

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
INQUIRY INTO ADMINISTRATIVE TRIBUNALS BILL 2023 [PROVISIONS] AND
RELATED BILLS**

PUBLIC HEARING, 26 APRIL 2024

Administrative Appeals Tribunal

Question 5 – 2019 Protocol for appointments to the Administrative Appeals Tribunal

Senator Shoebridge asked the following question on 26 April 2024:

Senator SHOEBRIDGE: Was there any process that you're aware of inside the tribunal seeking advice from you or from the president? I'm particularly talking about reappointments.

Mr Hawkins: There was a protocol which I think was dated back in 2019 where the Attorney would seek the views of the president. But, certainly, the views of the registrar were never sought.

Senator SHOEBRIDGE: Would you be in a position to provide that protocol or any details about that protocol to the committee?

Mr Hawkins: I can.

The response to the senator's question is as follows:

The submission of the Attorney-General's Department to the Senate Legal and Constitutional Affairs References Committee Inquiry into the performance and integrity of Australia's administrative review system has attached a copy of the *Protocol: Appointments to the Administrative Appeals Tribunal (2019)*. A copy of the submission, which contains further information about the process for Administrative Appeals Tribunal appointments, is attached.

Attorney-General's Department Submission

The performance and integrity of Australia's administrative review system

Introduction

The Attorney-General's Department (the department) provides the following submission to aid the Senate Legal and Constitutional Affairs References Committee in its inquiry into the performance and integrity of Australia's administrative review system.

This submission provides:

- an overview of Australia's administrative review system and the role of the department
- a snapshot of the creation and purpose of the AAT
- the AAT appointments process and the role of the department, and
- information about the Administrative Review Council (ARC).

The department would also be happy to provide additional supplementary information to assist the Committee in its review.

Australia's administrative review system and the role of the department

The administrative law system

Australia's administrative review system is primarily composed of two types of review: judicial review and merits review. Good administrative decision making is also supported by other bodies such as the Commonwealth Ombudsman.

Judicial review is review of a decision by the courts. The power of the courts to review Commonwealth government decision making is recognised in s 75(iii) and (v) of the Constitution and vested in the original jurisdiction of the High Court. Judicial review is limited to the question of whether the decision-maker acted fairly, within the allotted powers and according to law. This includes review on the bases of procedural fairness, acting beyond power, jurisdictional error, error of law, and fraud. In 1977, the Administrative Decisions (Judicial Review) Act introduced a codified system of judicial review in addition to constitutional judicial review.

Merits review is the process by which a person or body other than the primary decision-maker reconsiders the facts, law and policy aspects of the original decision and determines the correct and preferable decision. The process of review may be described as 'stepping into the shoes' of the primary decision-maker. If the reviewer considers that the decision was not the correct and preferable decision, the reviewer may remake the decision using the same legislative framework as the original decision-maker.

In 1968 Attorney-General Sir Nigel Bowen formed the Commonwealth Administrative Review Committee, which was led by Sir John Kerr and became known as the Kerr Committee, to review the Australian administrative law system. The terms of reference included considering the availability of review, grounds of review and administrative law procedures. In 1971, the Kerr Committee tabled a report outlining the inadequacy of parliamentary and judicial action as the primary means of reviewing decisions, and the inadequacy of the then processes where numerous bodies reviewed

decisions made under various pieces of legislation. For example, in the taxation field at the time there were Boards of Review, Valuation Boards, the Relief Board and the Tax Agents Board. The report recommended the establishment of a general administrative review tribunal to provide external merits review of government decisions. In part as a result of these recommendations, legislation was passed in 1975 establishing the AAT.

The AAT provides an important function in the Australian community. It is an independent statutory body established to provide an independent merits review process that is fair, just, economical, informal and quick. AAT members are either experienced in legal matters, have skills in decision-making or are experts on particular subject matter. They undertake merits review of a broad range of administrative decisions, with a view to reaching the correct or preferable decision in each matter. Merits review through the AAT is an integral part of ensuring good governance, accountability and transparency in public administration and contributes more broadly to better administrative decision making.

The AAT is not the only source of merits review. Merits review of a decision can be conducted by another person or persons within the same agency as the original decision maker. Internal merits review is commonly recommended before seeking external review as it provides an opportunity for agencies, as subject matter experts, to reconsider a decision and can result in the quicker resolution of the issue than seeking external review. For example, Services Australia provides internal merits review for a range of social security benefits decisions.

In addition to the AAT, other agencies provide external merits review functions. For example, the Office of the Australian Information Commissioner may reconsider decisions relating to freedom of information requests.

The role of the department

The department promotes and provides advice to government on best practice administrative decision making. It also supports the Attorney-General, Senator the Hon Michaelia Cash, in her portfolio responsibility for the AAT, which involves facilitating the appointment of AAT members, providing advice on the resourcing needs of the AAT, and progressing policy and legislative reforms to ultimately provide users with the best experience possible.

Best practice administrative decision making will be understandable, supported by logical reasons, transparent and without bias. The decision maker will consider all relevant factors and no irrelevant factors. Ensuring that powers under which administrative decisions will be made are well-structured and contain sufficient guidance for the original decision makers is central to maintaining these objectives. At the other end of the process, the ability to seek review of decisions that affect an individual's rights or interests is vital to ensuring good practices are maintained.

The department supports the development of best practice decision making by reviewing and providing advice on all draft Bills which raise administrative law issues. Office of Parliamentary Counsel (OPC) Drafting Direction 4.2 (the Drafting Direction) states that administrative law issues raised in draft Bills must be referred to the department for review. The department then provides advice to OPC and the instructing agency on administrative law principles and best practice. Common referrals from OPC to the department include draft Bills that affect the power or jurisdiction of a tribunal, create a new reviewable decision, limit or exclude merits review, or affect

the operation of the AAT Act or AAT Regulations. A full list of issues which must be referred to the department are set out at Attachment A to the Drafting Direction. The Drafting Direction states that proposals raising administrative law issues should be referred to the department as early as possible, even before drafting has started. The department also provides policy advice on administrative law to agencies on an ad hoc basis as part of the policy development process.

When considering proposals relating to merits review, including external merits review by the AAT, the department continues to be guided by the merits review principles set out in the 1999 ARC publication 'What decisions should be subject to merit review?'. The core principle is that an administrative decision that will, or is likely to, affect the interests of a person should be subject to merits review. The ARC guide includes advice on identifying a merits reviewable decision, decisions that are unsuitable for merits review, factors that may justify excluding merits review and factors that do not justify excluding merits review.

For example, the department may receive a referral from OPC about a proposal to limit merits review of a decision made by a Minister. The department provides policy advice on whether it is appropriate for merits review to be excluded on the basis of the nature of the decision, nature of the decision-maker and effect of the decision. If the department is of the view that it would not be appropriate to exclude merits review, the department advises the instructors and drafters of the reasons why merits review should apply and advocates for its inclusion. Otherwise, the department may conclude that the decision is unsuitable for merits review, such as legislation-like decisions of broad application which are subject to parliamentary oversight. It is ultimately the decision of the relevant Minister with policy responsibility for the legislation to determine the preferable policy position on such issues. The department also consults with the instructing agency on issues that should be raised in the explanatory materials of a Bill, supporting transparency and accessibility of policy and the instrument making process.

Through this process, the department promotes effective administrative decision-making across government and, in particular, effective merits review. Not only does appropriate merits review ensure that administrative decisions are correct and preferable, merits review also has a broader, long-term objective of improving the quality and consistency of the decisions of primary decision-makers. This produces better outcomes for those subject to administrative decisions and reduces the burden on external merits review bodies such as the AAT. Effective external review remains an important aspect of ensuring the transparency and accountability of decisions made by government.

The department also plays an active role in considering proposed policy and legislative reforms across government that may impact on the AAT's functions, jurisdiction and processes. The department works closely with the AAT and other departments as required on existing, emerging or anticipated AAT issues. It is also important to recognise that proposed reforms may have a flow on impact on the federal courts through the appeals process, and the department also provides advice and seeks resources as required.

A key role of the department is to progress, where necessary and appropriate, policy and legislative change to support the AAT to better conduct its business. Most recently, this has included work to develop responses to legislative recommendations arising from the Report of the Statutory Review

of the *Tribunals Amalgamation Act 2015* by the Hon Ian Callinan AC QC. The first step in responding to these legislative recommendations was through the introduction of the Courts and Tribunals Legislation Amendment (2021 Measures No.1) Bill 2021 on 23 June 2021. The Bill seeks to make a number of administrative amendments to the AAT Act to improve its operation and streamline AAT procedures and practices.

The creation and purpose of the AAT

The AAT operates independent of government, and is one of the cornerstones of Australia's administrative review system. It provides individuals with an independent and high-quality merits review that is accessible, fair, just, economical, informal and quick. The AAT has jurisdiction over more than 400 pieces of legislation, and consistently finalises over 40,000 applications each year.

The AAT was established by the AAT Act and commenced operation on 1 July 1976. Its creation was part of administrative law reforms taking place in the 1970s, which included the establishment of the AAT, the Commonwealth Ombudsman and the introduction of the ADJR Act. Those reforms were designed to facilitate the capacity of individuals to challenge government decisions. The AAT was the centrepiece of the reforms, providing a direct pathway for individuals and organisations to have administrative decisions of government independently reviewed.

The AAT in its current form incorporates other tribunals that were previously established to deal with specific issues. In particular, on 1 July 2015, the AAT was amalgamated with the Migration Review Tribunal and the Refugee Review Tribunal (MRT-RRT) and the Social Security Appeals Tribunal (SSAT), implementing the recommendations of the 1995 [Better Decisions](#) report of the ARC. Consolidating those tribunals in the AAT has simplified engagement with the administrative review system for AAT users, has allowed for a greater flexibility in the members' availability to hear matters across the AAT, and seen the standardisation of member entitlements.

- In 1982, the Immigration Review Panel was established to provide independent merits review of migration decisions that could not be reviewed by the AAT. The Immigration Review Panel was merged with the Migration Internal Review Office in 1999 to form the Migration Review Tribunal (MRT). The Refugee Review Tribunal (RRT) was established in 1993, replacing the Refugee Status Review Committee. Between 2002 and 2005, the functions of the MRT and RRT were progressively consolidated. In 2005, the MRT-RRT commenced operation as a single agency.
- The SSAT was established in 1975 and, until 1 July 2015, provided independent merits review of administrative decisions under various Acts including in relation to child support, family assistance, paid parental leave, social security and student assistance.
- From 1 July 2015, the Immigration Assessment Authority (IAA) became an independent authority within the Migration and Refugee Division of the AAT. The IAA provides a fast track review process in relation to certain decisions to refuse protection (refugee) visas.

In accordance with section 2A of its enabling legislation, in carrying out its functions the AAT must pursue the objective of, amongst other things, providing a mechanism of review that is accessible, fair, just, economical, informal and quick. The AAT has an extensive and constantly expanding jurisdiction which includes matters such as migration, child support, social security, taxation,

veterans' entitlements and workers' compensation. To manage its vast jurisdiction, the workload of the AAT is managed by nine Divisions.¹

While the AAT is in part governed by the AAT Act, in reviewing decisions made by other portfolios its powers are also bestowed or constrained by legislation administered by those other portfolios - for example, the *Migration Act 1958*, the *Taxation Administration Act 1953*, the *Social Security Act 1991* and the *National Disability Insurance Scheme Act 2013*.

Since 2016-17, the AAT has received approximately 50,000-60,000 applications each year, demonstrating the reliance users are placing on it to have their administrative decision reviewed. Of the matters appealed to the federal courts in 2020-21, only 1.8% of appeals were allowed.²

The AAT appointments process and the role of the department

As at 12 November 2021, the AAT comprises 112 full-time members and 201 part-time members. All appointments to the AAT meet the requirements under the *Administrative Appeals Tribunal Act 1975*.

Legislative framework for appointments

As per Division 2 of the AAT Act, appointments to the AAT are made by the Governor-General on the advice of the Executive Council. Division 2 further sets out requirements relevant to the employment of AAT members, including qualifications for appointment, restrictions on outside employment, disclosure of interests by members and resignations and termination of employment.

Under section 7 of the AAT Act, a person may be appointed as a Deputy President, senior member or member (as the case may be), if they are enrolled as a legal practitioner (however described) of the High Court or the Supreme Court of a State or Territory and have been so enrolled for at least 5 years or, if in the opinion of the Governor-General, they have special knowledge or skills relevant to the duties of a Deputy President, senior member or member. The mechanism for appointing members under section 7 is intended to ensure that the AAT is constituted by individuals who have a wide range of experiences which make them well placed to undertake merits review. These individuals do not necessarily need a legal background, but instead may be appointed for their professional and technical expertise, knowledge or skills. For example, this knowledge could be in relation to accountancy, medicine, taxation, defence or public administration.

Section 6 of the AAT Act provides for the appointment of part-time members, recognising that the need for specialist skills may only arise on an ad hoc basis. The ability to appoint part-time members also provides the AAT with flexibility in managing its caseload, with part-time members able to act as a surge capacity when caseloads are particularly busy.

Noting that AAT members can work part-time and are not precluded from holding outside employment, the AAT Act aims to maintain public confidence in the integrity of decision-making

¹ Freedom of Information (FOI) Division, General Division, Migration and Refugee Division, National Disability Insurance Scheme (NDIS) Division, Security Division, Small Business Taxation Division, Social Services and Child Support Division, Taxation and Commercial Division, Veterans' Appeals Division.

² [AAT 2020-21 Annual Report](#), Transparency Portal, Table 2.1.1

within the AAT by requiring members who retain outside employment to avoid conflicts of interest. Subsection 11(2) of the AAT Act sets out that part-time members are not precluded from undertaking paid employment outside the AAT unless, in the President's opinion, it conflicts or may conflict with their duties. Further, section 14 sets out disclosure requirements for members in relation to a proceeding before the Tribunal, and how identified conflicts may be managed. In this context, the onus is on individual members to declare any potential conflicts of interest. It is then a matter for the President of the AAT to consider and manage disclosures.

Subdivision B of Part III of the AAT Act seeks to maintain the integrity and performance of the AAT by setting out steps that must be undertaken prior to the assignment of non-presidential members to Divisions within the AAT. These requirements include consultation with the President in relation to proposed assignments, consultation with Ministers responsible for specific acts, or being satisfied that a member holds specific training or knowledge before being assigned.

Section 13 of the AAT Act provides that the Governor-General may terminate the appointment of a member (not a Judge) in a limited number of specified circumstances. The department notes the AAT Act does not currently provide any formal mechanism whereby the Parliament can have placed before it for consideration any investigation into alleged misbehaviour. This is different to serious complaints potentially warranting removal from judicial office that may be brought before the Parliament in relation to federal judges, where guidance is provided by the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*.

[The appointments process in practice](#)

The process for AAT appointments has evolved over time. At all times, the department's role has been to support the Attorney-General to bring appointments forward for formal government consideration and to progress assignments to divisions of the AAT.

From the commencement of the [Australian Public Service Commission's Merit and Transparency Guidelines](#) (APSC Guidelines) in 2008 until the start of the Protocol for AAT Appointments in 2015, all AAT appointments were conducted in accordance with the APSC Guidelines.

AAT appointments are now conducted under a Protocol, which is an agreement between the Attorney-General and the President of the AAT for managing the ongoing appointment needs of the AAT. The Protocol operates as an exemption to the APSC Guidelines.

It was recognised that the significant increase in the number of AAT members post-amalgamation with the SSAT and MRT-RRT (increasing from approximately 80 to 365 members) and the related expiry of appointments (estimated at around 100 per year) would result in the APSC Guidelines not being suited to AAT appointments. In those circumstances taking a more tailored approach to AAT appointments would provide a streamlined and flexible approach to identifying and recruiting high calibre candidates for appointment.

The then Attorney-General, the Hon George Brandis QC, in consultation with the then President of the AAT, the Hon Justice Duncan Kerr *Chev LH*, settled the first Protocol on 6 November 2015 (**Attachment A**). The 2015 Protocol, which operates as an exemption to the APSC Guidelines, set out three consecutive steps for appointments to the AAT:

- the President provide the Attorney-General with their assessment of the appointment needs of the AAT
- the Attorney-General may accept the President's advice about appointments or choose a person who is appropriately qualified, and
- if there are appointment needs that have not been filled following step two, then the Attorney-General will seek expressions of interest to identify candidates for appointment.

A revised Protocol came into effect on 25 March 2019 (**Attachment B**) agreed between the then Attorney-General, the Hon Christian Porter MP, and the President of the AAT, the Hon Justice David Thomas. The revised Protocol increased the transparency in the AAT appointments process through the inclusion of a yearly Expression of Interest (EOI) process for applicants. The revised Protocol also provides for the AAT to lead selection processes and identify suitable candidates for appointment, which inform the President's recommendations to the Attorney-General.

Under paragraph 3 of the Protocol, the President establishes processes to assess the suitability of applicants who have provided EOIs to a Register which references AAT-specific selection criteria. The President then supplies advice and recommendations about appointments to the Attorney-General. Under paragraph 7 of the 2019 Protocol, the Attorney-General is not limited to candidates recommended by the President and may recommend to Cabinet a candidate who has not been recommended by the President or who is not on an EOI register. The revised Protocol continues to operate as an exemption to the APSC Guidelines.

EOI Register

As per the 2019 Protocol, each year the President of the AAT seeks expressions of interest in appointment to the AAT by public advertisement. The department manages the advertising and hosts the EOI register on its IT infrastructure.

The first AAT EOI register opened in August 2019 and over 800 applications were received. This EOI process informed 30 AAT member appointments announced in 2020. An EOI process was not conducted in 2020 because appointments arising from the first EOI process were only finalised in December 2020.

A new General EOI Register was opened on 16 April 2021 and will remain open for 12 months or until a new call is advertised. Over 400 applications have been received. An EOI Register was also opened on 16 April 2021 seeking EOIs for appointment as an AAT Deputy Division Head. This Register closed on 16 May 2021 and over 160 applications were received.

The department provides information to the AAT about EOIs received as and when requested. Initial information comprises but is not limited to names, qualifications and referees. Further information, including responses to selection criteria and the CV of candidates, are provided to the AAT as requested. The department has recently arranged for the AAT to also have direct access to the EOI Register to streamline the process for considering member applications.

The department's role in AAT member appointments

Once the Attorney-General has identified suitable candidates for appointment, the department supports the Attorney-General to progress these candidates through the Government's appointment process. In particular, the department:

- Contacts proposed candidates recommended for appointment to seek a Curriculum Vitae (CV) and a signed Private Interests Declaration (PID) form as required under paragraph 122 of the [Cabinet Handbook](#). The department does not otherwise contact proposed candidates recommended for appointment to discuss their possible appointment.
- Reviews the PID forms of proposed appointees for disclosures. The department would not necessarily be aware of a person's actual, perceived or potential conflicts of interest unless the proposed appointee discloses that information in their CV or PID.
- Provides these documents to the Attorney-General as part of the required documents package for appointments under the Cabinet Handbook.

The PID forms of individuals who were successful in being appointed to the AAT were not typically provided to the AAT, as they were not provided for that purpose and there are privacy implications for sharing PIDs without the individual's consent. In June 2021, the department changed its processes to seek the consent from all potential new appointees for their CV and PID to be provided to the AAT if the individual is ultimately appointed to the AAT.

The Administrative Review Council

The Administrative Review Council (ARC) was established as an independent policy advisory body under Part V of the AAT Act.

The ARC was a recommendation of the 1971 Kerr Committee report along with the related reforms of the administrative law system discussed above. The report recommended that the first step 'in the evolution of an Australian system of administrative law' should be the establishment of the ARC (p 103). The Kerr Committee stated that their intention for the ARC was to:

assist the Government in providing a review of administrative decisions in as many cases as possible, and in setting up the appeal system in each case where review is to be provided, to supervise procedures, to minimise the number of privative clauses and generally to assist in the introduction on as wide a basis of possible of the system of administrative law we have outlined (p 106).

To that end, the functions of the ARC under section 51 of the AAT Act are predominantly to review and monitor developments in administrative law, make recommendations to the Minister on improvements to the administrative law system, and promote knowledge of administrative law.

Section 49 of the AAT Act provides that the members of the ARC are the President of the AAT, the Commonwealth Ombudsman, the President of the Australian Human Rights Commission, the President of the Australian Law Reform Commission, the Australian Information Commissioner and between three and eleven members appointed by the Governor-General.

The role of the ARC was to, at its initiation, assist in the creation of Australia's administrative review system, and continue to provide advice to the Attorney-General on the Commonwealth administrative law system. When operational, the ARC's functions included inquiring into and advising the Attorney-General on the federal administrative law system, administrative decision-making practices and tribunal practice and procedure. It also promoted knowledge about administrative law and provided practice guides for decision-makers. ARC publications can still be accessed via [the department's website](#). Between 1978 and its last report in 2012, the ARC produced a variety of publications, including best practice guides on, amongst other topics, lawfulness, natural justice, and accountability. The ARC also provided practical guidelines for preparing statements of reasons and standards of conduct for tribunal members. The ARC conducted reviews and produced reports on topics including automated assistance in administrative decision making, administrative accountability, and information-gathering powers of government agencies. These publications have not been updated to reflect any developments in case law or legislation since the publications were made. However, the publications articulate sound and enduring statements of policy and the department regularly refers to the ARC publications in the course of its work. The ARC did not have any function or power to review particular decisions of government agencies or tribunals.

In May 2015, the ARC was discontinued and its functions were consolidated into the department. The Minister for Finance announced the discontinuation of the ARC as part of the [May 2015 Smaller Government Reform agenda](#).³ Although Part V of the AAT Act (which provides for the ARC's establishment and operation) has not been repealed and remains in force, the ARC has not received any funding or had any new members appointed since its discontinuation.

The ARC performed a valuable role in the development of Australia's system of administrative review and ensured that by 2015, Australia's administrative law system was well established, administrative law values were well recognised and a comprehensive body of administrative law jurisprudence had developed. The AAT has been in [operation](#) since 1 July 1976, reviewing decisions made under more than 400 Commonwealth Acts and legislative instruments.

Since the ARC's functions were consolidated into the department, we continue to review the operation of administrative law at the Commonwealth level and guide the development of administrative law policy. This is done by, amongst other things, considering the application of administrative law in changing contexts and promoting legislative drafting that is consistent with administrative law policy. The department maintains up-to-date expertise on administrative law issues by reviewing and considering changes in case law and developments across the public sector such as automated decision making. The department facilitates the review and strengthening of the administrative law system by providing advice on proposals affecting administrative law issues, primarily facilitated through providing advice on draft Bills under OPC Drafting Direction 4.2.

³ The consolidation of the functions of the ARC was informed, in part, by the [National Commission of Audit](#) which recommended in 2014 that the ARC be merged within the Department. The Smaller Government Reform agenda aimed to streamline the number of government bodies and eliminate duplication.

The department will continue to provide expert policy advice across government on administrative review and consider emerging issues in decision-making frameworks such as the use of assistive technology in administrative decision-making.

PROTOCOL

Appointments to the Administrative Appeals Tribunal

2015

Vacancies (both new appointments and reappointments on the Administrative Appeals Tribunal (AAT)) will be filled in the following manner:

1. The President of the AAT will supply the Attorney-General with:
 - a. the Tribunal's assessment of what positions need to be filled and at what level; and
 - b. advice about which members whose terms are expiring have sought reappointment; and
 - c. the President's recommendations regarding whether reappointments should be offered and at what level.
2. The Attorney-General will then indicate which positions will not require public advertisement for expressions of interest because:
 - a. a particular member will be reappointed without the requirement for advertising; or
 - b. the Attorney-General has chosen a suitable person who is appropriately qualified.
3. For the remaining positions, the Attorney-General will seek expressions of interest by public advertisement. The Attorney-General's Department (AGD) will establish a register to receive applications that address selection criteria developed specifically for the AAT.
4. The Secretary of the AGD will establish a Selection Committee (the Committee) that will include the President of the AAT (or a nominee), a representative of the Attorney-General (excluding ministerial staff) and the Secretary of the AGD (or a nominee). The Committee will refer to the register and provide confidential advice to the Attorney-General about potential candidates he may find suitable to recommend to Cabinet for appointment and the appropriate level of appointment in each instance. The panel may or may not choose to interview prior to providing their advice to the Attorney-General for any particular position.
5. The Attorney-General is not limited to candidates preferred by the Committee and may choose to recommend to Cabinet a candidate for a position that has not been suggested by the Committee or is not on the register.
6. The Attorney-General will consult his ministerial colleagues who must be consulted in respect of potential appointments to particular Divisions.
7. The Attorney-General will then recommend appointments to Cabinet.

This process will be conducted every six months and six months ahead of the vacancies arising.

PROTOCOL

Appointments to the Administrative Appeals Tribunal

2019

Vacancies on the Administrative Appeals Tribunal (AAT) will be filled in the following manner:

1. The President of the AAT will, every year, seek expressions of interest by public advertisement. The AAT will establish a register to receive applications that address selection criteria developed specifically for the AAT.
2. Subject to the President otherwise determining, expressions of interest will remain on the register for the calendar year they are received. Each calendar year the register will be repopulated.
3. The President of the AAT will establish a process to assess the suitability of applicants who have provided expressions of interest to the register.
4. The President of the AAT will supply the Attorney-General with:
 - a. the AAT's assessment of what positions need to be filled and at what level; and
 - b. advice about which members whose terms are expiring have sought reappointment; and
 - c. the President's recommendations regarding whether reappointments should be offered and at what level; and
 - d. the President's recommendations regarding suitable candidates for appointment that should be offered and at what level for positions where the President has recommended that reappointments should not be offered.
5. The process described in paragraph 4 will be conducted every six months and six months ahead of the vacancies arising, or as otherwise requested by the Attorney-General.
6. The President of the AAT's recommendations to the Attorney-General will be made having had regard to the outcomes of the process to assess the suitability of applicants who have provided expressions of interest to the register.
7. The Attorney-General is not limited to candidates recommended by the President of the AAT and may choose to recommend to Cabinet a candidate for a position that has not been suggested by the President of AAT or is not on the register.
8. The Attorney-General will consult ministerial colleagues who must be consulted in respect of potential appointments to particular Divisions.
9. The Attorney-General will then recommend appointments to Cabinet. If the appointment(s) receive Cabinet's approval, the Attorney-General will recommend the appointment(s) to the Governor-General for consideration.