

Additional Comments by the Australian Greens

1.1 As noted in the Committee's Majority Report, the Tribunals Amalgamation Bill 2014 (the Bill) seeks to merge the Administrative Appeals Tribunal (AAT), the Social Security Appeals Tribunal (SSAT) and Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) into a single amalgamated Tribunal, established under the AAT Act and to be called the AAT.

1.2 The policy objective of the amalgamation is to further enhance the efficiency and effectiveness of the Commonwealth merits review jurisdiction, as well as generating savings through shared financial, human resources, information technology and governance arrangements.

1.3 While the Explanatory Memorandum to the Bill states that the amalgamation would primarily affect the tribunals' internal administrative and corporate operations, this Bill makes substantial changes to the existing Commonwealth tribunal system that will have a significant impact on how everyday people experience 'justice' in this system. For example, these reforms will impact upon anyone who seeks review of a decision relating to their Centrelink benefits, or their student or work visa, or their freedom of information request.

1.4 The Australian Greens support efforts to improve the effectiveness and efficiency of the Commonwealth Tribunal system, provided that such changes are pursued in way that also enhances the accessibility, fairness and flexibility of the current system and recognises that different problems require different approaches to review.

1.5 As a result, there is a need to test whether this Bill in fact preserves the rights and interests of Tribunal users, and does not jeopardise fair decision making or specialist expertise.

1.6 Many of the submissions to this inquiry supported the structural reforms contemplated by this Bill. However, many submission-makers also drew attention to features of the Bill that would give rise to substantive concerns and that would require vigilant monitoring and review to be confident that the amalgamation process facilitated by the Bill does not sacrifice 'the statutory objectives of the Tribunal conducting a review which is *fair and just* to the objectives of being *economical and quick*.'¹

1.7 Similar sentiments were echoed by the Public Interest Advocacy Centre (PIAC) which observed:

The newly amalgamated Administrative Appeals Tribunal will be responsible for thousands of matters. The need effectively to manage that caseload must not impact on the equally important function of effectively

1 Legal Aid NSW, *Submission 5*, p. 2. See also National Welfare Rights Network, *Submission 2*, p. 2; Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 1 of 2015*, 11 February 2015, p. 34.

probing administrative decisions that can often have a hugely significant impact on individual lives, including on people's human rights.²

1.8 The substantive concerns with the Bill raised by Tribunal users, experts and legal practitioners include:

- Concerns that the Bill may lead to an increase in Tribunal fees, which would in turn act as a deterrent for those seeking merits review of an administrative decision.³
- Concerns that the changes proposed in the Bill would allow the amalgamated AAT to conduct a second-tier review on the papers without first obtaining the consent of the parties. As Legal Aid NSW points out, this could potentially adversely affect a large proportion of tribunal users, particularly those with limited finances, limited English language skills, and serious physical or mental health issues.⁴
- Concerns that the requirement for the Attorney-General to consult with the Immigration Minister prior to assigning a person to the Migration and Refugee Division as a member, head or deputy head of the division could undermine the independence of the division and politicise the review process. For example, the Refugee Council of Australia (RCOA) noted that the Administrative Review Council's Better Decisions Report (1995) recommended that the 'selection and appointment process for all tribunal members should be rational, merit-based and transparent' and emphasised the need for appointments to be based on merit and expertise alone.⁵
- Concerns that many vulnerable users of the proposed Migration and Refugee Division of the amalgamated AAT would be left to navigate the complexity of refugee and migration law without access to independent assistance or legal advice. RCOA recommended that the Australian Government reinstate access to the Immigration Advice and Application Assistance Scheme at both the primary and review stages of the refugee status determination process and remove eligibility restrictions based on an asylum seeker's mode of arrival in Australia.⁶
- Concerns that the limitations on the right of a party to be represented at a hearing in the proposed Social Services and Child Support Division of the amalgamated AAT could undermine the efficiency and fairness of the review process. As Victoria Legal Aid explained in their submission, '[g]iven the

2 Public Interest Advocacy Centre, *Submission 4*, p. 2.

3 Public Interest Advocacy Centre, *Submission 4*, p. 2.

4 Legal Aid NSW, *Submission 5*, p. 2. See also National Welfare Rights Network, *Submission 2*, p. 2; Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 1 of 2015*, 11 February 2015, p. 34.

5 Refugee Council of Australia, *Submission 3*, p. 2.

6 Refugee Council of Australia, *Submission 3*, p. 3.

inherently complex nature of social security law, access to legal representation for the preparation and conduct of hearings before the Tribunal is a proportionate response to addressing the structural inequality associated with the social security review processes'.⁷

- Concerns relating to the proposed removal of the existing jurisdiction of the Family Court to hear appeals from the Federal Circuit Court, following a judicial review of decisions made under the CSRC Act by the SSAT. In its submission, the Family Court argued that transferring the jurisdiction of the Family Court to the Federal Court would result in 'greater fragmentation in child support appellate jurisdiction, and a squandering of the considerable expertise already developed in the Appeal Division of the Family Court...'.⁸
- Concerns relating to the doubling of penalties for committing offences under the AAT Act from 6 months imprisonment to 12 months imprisonment and from fines of 30 penalty points up to fines of 60 penalty points. For example, RCOA submitted that the proposed levels 'would be out of step with similar provisions for Commonwealth and State courts, tribunals and Royal Commissions'.⁹
- Concerns that this Bill, when considered in light of the government's proposed abolition of the Office of the Australian Information Commissioner (OAIC) in the Freedom of Information (New Arrangements) Bill 2014, will lead to an increased number of applications for review of government decisions to refuse access to public information. For example, PIAC has submitted that there is 'a role for specialist expertise when considering FOI review applications and that this should be reflected in the specialist divisions of the newly amalgamated tribunal'.¹⁰

1.9 The Australian Greens also strongly endorse the observations of the National Welfare Rights Network that:

...access to a fair and effective tribunal for our vulnerable clients requires more than legislative rights of appeal. It is critical that tribunals are adequately resourced, that members are equipped with the necessary skills and expertise, that welfare rights service are well resourced and that there are appropriate case management procedures in place. Efficiency driven changes within the SSAT over recent years have, in our opinion, undermined the accessibility, efficacy and fairness of the SSAT.¹¹

7 Victoria Legal Aid, *Submission 6*, p. 1.

8 Family Court of Australia, *Submission 8*, pp 3–4.

9 Refugee Council of Australia, *Submission 3*, pp 2–3. See also Andrew and Renata Kaldor Centre for International Law, UNSW, *Legislative Brief: Tribunals Amalgamation Bill 2014*, 23 January 2015, pp 3–4.

10 Public Interest Advocacy Centre, *Submission 4*, p. 3.

11 National Welfare Rights Network, *Submission 2*, p. 2.

1.10 It would be deeply regrettable if the same 'efficiency driven changes' comprising the rationale behind this Bill also result in undermining the accessibility, efficacy and fairness of the broader Tribunal system.

1.11 The Australian Greens are disappointed that the majority of the Committee did not use the opportunity presented by this Inquiry to fully explore the full range of issues raised by experts and practitioners making submissions to this Inquiry.

1.12 Without further information, it is difficult to be confident that the all of these potential concerns will be avoided once the amalgamated system is up and running.

1.13 In light of this, the Australian Greens recommend that the amalgamated Tribunal system be subject to comprehensive review within 24 months of coming into operation. This would provide an important opportunity for Tribunal users, Tribunal members, practitioners and other interested parties to reflect on whether the Bill has been successful in meeting its objectives of enhancing the efficiency and effectiveness of the Commonwealth merits review jurisdiction, whilst at the same time preserving fair decision-making, procedural fairness rights and specialist expertise.

Recommendation 1

1.14 The amalgamated Commonwealth Tribunal system established by this Bill be subject to comprehensive, independent review within 24 months of its operation.

**Senator Penny Wright
Australian Greens**