

## **ADDITIONAL COMMENTS AND POINTS OF DISSENT BY SENATOR BRIAN GREIG**

1.1 The Australian Democrats welcome the recommendations of the Committee, which will improve the Bill and address a number of flaws. In particular, we strongly support the Committee's recommendation to maintain the requirement that the President of the Administrative Appeals Tribunal (AAT) must be a Federal Court Judge.

1.2 However, the Democrats would go further than the Committee has. We believe there are additional improvements which can, and should, be made to the Bill.

1.3 It is curious that the Committee has canvassed a number of concerns raised in submissions to the inquiry, yet concludes that "the concerns raised are not sufficient to prevent the passage of the Bill". This conclusion ignores the possibility of amending the Bill to address the concerns raised.

1.4 In particular, the Democrats believe that further recommendations are warranted in relation to the following issues:

### **Removal of provisions allowing tenured appointments of members**

1.5 As the Committee has noted, the Bill proposes to restrict the term of appointment for all members up to a maximum of seven years, with eligibility for reappointment, thereby removing the possibility of tenured appointments.

1.6 The Democrats note the Government's view that "tenured appointments undermine the ability of the government to ensure that the pool of available members corresponds with the needs of the AAT and its users" and that, for over 15 years, only fixed-term appointments have been made. Nevertheless, the Democrats believe there is merit in retaining the option of making tenured appointments within the legislation.

1.7 We note the views of the Law Council of Australia, the Law Society of New South Wales and the South Brisbane Community Legal Service, all of which argued that the removal of tenured appointments would be likely to compromise the independence of the AAT and "inevitably result in a drop in public confidence"<sup>1</sup>.

1.8 The Democrats welcome the Committee's Recommendation 2, that the Bill be amended to specify a minimum term of appointment of three years. However, in conjunction with this specified minimum term, we believe that the option to make tenured appointments to the AAT should be retained in the legislation.

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<sup>1</sup> Mr Graham McDonald, *Submission 10*, p. 1.

1.9 Retaining this option places no obligation on the Government of the day to actually make tenured appointments. Indeed, it would be entirely possible for the Government to maintain its practice of making fixed-term appointments, nevertheless we believe there is merit in retaining both options. Accordingly, the Democrats recommend that the power to make tenured appointments to the AAT be retained in the Act.

### **Recommendation 1**

**1.10 That the power to make tenured appointments to the AAT be retained in the Act.**

### **Removal of the requirement that a presidential member should be a part of a tribunal considering certain migration matters:**

1.11 The Democrats are sympathetic to the arguments advanced by the Public Interest Advocacy Centre in relation to this amendment. In particular, we agree that the relevant decisions under the *Migration Act* involve significant issues and require careful consideration by a legally-qualified presidential member of the AAT.

1.12 Moreover, we believe that the proposed item 226 of the Bill lacks clarity and is likely to generate confusion and delay.

1.13 For these reasons, the Democrats recommend that item 226 of the Bill be opposed.

### **Recommendation 2**

**1.14 That Item 226 of the Bill be opposed.**

### **Ordinary members to constitute multi-member tribunals**

1.15 The Democrats do not believe that the requirement for multi-member tribunals to include at least one presidential member should be removed from the Act. As the Law Council argues, "in the case of multi-member tribunal hearings, owing to the legal complexities usually associated with such cases," it is vital that at least one member of the tribunal is legally qualified.

1.16 Accordingly, the Democrats recommend that item 47 of the Bill be opposed.

### **Recommendation 3**

**1.17 That Item 47 of the Bill be opposed.**