

Legislative brief

Tribunals Amalgamation Bill 2014



Andrew & Renata Kaldor
Centre for International
Refugee Law

Last updated 23 January 2015

This legislative brief sets out the key changes that the Tribunals Amalgamation Bill 2014





Members will be appointed for a maximum term of five years although the appointment can be renewed¹² This is the same as the current arrangement for MRT-RRT members, although the maximum term for AAT members is currently seven years⁴³ The Attorney-General can set out other terms and conditions of appointment in writing (as is currently the case for the MRT-RRT) rather than by regulation (as currently required for the AAT).¹⁴

The existing grounds for removal for members of the MRT-RRT continue to apply These will now also apply to the AAT (except for judges appointed as President or Deputy President)¹⁵ with the effect of broadening the grounds for removal for AAT members to include absence and conflict of interest.¹⁶

Comment

The Bill generally seeks to harmonize the employment conditions of AAT members with MRT-RRT members (by reducing the protections down to the existing level of the MRT-RRT)

One concern is that there does not appear to be adequate justification for the requirement to consult with the Immigration Minister for appointments to the Migration and Refugee Division. It is not clear why the need to ensure appropriate subject-matter expertise could not adequately be considered through ordinary selection processes or, if desired, through



to be justified because it aligns the penalties with those in the Migration Act and in other legislation establishing courts and tribunals²⁰

Currently, these offences allow for a defence that a person has a 'reasonable excuse'. This is replaced with a defence of selfincrimination (that is, it is a defence that the person would incriminate him or herself). This is consistent with Commonwealth guidance that the defence of reasonable excuse should be avoided because it is too vague.²¹ However, the existing general defences under the Criminal Code (Cth) continue to apply.

Comments

The limited changes with respect to jurisdiction and procedure are surprising, given the measure is primarily concerned with administrative efficiencies. Arguably, this is a missed opportunity to review the procedures of the MRTRRT with a view to improving consistency across Australian administrative law (for example, in the requirements of procedural fairness)

The doubling of the penalty for offences of not complying with the requirements of the Tribunal also does not appear to be justified. Similar offences of non-compliance in Commonwealth legislation for courts, tribunals and royal commissions typically attract maximum penalties of six months, and this is broadly consistent with state and territory legislation.

