not like they're retired judges who have been appointed in their own right, delegates of someone or retired senior members of the AAT. A majority of them are not, at the very least, meeting those requirements. Isn't that the case?
Ms Samios: I can certainly provide on notice the names of the people involved. I'm not sure if it's an actual majority, but close to a majority would, in fact, be retired judges. I would need to go and check the numbers, but I think very close to 50 per cent of the panellists we've had have been retired judges. Then there have been people with a range of other perspectives: people with roles, say, on the Law Council or people with experience in the community sector have all been among the panellists nominated or delegated, depending on the function. And there have been current and former public servants, but I think those people understand very well what a merit based and transparent process requires, including the requirement for them to act independently in performing those functions.
Senator SCARR: So why hasn't membership of those panels been made public today?
Ms Samios: I thought it had been made public somewhere, but I'm very happy to provide it.
Senator SCARR: If you could provide that on notice, I'd appreciate that.

The response to the question is as follows:

Process	Panel	Rep*.	Panel members	
Adminstrative Review Tribunal (ART) General Member	A	AGD Sec	Mr Glenn Owbridge PSM	Former Senior Executive Lawyer, Australian Government Solicitor
		AAT	The Hon John Mansfield AM KC	Former Judge of the Federal Court
		AG	Ms Natalie Wade	Disability rights lawyer and advocate
	B	AGD Sec	Ms Jackie Davis	First Assistant Secretary, Department of Health
		AAT	The Hon Alan Robertson SC	Former Judge of the Federal Court, former member of the Administrative Review Council, member of the Expert Advisory Group
		AG	Mr Peter Woulfe	Barrister, Blackburn Chambers, Chair of Law Council of Australia Federal Dispute Resolution Section
	C	AGD Sec	Mr Anthony Seebach	First Assistant Secretary, Small and Family Business Division, Treasury
		AAT	The Hon Arthur Emmett AO KC	Former Judge of the Federal Court; former Judge of the NSW Court of Appeal
		AG	Ms Genevieve Bolton	Executive Director/Principal Solicitor, Canberra Community Law
	D	AGD Sec	Mr Matthew Swainson	Chief Counsel of the National Disability Insurance Agancy
		AAT	The Hon John Dowsett AM KC	Former Judge of the Federal Court, Former President National Native Title Tribunal
		AG	The Hon Ann Lyons	Former Senior Judge Administrator of the Supreme Court of Queensland; former Judge of the Supreme Court of Queensland
	E	AGD Sec	Mr David De Silva	Former First Assistant Secretary, Department of Finance
		AAT	The Hon Pamela Tate AM KC	Former Judge of the Victorian Court of Appeal
		AG	The Hon Alan Wilson KC	Former President of Queensland Civil and Administrative Tribunal; former Judge of the Supreme Court of Queensland
	F	AGD Sec	Emeritus Professor Ron McCallum AO	Legal academic, member of the Expert Advisory Group, former Adminstrative Appeals Tribunal member
		AAT	The Hon Julie Dodd–Streeton KC	Former Judge of the Federal Court; former Judge of the Supreme Court of Victoria
		AG	Mr Tom Howe PSM KC	Former Chief Counsel, Dispute Resolution with Australian Government Solicitor
	G	AGD Sec	Mr Bruce Taloni	Group manager, Portfolio Coordination, Department of Social Services
		AAT	The Hon Murray Kellam AO KC	Former Judge of the Victorian Court of Appeal; inaugural President of Victorian Civil and Administrative Tribunal; former chair of the National Alternative Dispute Resolution Advisory Council
		AG	The Hon Marcia Neave AO	Former Judge of the Supreme Court of Victoria; Chair, Justice Connect
	H	AGD Sec	Mr David De Silva	Former First Assistant Secretary, Department of Finance

The response to the question is as follows:

		AAT	The Hon Jeremy Allanson	Former Judge of the Supreme Court of Western Australia
		AG	Ms Catherine Eagle	Principal Solicitor, Welfare Rights and Advocacy Service, WA
ART Senior Member	J	AGD Sec	Mr Ian Govey AM	Former Australian Government Solicitor
		AAT	The Hon Julie Dodd–Streeton KC	Former Judge of the Federal Court; former Judge of the Supreme Court of Victoria
		AG	The Hon Susan Kenny AM	Former Judge of the Federal Court of Australia; former Acting President of the Adminstrative Appeals Tribunal
	K	AGD Sec	Ms Robyn Shannon	Deputy Secretary, Disability and Carers Stream, Department of Social Services
		AAT	The Hon John Dowsett AM KC	Former Judge of the Federal Court, Former President of the National Native Title Tribunal
		AG	Emeritus Professor Ron McCallum AO	Legal academic, member of the Expert Advisory Group, former Adminstrative Appeals Tribunal member
	L	AGD Sec	Mr Brenton Philp	Deputy Secretary, Markets Group, Treasury
		AAT	The Hon Murray Kellam AO KC	Former Judge of the Victorian Court of Appeal; inaugural President of the Victorian Civil and Administrative Tribunal ; former Chair, National Alternative Dispute Resolution Advisory Council
		AG	The Hon Ann Lyons	Former Senior Judge Administrator of the Supreme Court of Queensland; former Judge of the Supreme Court of Queensland
	M	AGD Sec	Ms Jackie Davis	First Assistant Secretary, Department of Health
		AAT	The Hon Arthur Emmett AO KC	Former Judge of the Federal Court; former Judge of the NSW Court of Appeal
		AG	The Hon Alan Wilson KC	Former President of the Queensland Civil and Administrative Tribunal; former Judge of the Supreme Court of Queensland
ART Deputy President	N / A	AGD Sec	Ms Tamsyn Harvey	Deputy Secretary, Attorney-General's Department
		AAT	The Hon Justice Emilios Kyrou AO	President of the Adminstrative Appeals Tribunal
		AG	The Hon Ray Finkelstein AO KC	Former Solicitor-General of Victoria; former Judge of the Federal Court; former President of the Australian Competition Tribunal
ART CEO and Principal Registrar	N / A	N/A	Ms Tamsyn Harvey	Deputy Secretary, Attorney-General's Department
			The Hon Justice Emilios Kyrou AO	President of the Adminstrative Appeals Tribunal
			Mr Iain Anderson	Commonwealth Ombudsman

*The current Guidelines for appointments to the AAT provide in paragraphs 7 and 8 that the assessment panel will be chaired by the Attorney-General's Department Secretary (AGD Sec) or their delegate and that the panels will comprise the Chair, the Adminstrative Appeals Tribunal President (or delegate) (AAT) and one member nominated by the Attorney-General (AG).