



Law Council  
OF AUSTRALIA

Office of the President

15 July 2021

Senator the Hon Sarah Henderson  
Chair  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Chair

### Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021

The Law Council of Australia appreciates the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee's (**Committee**) as part of its inquiry into the Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021 (Cth) (**Bill**).<sup>1</sup>

The Bill introduces a number of administrative amendments across a range of legislation related to Australia's federal courts and tribunals. The Law Council is generally supportive of the measures proposed in the Bill and considers that the proposed measures will be of some benefit in improving and clarifying several processes in the federal courts and the Administrative Appeals Tribunal (**AAT**).

As set out in the Explanatory Memorandum, the Bill is an 'initial step' in improving the operation of the AAT following the 2018 statutory review of the *Tribunals Amalgamation Act 2015* (Cth) (**Statutory Review**), conducted by former Justice of the High Court of Australia, the Hon Ian Callinan AC QC.<sup>2</sup> The Bill seeks to implement several of the measures recommended by the Statutory Review, for example:

- partial implementation of Measure 30 by empowering the President of the AAT to direct that a proceeding in the Social Services and Child Support Division (**SSCSD**), or any part of it or matter arising out of the proceeding, be referred to an alternative dispute resolution pre-hearing process;
- implementation of Measure 33 by removing provisions across several pieces of legislation<sup>3</sup> to allow section 40A of the *Administrative Appeals Tribunal Act 1975*

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<sup>1</sup> The Law Council is grateful for the support of its Family Law Section and Federal Litigation and Dispute Resolution Section, as well as the Queensland Law Society, in preparing this submission.

<sup>2</sup> Hon Ian Callinan AC QC, *Review: section 4 of the Tribunals Amalgamation Act 2015 (Cth)* (Report, on 23 July 2019). The Law Council provided a submission to this review on 27 August 2018: <<https://www.lawcouncil.asn.au/resources/submissions/statutory-review-of-the-tribunals-amalgamation-act-2015>>.

<sup>3</sup> Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021 sch 1 pt 1 proposes amendments to the *Administrative Appeals Tribunal Act 1975* (Cth) s 40A(1); *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) ss 117-8, 199(1); *Child Support (Registration and Collection) Act*

(Cth) to be applied in relation to SSCSD proceedings and therefore allow the President or an authorised member or officer of the AAT to summon a person to give evidence or produce documents; and

- clarifying that the AAT's power to correct errors in the text of a decision, or in a written statement of reasons for the decision, can only be exercised by the President or the member who presided at the proceeding. However, it should be noted that no amendment has been made to amend section 24Z of the AAT Act so that section 43AA would also apply to the Migration Review Division as recommended by the Statutory Review.

The Law Council supports these measures and looks forward to continuing to work with the Australian Government and the AAT on the implementation of further recommendations of the Statutory Review.

The Bill also makes minor amendments to the *Family Law Act 1975* (Cth), *Federal Circuit Court of Australia Act 1999* (Cth) (and as of 1 September 2021, the *Federal Circuit and Family Court of Australia Act 2021*), and *Federal Court of Australia Act 1976* (Cth) to clarify that hearings conducted remotely using videoconferencing technology are exercised in 'open court'. The Law Council supports these amendments.

#### **Contact**

The Law Council trusts this information is of assistance to the Committee. The Law Council would be pleased to provide any further assistance the Committee may require. Should you wish to speak with me directly, I am contactable on 0438 301 956 or [Jacoba.Brasch@lawcouncil.asn.au](mailto:Jacoba.Brasch@lawcouncil.asn.au).

The responsible officer within the Law Council Secretariat, Mr Nathan MacDonald, Principal Policy Lawyer, is also available to assist the Committee Secretariat or Committee members' offices and is contactable on (02) 6246 3721 or [nathan.macdonald@lawcouncil.asn.au](mailto:nathan.macdonald@lawcouncil.asn.au).

Yours sincerely



**Dr Jacoba Brasch QC**  
**President**

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*1988* (Cth) ss 95F-95G, 95H(1); *Paid Parental Leave Act 2010* (Cth) ss 228-9, 230(1); and *Social Security (Administration) Act 1999* (Cth) ss 147 (table item 3), 165, 165 (heading), 165(1), 165(3).