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Legal Services Commission

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Kelly Paxman
Acting Secretary
Legal and Constitutional
References Committee
Legislation Committee
AUSTRALIAN SENATE

Dear Ms Paxman,

INQUIRY INTO THE ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 2004

I refer to your circular letter dated 7th December 2004 and advise the Legal Services Commission will not be making a detailed submission on this Bill. However, the following matters are submitted for the Committee's consideration.

While the Commission supports measures which will improve the operations of the AAT, we are concerned about the provisions of the Bill relating to the terms of appointment of the President and other senior members of the AAT. Under the proposed changes, these office holders would no longer have tenure. Instead, they would be appointed for fixed terms only. As well, the President will no longer be required to be a Federal Court Judge, and may be a legal practitioner with as little as five years experience.

The Commission's concern is that these provisions are inconsistent with the principle of judicial independence for members of courts and tribunals such as the AAT which was created to provide a judicial mechanism to review administrative decisions independent of the Government agency concerned. The proper administration of justice requires that disputes between citizens and government be determined by persons who are both independent of the executive and seen to be so and who are not subject to either direct or indirect pressures which may affect or be seen as likely to affect their impartiality. Without question, tenure provides senior members of the Tribunal with that necessary independence.

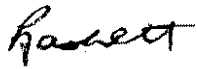
It is essential that AAT members both are, and are seen to be, independent of government. Such independence is essential for the maintenance of public confidence in the justice system and to the maintenance of the rule of law. In particular, the abolition of tenure could result in a President or a Deputy President being appointed for a short period, say 12 months, and then being appointed for a further short period, equivalent to an extended "probationary" period. This is, in the Commission's view, most inappropriate for these

appointments. Accordingly, the Commission respectfully suggests that these provisions of the Bill should be reconsidered and existing tenure to be preserved.

If tenure is not acceptable to the Government, then the President should also hold office as a Judge of the Federal Court, and a Deputy President should have at least seven year terms of appointment. We further suggest that the term of appointment for any other member, other than in an acting capacity, should be at least five years.

The Commission appreciates this opportunity to comment on the Bill.

Yours sincerely



PETER HASKETT
ACTING DIRECTOR