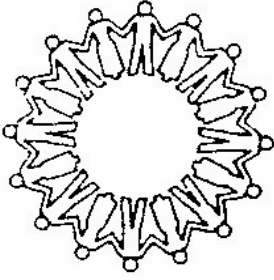


SOUTH BRISBANE IMMIGRATION & COMMUNITY LEGAL SERVICE INC.



CENTRO COMUNITARIO PER L'IMMIGRAZIONE E LA CONSULENZA LEGALE
SERVICIO COMUNITARIO DE ASISTENCIA LEGAL E INMIGRACIÓN
PANGMAMAYANG PAGLILINGKOD SA IMIGRASYON AT BATAS
DỊCH VỤ ĐI TRÚ VÀ CỘNG ĐỒNG LUẬT PHÁP
GÖÇ İŞLERİ VE TOPLUM HUKUK HİZMETİ
ادارة الاهجرة للخدمات القانونية للمجتمع
南布里斯本移民及社區法律服務處

24 January 2005

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Email legcon.sen@aph.gov.au

Dear Committee

INQUIRY INTO ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 2004

The South Brisbane Immigration and Community Legal Services (SBICLS) is an independent not-for-profit organization specializing in refugee and immigration law. Our legal service takes on genuine cases of people most in need, and provides expert advocacy before the Department of Immigration, the Migration and Refugee Review Tribunals, and works with pro bono solicitors and barristers to take some cases of public interest to federal courts. SBICLS also undertakes community legal education and law reform projects where resources permit. SBICLS appreciates the opportunity to comment on the proposed amendments and for the short time extension in which to lodge our submissions.

Objects Clause

It is noted that a number of the proposed amendments in the *Administrative Appeals Tribunal Amendment Bill 2004* are intended to improve the procedural efficiency of the AAT; however SBICLS is concerned that the proposed objects clause (clause 1) as currently worded may shift focus away from 'fairness' and inhibit the quality of the appeal process. We submit that review at this level should not be constrained by terms that apply to lower tiers of review such as the RRT, MRT, SSAT. Annual reports of all federal registries indicate that current case management strategies already strive for the most efficient processing of cases. SBICLS supports an efficient review process but this must not be at the expense of fairness. We submit that "quick and economical" should not be part of the objects and that a 'fair and just' object would include the necessity to have an efficient process.

Required Qualifications of President

SBICLS suggests that the proposed expansion of the qualification requirements under clause 15 of the Bill may have the effect of lowering the standard of legal skill and authority the position of President currently demands.

The establishment of an independent Tribunal is paramount to providing credible opportunities for individuals to seek redress and access fair and just review of administrative decisions. Currently under subsection 7(1) of *AAT Act* only practicing Federal Court Judges may be appointed to the position of President and SBICLS believes that this may be the most appropriate means of ensuring public confidence in the high standing of the position and of the Tribunal's independence from the executive arm of government.

The President must be of such a calibre that demands the respect of the other members of the Tribunal. The President must also be seen to be independent. A person in the position of a federal court judge would satisfy these demands.

However, it is acknowledged that the required attributes may not be confined to the judiciary and there may be some merit in broadening the applicant pool to get the best qualified person. However this would need to be carefully processed. A person having been a legal practitioner for only five years as contemplated by the Bill, would certainly not be appropriate in our view.

The AAT handles an enormous area of review of government decision-making and we believe that in such a crucial position it would be wise to have the appointment for President come from a politically bipartisan selection committee which also includes a community representative. This would promote a positive perception and help to take the politics out from the appointment.

Tenure

The explanatory memorandum in clause 21 identifies that the repeal of subsections 8(1) and 8(2) are "*designed to ensure that all future appointments to the AAT will be for fixed terms only*". Contact with members of some federal review tribunals has revealed that within some of the tribunal membership there is a perception that those who make swift decisions in favour of the government are more likely to be re-appointed. With power to appoint and re-appoint applicants for fixed terms it is possible there will be a real or perceived risk that appointees may be susceptible to governmental pressures. This has the potential to undermine the integrity of the AAT and its perceived independence.

Further, to attract members of a high calibre who can deal fairly and expeditiously with a diverse range of highly complex matters, there must be reasonable tenure of employment. Such people would invariably be leaving successful positions to take up office within the AAT.

SBICLS recommends that clause 12 of proposed amendments is inappropriate.

Alternative Dispute Resolution

SBICLS welcomes the promotion of alternative dispute resolution (ADR) in the administrative appeals process, as a means of encouraging other alternatives to resolution. SBICLS cautions that provision must be made to ensure that possible negative factors such as power imbalances (eg domestic violence) do not mitigate against fair and just processes and determinations.

Other comments

SBICLS appreciates the opportunity to comment on the proposed amendments to the *AAT Act*. We have provided only a brief submission but note that we have read the submission and other recommendations made by the National Welfare Rights Network (NWRN) to the inquiry and are supportive of these.

Yours sincerely

Robert Lachowicz
Coordinator/Principal Solicitor