

Senate Legal and Constitutional Affairs References Committee
THE PERFORMANCE AND INTEGRITY OF AUSTRALIA'S ADMINISTRATIVE
REVIEW SYSTEM

Attorney-General's Department

Question date: 01 December 2021

Question type: Written

Senator the Hon Kim Carr asked the following question:

In relation to section 3ZZAF of the Crimes Act 1914:

1. How many Deputy Presidents are currently nominated to issue warrants? Please provide a breakdown of:
 - a. how many are part-time Deputy Presidents and how many are full-time;
 - b. how many are judicial Deputy Presidents and how many are non-judicial Deputy Presidents;
 - c. how many have been enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory for at least five years and how many have not been;
 - d. how many are also nominated under section 13 of the Surveillance Devices Act; and
 - e. how many are also nominated under section 6DA of the Telecommunications (Interception and Access) Act 1979.
2. How many Senior Members are currently nominated to issue warrants?

The response to the Senator's questions is as follows:

1. Ten Deputy Presidents are currently nominated to issue warrants under section 3ZZAF of the *Crimes Act 1914*.
 - a. Seven of the Deputy Presidents are full-time and three are part-time.
 - b. All of the Deputy Presidents nominated under section 3ZZAF of the *Crimes Act 1914* are non-judicial.
 - c. All of the Deputy Presidents nominated under section 3ZZAF of the *Crimes Act 1914* have been enrolled as a legal practitioner of the High Court, another federal court, or the Supreme Court of a State or of the Australian Capital Territory for at least five years.
 - d. All of the Deputy Presidents nominated under section 3ZZAF of the *Crimes Act 1914* are nominated under section 6DA of the *Surveillance Devices Act 2004*.
 - e. All of the Deputy Presidents nominated under section 3ZZAF of the *Crimes Act 1914* are nominated under section 6DA of the *Telecommunications (Interception and Access) Act 1979*.
2. Nine Senior Members are currently nominated to issue warrants under section 3ZZAF of the *Crimes Act 1914*.

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Senator the Hon Kim Carr asked the following questions:

Question 1.

In relation to the current AAT Appointments Protocol:

1. Under the Protocol, the President of the AAT is required to seek expressions of interest by public advertisement every year. Was the most recent call for expressions of interests on 16 April 2021? If not, when was it?
2. What is the nature and extent of the Department's involvement in the appointments process under the Protocol?
3. Does the Department know how many expressions of interest have been received in respect of the most recent call for expressions of interest? If not, why not? If so, how many?
4. How many of the applicants to the most recent call for expressions of interest are female and how many are male?
5. How many of these applications are for appointments as Members?
6. How many of these applications are for appointments as Senior Members?
7. How many of these applications are for appointments as Deputy President?

Question 2.

Prior to expressions of interest being sought on 16 April 2021, when was the last call for expressions of interest?

Question 3.

In respect of each of the previous calls for expressions of interest under the Protocol (i.e. pre-April 2021):

1. Does the Department know how many expressions of interest were received? If not, why not? If so, how many?
2. How many of the applicants were female and how many were male?
3. How many of those applications were for appointments as Members?
4. How many of those applications were for appointments as Senior Members?
5. How many of those applications were for appointments as Deputy President?
6. How many of the applicants were ultimately appointed to the Tribunal?

Question 4.

Paragraph 1 of the 2019 Protocol for Appointments to the Administrative Appeals Tribunal provides that expressions of interest should be sought annually. Why was there no call for

expressions of interest in 2020? Does the Department acknowledge that this was a breach of the protocol? If not, why not?

Question 5.

How many of the people who have been appointed as members, senior members or deputy presidents to the Administrative Appeals Tribunal since March 2019 were selected from the pool of individuals who made formal expressions of interest in response to public advertisements?

The response to the Senator's questions is as follows:

Question 1

1. The most recent call for Expressions of Interest (EOI) was on 16 April 2021.
2. The department does not hold a prescribed role under the Protocol for Appointments to the Administrative Appeals Tribunal 2019 (the 2019 Protocol). The department supports the Administrative Appeals Tribunal (AAT) and the Attorney-General by:
 - a. managing public advertising for the EOI register;
 - b. hosting the EOI register on the department's IT infrastructure;
 - c. providing information to the AAT about EOIs received;
 - d. providing advice to the Attorney-General on the President of the AAT's assessment of the AAT's appointment needs and the candidates that have been recommended for appointment (this does not typically include an analysis of the merits of the candidates recommended);
 - e. following the Attorney-General's identification of suitable candidates, supporting the Attorney-General to progress candidates through the Government's appointment process, including seeking curricula vitae and Private Interests Declarations from proposed candidates and drafting appointments documentation.
3. As at 3 December 2021, there were 439 EOIs on the Register. The number of applications may change on a daily basis as the EOI Register remains open and will be open until 29 April 2022 or until a new call is advertised.
4. Of the 439 EOIs received as at 3 December 2021, 257 are male applicants and 182 are female applicants.
5. As at 3 December 2021, 405 applicants on the EOI Register have applied to be a Member. It should be noted that applicants can indicate interest in appointment as a Member, Senior Member or Deputy President (they are not exclusive).
6. As at 3 December 2021, 265 applicants to the EOI Register have applied to be a Senior Member. It should be noted that applicants can indicate interest in appointment as a Member, Senior Member or Deputy President (they are not exclusive).
7. As at 3 December 2021, 100 applicants to the EOI Register have applied to be a Deputy President. It should be noted that applicants can indicate interest in appointment as a Member, Senior Member or Deputy President (they are not exclusive).

Question 2

1. Prior to 16 April 2021, the last call for EOIs was on 8 August 2019. The EOI Register was open until 8 September 2019.

Question 3

1. There were 814 applications to the EOI Register that opened on 8 August 2019.
2. There were 372 female applicants and 442 male applicants.

3. There were 636 applications for appointment as a Member. It should be noted that applicants could indicate interest in appointment as a Member, Senior Member or Deputy President (they were not exclusive).
4. There were 376 applications for appointment as a Senior Member. It should be noted that applicants could indicate interest in appointment as a Member, Senior Member or Deputy President (they were not exclusive).
5. There were 139 applications for appointment as Deputy President. It should be noted that applicants could indicate interest in appointment as a Member, Senior Member or Deputy President (they were not exclusive).
6. Two promotions and 11 new appointments to the AAT were made from the EOI Register that was open from 8 August to 8 September 2019.

Question 4

No EOI process was conducted in 2020. The reason was largely a practical one. On 23 April 2020, the President of the AAT wrote to the Attorney-General with recommendations to address member needs for the 2020 year, with the 2019 EOI Register informing new appointments. These appointments were not finalised until December 2020.

Question 5

56 substantive AAT appointments, including 41 reappointments, have been announced since March 2019 and have been made in line with the 2019 Protocol.

- In accordance with clause 4(c) of the 2019 Protocol, the President of the AAT has established processes for current members to inform his recommendations to the Attorney-General for reappointments. 41 reappointments under the 2019 Protocol have been made since March 2019.
- In line with clause 4(d) of the 2019 Protocol, the EOI Register is used to inform recommendations for new appointments to the AAT. Current members of the AAT whose terms are due to expire before the next EOI Register opens only need to submit an EOI if they are seeking advancement to a higher remuneration level or category of membership (a new appointment). 2 promotions and 11 new appointments to the AAT under the 2019 Protocol have been made since March 2019 from candidates on the EOI Register.
- Also under clause 4(d) of the 2019 Protocol, the President of the AAT recommended the appointment of 1 new judicial Deputy President to the AAT. This judicial Deputy President was appointed in December 2020, but was not on the EOI Register.

Fifteen appointments to the AAT were announced on 8 April 2019, but these appointments were made prior to the implementation of the 2019 Protocol and are not included in the figures above.