

INQUIRY INTO THE TRIBUNALS AMALGAMATION BILL

Legal Aid NSW submission

to Legal and Constitutional Affairs Legislation Committee

February 2015

About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services. Legal Aid NSW welcomes the opportunity to respond to the inquiry into the Tribunal Amalgamation Bill (the Bill).

Introduction

Legal Aid NSW assists clients with respect to veterans', social security and immigration matters. The Bill does not make any significant changes to the review rights of people affected by adverse decisions in these jurisdictions except in one area which will be detailed below.

Legal Aid NSW supports several aspects of the Bill, and only objects to the proposed amendment to section 34J of the *Administrative Appeals Tribunal Act 1975*. The reasons for this are outlined below.

Legal Aid NSW supports

- Legal Aid NSW supports the elements of the Bill that maintain the objectives of the amalgamated tribunal providing merits review that is fair, just, economical, informal and quick.

This includes:

- maintaining the independence of the tribunal by appointing a Federal Court judge as its President and funding through a single annual departmental budget appropriation rather than funding being related to the relevant portfolio.

- maintaining the ability of a social security recipient to seek second tier merits review as of right. The Bill maintains the current structure of first tier merits review at the Social Security Appeals Tribunal and the second tier review at the Administrative Appeals Tribunal (AAT) as of right.

Legal Aid NSW does not support

Legal Aid NSW does not support the proposed amendment to section 34J *Administrative Appeals Tribunal Act*. This amendment will allow the Tribunal to conduct a review at the second tier on the papers and without a party's consent: the current legislation allows the AAT to do this only with the consent of both parties.

The Explanatory Memorandum states:

48. To the extent that a review on the papers may limit the right to a public hearing, this limitation would be necessary and proportionate to the amalgamated Tribunal's objective for a fair, just, economical, informal and quick review. The amalgamated Tribunal would exercise this discretion carefully and on a case by case basis. Parties dissatisfied with the outcome of a review on the papers would retain access to judicial review.

And,

97. A minor amendment would be made so that second review of social services matters may, at the Tribunal's discretion, be conducted on the papers without the consent of the parties where the Tribunal is satisfied that the review can be adequately determined in the absence of the parties (new subsection 34J(2)). This would assist the Tribunal to ensure second review is conducted efficiently, but is clearly limited to those cases where it would be appropriate.

This amendment will potentially adversely affect many who utilise the review process. It will apply to the social security jurisdiction of the Tribunal where a large proportion are vulnerable people, with limited finances, limited English language skills, and serious physical or mental health issues. If the provision is applied then it effectively denies such a person the right to a proper hearing. As such, Legal Aid NSW disagrees with the characterisation of this amendment as "minor".

The qualifications that this power will be used "carefully" and in "appropriate" circumstances does little to ensure that the power will not be used to dismiss cases on the papers which may appear unmeritorious, but may reveal substantial merit when examined more carefully.

We consider that the proposed power to deal with a case on the papers without the parties' consent sacrifices the statutory objectives of the Tribunal conducting a review which is *fair and just* to the objectives of being *economical and quick*.

Additionally, this would detract from the "promotion of public trust and confidence in the decision making of the tribunal", which is a significant objective of the Act.

For the group who will be most affected by the proposed legislation, access to judicial review is not a realistic option due to prohibitive cost, and so not really of any practical benefit to those who will be adversely affected.

Thank you for the opportunity to make these submissions. Legal Aid NSW is keen to be involved in any further discussions about this important reform.