

ATTACHMENT E

Why did the government declare war on the AAT? To uphold 'community standards'

The government justifies its reshaping of the Administrative Appeals Tribunal by claiming it brings it into line with 'community standards'. For some seeking the tribunal's judgement, the changes could mean life or death.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

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"We have a problem with the AAT," Home Affairs Minister Peter Dutton told [2GB's Ray Hadley](#) in May 2018. "And there's no sense pretending otherwise."

According to Dutton, the Administrative Appeals Tribunal was failing to "uphold community standards", and didn't "reflect the views of the Australian people".

"We are looking at ways in which we can reform the migration aspect of the AAT and I want to make sure that if we cancel the visa of someone who has committed serious criminal offences ... that person has their visa cancelled and they're deported from our country. I'm not going to take a backward step on this," he told Hadley.

So what exactly are "community standards"? It doesn't exist in law as a concept. But as a rationale for the government to drastically overhaul and remake the AAT to ensure it delivers different results, it's very real indeed.

Dutton's attacks on the tribunal began escalating from 2017. During the 2016-2017 financial year, the AAT reviewed 19,077 of the Department of Home Affairs' visa decisions, overturning 31 per cent.

2017 was also the year the Coalition excoriated the tribunal after it overturned a ministerial directive to deport Melbourne taxi driver Jagdeep Singh to his native India after being convicted of sex offences. The Herald Sun singled out AAT senior

member Miriam Holmes for special treatment. Reporter Keith Moor gained access to internal AAT documents which “revealed” Holmes had asked AAT staff to remove one of her written decisions from the publicly accessible website.

“The documents suggest she did so because her written decision contained an error and other material which she was concerned could harm her reputation,” Moor reported.

It was a red meat kind of story for Australia’s tabloid media. The AAT, said 2GB announcer Ben Fordham, was “fast becoming the rapist’s best friend”.

In late 2018, Keith Moor at the *Herald Sun* was again given access to internal AAT documents. This time it related to AAT deputy president Jan Redfern, who allowed a Comanchero bikie originally from New Zealand to keep his visa “despite being satisfied the bikie may be a risk to the Australian community”, according to the report.

The newspaper catalogued other instances in which Redfern had overturned ministerial directives to cancel the visas of people convicted of violence or sex crimes: a gang member from New Zealand who had been on a “seven year crime spree”; a Chinese woman convicted of manslaughter; and a Nigerian student who had obtained his visa fraudulently.

The *Herald Sun* also revealed a “fake refugee” case that resonated strongly: six Iranian asylum seekers had returned to Iran for a holiday, contradicting their argument that they feared the Iranian regime.

In June this year, Law Council of Australia president Arthur Moses SC criticised Dutton for claiming that “when you look at judgments that are made it’s always interesting to go back to have a look at the appointment of the particular Labor government of the day”.

Dutton’s statement was “unacceptable”, said Moses: “It must be recognised and appreciated that these bodies provide an important check upon the unlawful exercise of power. Any suggestion by any member of government that Australian tribunals are not acting with independence — or any unwarranted attempts to influence the

exercise or curtail the role of merits review — can be dangerous and damaging to our justice system.”

Populating the AAT with Liberal Party members and government staffers has been “designed to erode the independence of the tribunal and has been done in response to pressure by Dutton and the News Corp media campaign”, wrote barrister and commentator Greg Barns, who has appeared for and advised in a number of AAT cases.

“The issue is one of what is termed apprehended bias,” Barns wrote in *Crikey* in mid-2017. “It is not that these former staffers and Liberal Party members might be actually biased, the test is whether a ‘fair-minded lay observer’ might reasonably apprehend that the AAT member might not bring an impartial mind to his or task as decision-maker.”

A refugee lawyer who often appears before the AAT told *Inq* that lawyers can anticipate the outcome of cases in advance “because we can see particular members don’t have the legal background, and have strong affiliations with political parties — and we expect those members to basically toe that party line in light of the pressure of reappointment”.

The lawyer summed it up this way: “It’s potentially life or death decisions for some applicants who cannot return to their countries. And these are non-qualified people who are toeing a party line that is anti-immigrant anti-refugee.”

Anatomy of a scandal: how the government stacks the AAT with its political cronies

Over the past six years, dozens of people with ties to the Liberal Party have gotten plum gigs at the Administrative Appeals Tribunal, despite many of them having no formal legal qualifications.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 24, 2019

It's a glittering prize: a job as a member of the Administrative Appeals Tribunal, one of the plumpest appointments within the gift of a federal government.

Tenure of up to seven years, renewable. Annual salary of up to \$385,000 for senior members. Removal only by order of the governor-general after a vote from both houses of parliament. No compulsory retirement age. The prestige of effectively being a judge sitting atop a multi-pronged legal institution whose annual budget is nine times more than the cost of running the High Court.

As for qualifications, none are needed. Even though the AAT makes legal judgements every day about important, often life-changing government decisions, its members don't need a law degree, or any kind of degree, or any experience, in anything.

All that's required is a federal government willing to hand out the gift — and how those gifts have been flowing under the Abbott/Turnbull/Morrison governments over the past six years.

During that period, the Coalition has replaced 70% of the 333 AAT members with its own appointments — a turnover that has decimated the ranks of the members and senior members who deal with the bulk of the tribunal's daily caseload.

These are all senior quasi-judicial positions that, in the AAT's own words, conduct "independent" merit reviews of migration, refugee, social security and other decisions by government ministers, departments and agencies.

But how “independent” are those members? This is what *Inq* has discovered:

- 65 of the 333 AAT decision-making members are former Liberal Party staffers, former Liberal or National politicians, party donors, members, unsuccessful Liberal candidates or Liberal government employees
- All bar one of the 65 were appointed to their roles in the last six years
- 24 of those 65 appointees have no legal qualifications, including seven of the AAT’s senior members
- The vast majority were appointed without a transparent selection process

In contrast, when the Labor Party left office in 2013, only 15 members across the AAT, and associated migration, refugee and social services tribunals, had *any* sort of political connection.

And many of them hadn’t been first appointed by an ALP government.

To break it down further: the Rudd and Gillard governments appointed former Labor MP and Federal Court Judge Duncan Kerr as AAT President, and South Australian Labor Senator Linda Kirk to the Migration Review Tribunal. There was another member who appeared to have connections to the Liberal government who was appointed in 2009. Former ALP Legal Advisor Stephanie Forgie was still sitting on the AAT, having been first appointed under Labor 1988.

By the end of 2013, there were also four people with connections to Labor connections and five with connections to the LNP serving on the tribunals who had been originally appointed under the Howard government. We understand two others on the Social Securities Tribunal had connections to the ALP, but because that tribunal didn’t publish the start of dates of their members, we don’t know for sure which government appointed them.

This has all happened under the umbrella of the *Administrative Appeals Tribunal Act 1975*, which stipulates that a member “must not” be appointed unless the person is a legal practitioner of the High Court or Supreme Court and has been “so enrolled for at least five years”, or — and this clause has given the government legal carte

blanche to appoint dozens of non-lawyers and political cronies — “in the opinion of the governor-general, has special knowledge or skills relevant to the duties of a senior member or member”.

But in a review of the AAT, published earlier this year, former High Court judge Ian Callinan QC — a noted conservative — recommended that “all further appointments, re-appointments or renewals of appointment ... should be of lawyers, admitted or qualified for admission to a Supreme Court of a State or Territory or the High Court of Australia”. The AAT, he observed, is “difficult, factually and legally” and “capacity to undertake forensic analysis and write reasoned judgements is essential”.

The AAT was set up over 40 years ago to provide a quick, affordable quasi-judicial forum to appeal against government department decisions. For much of that time it operated invisibly, frequently dealing with the grievances of the most vulnerable in the community: welfare recipients, NDIS users and veterans living on compensation. It also deals with visa and refugee claims, where it has earned the public ire of Coalition ministers over decisions the government claims are out of step with community values.

Although the AAT is part of Australia’s legal machinery, it doesn’t have the same protections as the judiciary — and that’s the technicality that has enabled the government to intervene to dilute the AAT’s independence.

Ministers have also publicly attacked decisions and singled out tribunal members, typically with the vigorous support of some of their media supporters.

The government has subverted the established appointments process, halting job advertisements and interviews, handing unfettered power to the attorney-general to hand-pick new members, and nobbling the statutory review body of senior public officials (established to provide independent oversight of the tribunal) by withdrawing its funding.

The sheer number of new members, some of whom have no experience in the legal profession, has led to a slowdown in decision making. In 2013/14, before the government began its assault on the AAT, the migration and refugee tribunal decided

24,729 cases. In 2016 that number fell to 16,111 and is slowly building up to an estimated 20,500 for 2019. That amounts to a 25% drop in productivity.

Justice and independence: they're the two big losers in the government's brazen, systemic politicisation of one of Australia's most important legal institutions.

The opinionated former flight attendant with the power to judge

Michael Cooke is an ardent Tony Abbott supporter who has called children protesting climate change 'political pawns' in a 'climate alarmist cult'. He's also a member of the Administrative Appeals Tribunal.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 24, 2019

Tony Abbott was desperate. With just over two weeks to go before the May 2019 federal election that would decide his political fate, the former prime minister was in a place that had been his comfort zone for the past 25 years. The Queenscliff Surf Life Saving Club, in the heartland of his Warringah electorate, was the venue for a live Sky News debate.

But there was no comfort for Abbott on this occasion, as he blustered his way through a question about climate change with his independent opponent Zali Steggall making the case for ambitious reduction targets as he cast doubt, again, on the science. People in the audience jeered their local member. It looked bad for Abbott. As he knew too well, lose the “Queensies” as the local beachsiders are known, and you’re likely to lose the election.

Yet not everyone was jeering the former PM. One loyal supporter, a long-term Warringah resident in his mid-60s, stood against the tide. His name is Michael Cooke.

In a Facebook discussion of the Sky debate, Cooke described barrister-turned-candidate Steggall as a “total fraud,” adding: “You should have been at the Queensie Surf Club to hear her crap.”

In separate Facebook posts, Cooke took on those who doubted the record of Tony Abbott. “Stop spamming,” he responded to a Steggall supporter who pointed to a *Sydney Morning Herald* opinion piece arguing it was time for Abbott to go. “U r full of it so like I said stop trolling.”

Inq has discovered that Cooke kept up his Facebook attacks on Steggall and her supporters on at least 10 different days up to and after the May 18 election, using the Facebook discussion pages of the *Manly Daily*, the local paper in the electorate. Descriptions Cooke applied to Steggall and/or her behaviour include: “total fraud” ... “crap” ... “false” ... “cult queen” ... “fake climate warrior” ... “weird”.

Cooke described children who attended a climate change protest in front of Tony Abbott’s office as a “climate alarmist cult organised by GetUp” which was “the insidious US import”. The school children, he posted, were “political pawns for GetUp/Steggall”. The attacks were personal and angry.

As well as being a fierce Tony Abbott loyalist and social media enthusiast, Michael Cooke is a full-time senior member of the Administrative Appeals Tribunal.

He was appointed first to the Migration Review Tribunal/Refugee Review Tribunal in 2014, during Abbott’s tenure as Prime Minister, before being shifted to the newly expanded AAT in 2015. Here, he now works in the tribunal’s migration and refugee division, where he rules on appeals from Department of Home Affairs visa decisions in a position that commands prestige, power and an annual salary of up to \$385,000.

Unlike most of the tribunal’s senior members, Michael Cooke has no legal qualifications. His early work experience includes time as a Qantas steward where, at the age of 33, he was selected to accompany Pope John Paul II on the pontiff’s return flight after touring Australia in 1986. “What can you say about this guy? Definitely one of the greatest moments in my life,” Cooke later wrote.

Cooke’s publicly accessible Facebook page provides a window into the worldview of someone whose statutory role is governed by a [conduct guide](#) requiring that an AAT member’s actions are “not biased and do not give rise to an apprehension of bias”, conduct their private interests “so as to avoid situations which would bring the AAT into disrepute”, and should “avoid any activities, interests or associations which may undermine public confidence in the impartial performance of their Tribunal responsibilities”.

On Facebook, Cooke follows groups that include CPAC Australia (the right-wing organisation which recently hosted leading Brexit figure Nigel Farage, among

others), Breitbart (the US alt-right news site), Monash Forum (an anti-renewable energy grouping of conservative politicians), Advance Australia (a libertarian political organisation that campaigned against Zali Steggall for the seat of Warringah), Fox TV host Sean Hannity and conservative Sky television host Paul Murray.

Cooke also follows ‘Tony Abbott’s Support Page’ and ‘I Stand with Tony Abbott’ on Facebook, pages dedicated to the political vision and works of the former prime minister.

Inq sought comment from the AAT on Cooke’s social media posts about Zali Steggall.

In a short written statement, a spokesperson said members were expected to observe the AAT Conduct Guide, but refused to comment on whether Cooke had breached the guidelines, or if his Facebook posts undermined the tribunal’s independence and integrity of the AAT.

The AAT also refused to comment on a recent [High Court ruling](#) that a public official posting material online, particularly on social media websites, should assume that “at some point, his or her identity and the nature of his or her employment will be revealed” even if they posted anonymously.

Cooke shares religious as well as political ties with Tony Abbott. Both attended Jesuit-run schools on Sydney’s north shore.

By the late 1990s, Cooke was accompanying Abbott on electorate duties. Dr Peter McDonald, then an independent member of state parliament, told *Inq* that Cooke was Abbott’s “seat warmer” at local functions — “he was an acolyte of Abbott’s”, he said.

In 2000, with Tony Abbott a minister in the Howard government, Cooke landed a job at the Migration Review Tribunal and, later, the Refugee Review Tribunal where he was employed as member for a decade.

A published [description](#) of Cooke’s qualifications in one of the tribunal’s annual reports is notably short on detail: “Michael Cooke was previously an adviser to a

Federal Minister,” it reads, without naming Abbott. “He has also worked as a flight attendant (International) with Qantas Airways, a steel worker in Wollongong and as a school teacher in Western Sydney. He has had a long-term interest in immigration and has had an involvement with Manly Warringah ethnic communities.”

Inq twice approached Michael Cooke for comment about his social media posts, but he did not respond. *Inq* is not suggesting, or has any evidence to suggest, that Cooke is anything but a competent member of the AAT.

The attorney-general, transparency and the AAT

The attorney-general commissioned a review into the AAT, failed to disclose a key relationship and then shelved the findings for seven months while appointing more Liberal-linked members.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

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When federal Attorney-General Christian Porter commissioned a former High Court judge to conduct a major review of the Administrative Appeals Tribunal last year, he did so despite being advised by the judge that someone in the judge's own "immediate family" was a member of the AAT — a relationship Porter did not publicly disclose.

The former judge is Ian Callinan AC, one of Australia's most distinguished jurists with a well-known conservative predisposition. *Inq* has confirmed that Callinan's "immediate family" member is his daughter, Fiona Meagher — now a full-time senior member of the AAT's Brisbane registry on an annual salary of \$325,000-385,000.

While the Callinan inquiry was still underway, in November last year, Fiona Meagher was also promoted by Porter from a part-time member to her current full-time role. Her new contract expires in 2023.

Callinan's inquiry examined, among other things, the criteria the government has used in selecting members, the increasing politicisation of the tribunal since the government created an amalgamated AAT in 2015, and the lack of transparent accountability at the AAT.

When *Inq* contacted the attorney-general, he issued a statement defending his decision not to reveal the relationship, denying there was any "actual conflict of issues arising" from the appointment of Callinan which would justify publicly declaring the relationship.

Porter's statement said: "The former justice of the High Court appropriately discharged the obligation to declare any matter that may possibly give rise to a perceived conflict of interests before his appointment so that the attorney-general could consider the matter. The attorney-general considered the matter raised — was fully satisfied that no conflicts arose and there was full confidence in the former justice of the High Court's ability to conduct a thorough review whilst managing the matter so that no issues arose and no issues did arise."

He went on: "If the suggestion is a former High Court judge cannot conduct a review of an organisation because amongst the hundreds of employees is a family member (which was properly and fulsomely declared), that is surely ridiculous; even more so is any suggestion that one of the hundreds of employees at the AAT cannot be considered for a merit based promotion as they otherwise would because of a broad policy review of the organisation being conducted by a declared relative. If that is the suggestion it demonstrates a complete misunderstanding about how declarations of interest processes work and how the requirements of procedural fairness operate."

Callinan has provided *Inq* with his declaration of interests made to the attorney-general, dated July 14 2018. He said he does not consider that he or his immediate family "have or have had any relationship or interest that would affect my performance of this role."

"However," Callinan adds, "for completeness I declare that a member of my immediate family is a member of the AAT. To avoid any doubt, I will not discuss or disclose during the currency of the review any confidential matter arising from the review with that person."

Fiona Meagher has a law degree from the University of Queensland and worked at the legal firm which later came to be known as MinterEllison. She has also worked previously for Telecom New Zealand Australia's group of companies, law firm McCullough Robertson, and the Queensland government's Mental Health Review Tribunal. She took the name of her husband, Toby — son of legendary Queensland horseman, the late Colin Meagher.

Inq does not suggest that either Callinan or his daughter have done anything other than act entirely properly in this matter.

But the revelation of the relationship involving the former judge and his daughter raises further questions over the attorney-general's handling of the Callinan report. The five-month review criticised several aspects of the AAT; particularly its lack of an independent appointments process, and the appointment of non-lawyers to the tribunal, given that "much of the work of the AAT is difficult, factually and legally" and that a "capacity to undertake forensic analysis and write reasoned judgements is essential".

Callinan quoted several former and serving AAT members who spoke of plummeting morale in the wake of a high number of political appointments made by the Coalition since it came into power six years ago.

Christian Porter received Callinan's recommendations in December last year, but it was seven months before the report was tabled in July this year.

During that seven-month hiatus, in February this year (months away from an election the Coalition was expected to lose), Porter announced 86 new appointments or re-appointments to the AAT. Tellingly, 19 of these appointed members had close Liberal Party connections, including former WA state Liberal minister Joe Francis and former Liberal Senate President Stephen Parry. Of these, *Inq* has determined at least eight have no law degree.

All this was decided while the Callinan review was sitting, unreleased, inside the attorney-general's office.

Michael Cooke's versatile world: from political neutrality to Liberal lobbyist, and back again

Within the senior ranks of a tribunal that oversees appeals against government bodies, is a former lobbyist.

DAVID HARDAKER

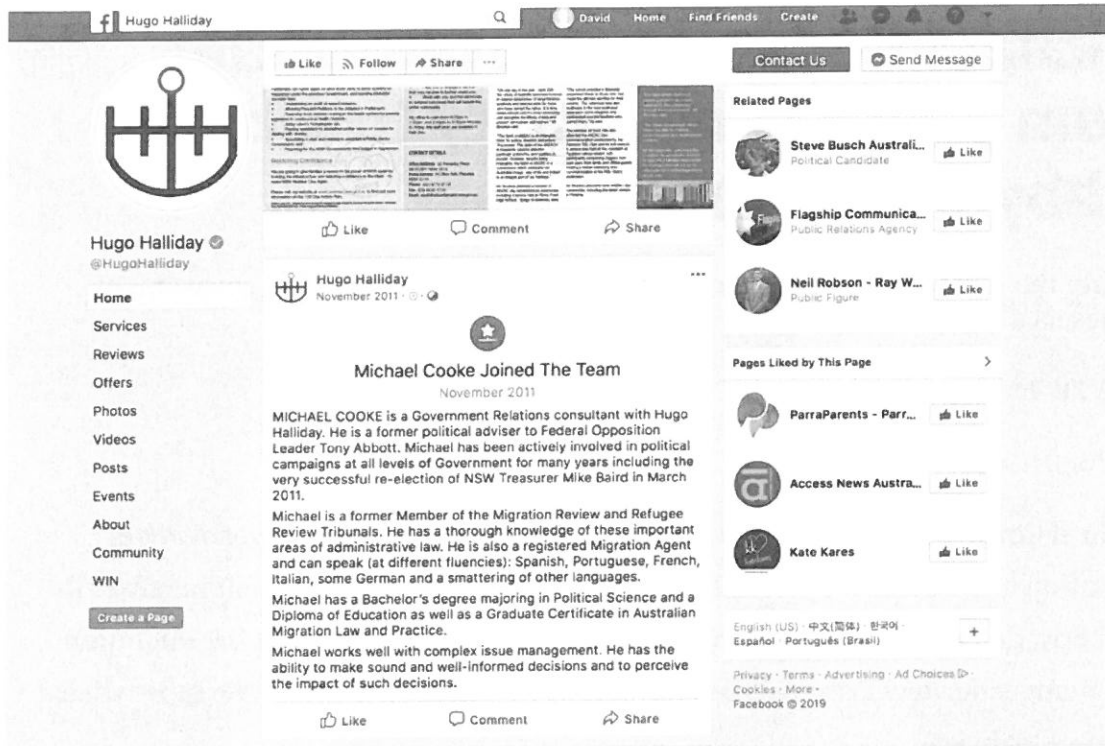
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Michael Cooke had spent 10 years immersed in the politically charged work of migration and refugee appeals. But in 2010, with a Labor government in power in Canberra that didn't share his political worldview, Cooke's term on the Migration and Refugee Review Tribunal finished and he needed a new career. So he became a political lobbyist.

With the election of a NSW Liberal government in 2011 and a building boom underway, Cooke's party connections — in particular his network of conservatives occupying influential government positions — would prove valuable.

Fresh from his role on the independent tribunal, Cooke returned to his roots by helping on the election campaign of local member, and later NSW premier, Mike Baird. He then joined a political lobbying firm called Hugo Halliday as a senior government relations consultant. The firm is owned by a veteran conservative NSW (then) Liberal, Bill Pickering, who at the same time was a councillor (and sometime mayor) on the local Ryde city council.

Hugo Halliday announced Cooke's appointment effusively: "He is a former political adviser to federal opposition leader Tony Abbott. Michael has been actively involved in political campaigns at all levels of government for many years including the very successful re-election of NSW treasurer, Mike Baird, in March 2011."



With Mike Baird as NSW treasurer and Tony Abbott heading for the prime ministership, Cooke was connected with a capital “C”. The Hugo Halliday lobbying firm’s fortunes, too, were set to zoom. In 2010 it had three clients, according to NSW lobbyist records. Over the next four years it ramped up to 23 clients and came to rival better known names like Crosby Textor and Newgate.

Most of the firm’s clients were property developers, looking to smooth the way through government approvals.

At the same time as he was a Hugo Halliday lobbyist, Cooke set up a separate political lobbying company, Cromarty Communications Pty Ltd, with himself as director. His main client was another Sydney property developer, Sarkis Nassif’s Holdmark Property, which was in negotiations with Ryde city council over proposals for large residential developments. Cooke’s then-employer — and owner of Hugo Halliday — Bill Pickering was a councillor on Ryde council at the time.

Pickering declined to be interviewed by *Inq* on this apparent tangle of interests, but in messages relayed through an employee he described Cooke as “only ever ... a subcontractor”. He agreed that Cooke’s company “may have had Holdmark as a client”

but that “neither Michael nor any representative from his firm” ever approached him about Holdmark.

Holdmark did not respond to questions about Cooke’s role as their lobbyist.

In addition to Holdmark, Cooke’s business also worked on behalf of the St George Illawarra Rugby League Club, according to lobbying records.

By mid-2014, the NSW government had introduced new laws to make political lobbying more transparent, and in July Cooke returned to tribunal life in the first batch of appointments under the Abbott government when then-immigration minister Scott Morrison appointed Cooke to the Migration and Refugee Review Tribunal. In 2015 his job was transferred to the AAT when it absorbed the two tribunals.

Inq has established that Cooke’s consultancy business, Cromarty Communications, remained on the ASIC register for more than two years after his appointment — but may not have been active — and was only de-registered in August 2016.

A spokesperson for the AAT said members are required to complete a private interests declaration during the process of appointment to the AAT, but would not confirm whether Cooke had done so.

“The AAT provides information and training to members to assist them in understanding their responsibilities as statutory office holders”, the AAT statement said, noting that it was up to members to “avoid and, where necessary, disclose conflicts of interest” rather than the AAT conducting checks.

Michael Cooke has not responded to *Inq*’s questions as to whether or not he declared the existence of his business when he joined the AAT.

Cooke was appointed in 2014 first as a member, with an annual salary between \$194,000 and \$250,000 in today’s terms (the AAT refuses to confirm the precise amount). A footnote in the tribunal’s 2016/17 annual report records that as of July 1, 2017, Cooke was to be promoted to the job of senior member with an automatic

annual pay rise of up to \$100,000 (the tribunal refuses to confirm) on a fixed-term contract for a further seven years.

Cooke's term expires in 2024, when he will be 72 years old.

Meet the Liberal mates network that sits atop the AAT

One's a former Western Australian state Liberal minister. The other was president of the Australian Liberal Students Federation. Both scored high-paying jobs on the Administrative Appeals Tribunal.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 25, 2019

Joe Francis is the kind of guy profile writers euphemistically label a “big personality”. A former Western Australian state Liberal minister and one-time submariner, he was described in his hometown newspaper *The West Australian* as a “self-confessed bogan who loves high-powered cars” who once “used the ashes of his beloved dog Sasha to ink a tattoo of her paw prints on his chest.”

In late February this year, three months before a federal election the Coalition expected to lose, Attorney-General Christian Porter appointed Francis as a full-time member of the Administrative Appeals Tribunal (AAT). His term runs until 2026, during which time he will be paid up to \$245,000 a year. (At the same time, Francis' former chief of staff, Stephen Barton, was also handed a part-time posting at the AAT).

At 47, Francis' political career had hit a roadblock. He'd enjoyed the highs of life as a state minister until losing his seat when the Barnett government was swept out of power in 2017. Once considered a future party leader, Francis instead picked up a job running a bus company.

In fact, it was the buses that turned Porter's appointment of his fellow WA Liberal to the AAT into a political circus. Dubbed “Bus-gate” by the *West*, Francis was accused of lending Porter one of his company's buses for this year's federal election campaign – an allegation that turned an already controversial appointment into a public nightmare.

According to the *West*, Francis oversaw the loan of company buses to Porter and two other Liberal MPs fighting to hold their seats, with Porter's name “displayed across

two star-spangled buses that traverse his electorate of Pearce.” Only after the furore erupted did the Liberal Party agree to pay for the buses.

SOURCE: FACEBOOK.

What justified Porter’s appointment of Francis to such an important judicial role? After all, the former minister had no law degree or any other tertiary qualification.

Whatever the answer, there seems little doubt that his connections helped. Francis is a religious conservative Liberal. In his maiden speech to the WA parliament, he described how at the age of 18, “one of the first things I did ... was join the Liberal Party.” He listed those to whom he would always be indebted “for their influence and help”: former prime ministers John Howard and Tony Abbott, as well as the late B.A. Santamaria, an avowed anti-communist and Catholic social conservative.

Francis is originally from NSW. Like Tony Abbott, he attended the private Catholic school, St Ignatius College (Riverview), before joining the navy. His network of fellow political travellers includes the hard-line right-wing NSW Liberal Ross Cameron.

His political network also includes AAT senior member and Tony Abbott loyalist Michael Cooke, the subject of earlier stories in this *Inq* series.

Inq’s investigation shows that Francis has been part of Cooke’s circle going back to at least 2010. In a Facebook post at that time, Francis takes a friendly shot at Cooke over his choice of football team: “U know deep down ur a Collingwood supporter also mate!” he jostled with Cooke. “Welcome to the dark side.”

Another name raised in that 2010 Facebook conversation — “JO” — would ultimately also find a home at the AAT alongside Cooke.

Justin Owen, who was appointed to the AAT in 2017, was president of the Australian Liberal Students Federation in the mid-1990s and worked in the office of former Liberal MP Bronwyn Bishop, whose electorate adjoins Tony Abbott’s. Owen angled for preselection for a state seat in 2010 before withdrawing from the contest. He went on to hold office in the party’s constitutional standing committee and served as a member of the Liberal’s state executive. He holds a law degree and worked as

general manager of the powerful industry lobby group, the Australian Hotels Association, for close to a decade.

AAT colleagues Cooke, Francis and Owen have shared good-natured barbs on Facebook about football, politics and real estate investment going back years. In January 2014, Cooke posted a message referring to a story about real estate buyers in the inner Sydney suburb of Redfern:

“Great news for Justin Owen with his proposed next move to the heartland. Good luck JO – no-one needs white picket fences when you can breathe the red and green air.”

... then added:

“Double whammy = easy walk to Redfern Oval/Souths Leagues and dilute the ALP vote. Win/win situation.”

Cooke and Owen also have a shared passion for Brexit. Owen took time away from his job in government relations at the National Australia Bank in mid 2016 to join in the Tory party’s Leave campaign, then wrote about it in the conservative British magazine *The Spectator*.

His first person piece appeared under the title “Nude at 40,000 feet”, a reference to taking a shower in first class on Emirates Airlines. It concluded with commentary on the Brexit result which, he wrote, “seems to have leftists rhubarbing their grave concern about ‘Global Markets’ and ‘The Economy’ for the very first time. Another great outcome of this referendum.”

By mid-2017, Owen and the National Australia Bank parted ways. That’s when then-Attorney-General George Brandis appointed Owen to the AAT, where he joined his old sparring partner Michael Cooke as a full-time senior member, making decisions on migration and refugee appeals, on an annual salary of up to \$380,000 and a contract that runs through to 2024.

You're out! How a government tamed the AAT

Members of the Administrative Appeals Tribunal are steadily losing their jobs and being replaced with people less qualified.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 25, 2019

Terry Carney lost his job as a member of the Administrative Appeals Tribunal (AAT) via a short, blunt email. It arrived five months after he delivered a tribunal decision which declared Centrelink's robo-debt scheme to be illegal — a finding that angered the federal government.

"I had one of those feelings in my bones," he remembers as the day approached for his contract to be renewed — or not. "I actually sort of paused and looked around in the hearing room when I completed what I knew might have been — proved to be — my last hearing."

The email, sent in September 2017, was an abrupt end to Carney's long career as a member of the AAT. Together with his work on the Social Security Appeals Tribunal, Carney had put in around 40 years of service. He has an Order of Australia plus a list of legal qualifications and publications in social security as long as your arm.

But none of that mattered when his contract came up for renewal and he was given a day to clear out his desk at the AAT. "It was disturbing," Carney told *Inq*. "It's disappointing for people. But a lot of highly qualified people, particularly in recent years, have been quote unquote 'cleared off the books' of the AAT."

Dozens of AAT members have been moved on since the Coalition government came into power in 2013. Some have been given the Terry Carney treatment, removed without explanation, despite meeting their professional targets.

Others saw the writing on the wall and jumped first. Their replacements include 65 former Coalition staffers, election candidates and former state and federal MPs — many of whom don't possess any legal qualifications.

Sue Raymond has been a close observer of the AAT's unravelling independence. A lawyer by training, she held positions on various tribunals and was a senior member in the AAT's Adelaide office until she decided to leave in 2017.

Since 2015, Raymond has watched experienced members, who were recommended for reappointment, pushed out in favour of those who arrived with political patronage.

"I'm not saying none of [the political appointments] have the right skills," she tells *Inq*, "but even if they do, it smacks of cronyism. If you see people just being appointed with no openness, and some of them have been former staff or failed candidates or whatever, it just devastates the morale ... it devalues the skills required to do the job and it does chip away at that notion of an independent tribunal."

When Raymond was hired in 2012 to the Migration Review Tribunal — later merged with the AAT — there was an open appointments process. She replied to an advertisement and was interviewed by a panel, including the tribunal head, a department official and a community representative.

"As well as that you were given one or two fact scenarios before going to the interview to indicate how you would approach making a decision," she explains. It led, she says, to appointees from varied backgrounds who were "whip smart and really well suited for the role".

Several former AAT members hired before 2015 told *Inq* they had gone through a similar hiring process, including a written application, interviews and providing multiple referees.

As well as stacking the AAT with party loyalists, the Coalition has singled out decisions it doesn't like, usually on the grounds that they don't reflect "community values". The government's modus operandi is to attack the individual AAT member who made the decision, often with the help of its media allies.

In 2017, senior tribunal member Miriam Holmes was on the receiving end of a media mauling over her decision to grant a bridging visa to an Indian man who'd been convicted of sexual assault, under headlines like "[Tribunal allows sex creep to stay](#)" and "[Tribunal lets migrant riffraff run rings around us](#)".

Former colleagues describe Holmes as someone with all the attributes needed in a senior member — strongly independent, an accomplished lawyer and a good caseload manager — but her contract was not renewed when her term expired in 2017.

In his review of Holmes' decision, the AAT's then-acting president, Justice John Logan, called on the government to respect the separation of powers that underpins Australian democracy.

“The very existence of the Tribunal and the independent, quasi-judicial model adopted for it means that, inevitably, there will be tension from time to time between Ministers and others whose decisions are under review,” the judge wrote.

“That does not mean that Tribunal decisions are immune from criticism. Any member who allowed himself or herself to be persuaded as to an outcome by partisan or political rhetoric by a Minister, any other administrator or the popular press would be unworthy of the trust and confidence placed in him or her by His Excellency the Governor-General and untrue to the oath or affirmation of office which must be taken before exercising the Tribunal's jurisdiction. For those members who do not enjoy the same security of tenure as judges, that may call at times for singular moral courage and depth of character.”

Miriam Holmes, now assistant Victorian Government Solicitor, declined to speak about her time at the AAT. Sue Raymond, who watched the attack on her former colleague, questions the government's motives. “There's pressure to make decisions that reflect ‘community values’,” she says. “But what are ‘community values’? As a member you have to apply the law.”

Another former member (an experienced lawyer) who left rather than wait to be pushed — “I walked out in anger” — described adjudicating a case that found in favour of an ALP politician. “I remember thinking ‘oh my God’, I felt pressured that the decision could jeopardise my reappointment. I had friends working in the migration tribunal and got to know what they went through on a daily basis. They told me they feared that if they ever found against a minister they would get rolled. I advised them that they just have to find according to the law.”

The road from political backrooms to the people's court

A job at the top of the Administrative Appeals Tribunal is, by definition, apolitical. So why are so many gigs going to former Coalition politicians and staffers?

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 26, 2019

A job in politics is *political*. It requires skills in tactics, policy, partisanship, wheeling and dealing, spin and media manipulation.

A job at the top of the Administrative Appeals Tribunal is, by definition, *apolitical*. It's about non-partisan independence, adherence to an Act, discretion and objectivity.

Despite that obvious disconnect, it's a route that has been heavily trafficked since 2013 as the Coalition government has appointed 17 former LNP state and federal parliamentarians, 6 unsuccessful party candidates and at least 28 Liberal staffers to the AAT.

Helena Claringbold was Tony Abbott's electorate office manager in 2014 when then-immigration minister, Scott Morrison, appointed her to the Migration Review Tribunal (later absorbed into the AAT).

Her relevant qualifications? The AAT has refused to provide any information about any of its members, but when she departed Abbott's office, the *Financial Review* described Claringbold as "particularly close to First Lady Margie Abbott", and someone who "made an art form of managing the [Warringah] Liberal Party biddys and crazies".

At Senate estimates hearings, officials acknowledged Claringbold was not among those recommended to Morrison by an independent committee. It emerged

Claringbold was not interviewed by the committee, nor had she applied before the closing date.

Karen McNamara's path from Liberal politics to the AAT was rapid, but not without its bumps. McNamara served one term, from 2013 to 2016, as federal member for Dobell on the NSW Central Coast. Less than a year after being elected, she made an appearance at a NSW Independent Commission Against Corruption (ICAC) inquiry into illegal political donations to NSW MPs in the state's 2011 election.

McNamara had been campaign manager for successful Liberal candidate, Darren Webber, who was subsequently forced to resign from the party after it emerged he had accepted illegal donations from a property developer. McNamara said she had no knowledge of the payments and the ICAC made no adverse findings about her.

After losing her seat in 2017, McNamara became an adviser to the conservative NSW Liberal Senator Concetta Fierravanti-Wells and, within months, was appointed to the AAT as a full-time member until 2024.

McNamara does not hold a law degree. She undertook a Bachelor of Legal and Justice Studies at Southern Cross University in 2002, which qualified her to enter the legal profession as, for example, a paralegal, but not a lawyer.

Ann Brandon-Baker was a deeply political animal — as she had to be — when she served as Scott Morrison's chief of staff while he was immigration minister.

But unlike most senior ministerial staffers, the gory details of her political backroom work became public in April 2014 when a story in *The Guardian* revealed the personal details of almost 10,000 asylum seekers in detention that were accidentally placed on the Immigration Department's website. The story featured an allegation that Brandon-Baker "revised a press release to remove detail about the severity of the breach".

Two years after that episode, just days before the 2016 federal election was called, then-attorney-general George Brandis made several quick appointments to the AAT, including that of Ann Brandon-Baker (who appears to have since changed her name to Ann Duffield).

She was originally appointed as a part-time member with the authority to hear migration cases, but a footnote in the AAT's 2016/2017 annual report revealed that, less than a year later, she was promoted to the role of senior member, one of the highest-paid positions (up to \$385,000 annually) within the tribunal.

Hedley Grant Pearson Chapman was born in Adelaide, educated at Prince Alfred College and the University of Adelaide, and worked as a marketing executive in the oil industry. He was then a self-employed management consultant before becoming a one-term Liberal Party member for the federal seat of Kingston in the 1980 election. He returned to federal politics as a South Australian senator from 1987-2007. From 2010-12 he was president of the Liberal Party of SA.

Then-attorney-general George Brandis appointed Chapman as a part-time member of the AAT in October 2017. Two months later, he was promoted to the role of senior member with an automatic salary increase. He will be 75 when his contract expires in 2024.

Chapman has no legal qualifications. He has been in business with the right-wing NSW Liberal, Ross Cameron.

James Lambie is another political staffer who climbed the ranks to a senior job at the AAT. A solicitor from Queensland and a senior investigator with the Australian Competition and Consumer Commission (ACCC), Lambie entered federal politics as a policy adviser to George Brandis in 2008. As the Coalition rose to power in 2013, so too did Lambie: he was promoted to Brandis' senior adviser that year, and became his chief of staff in 2016.

Never straying far, Lambie was caught up in several of his former boss' controversies. Back in 2016, Brandis was accused of misleading the parliament, claiming that they couldn't seek legal advice from the government's solicitor-general without his permission. During the Senate inquiry, one witness, former solicitor-general David Bennett, revealed that Lambie had turned up at his house, a move accused of "smack[ing] of interference in the committee's work".

In December 2017, Brandis allocated his right-hand man a seven-year contract as a senior member on the AAT.

Then there's Chris Puplick. The 71-year-old former Liberal Party senator from NSW was appointed to the AAT in 2017. He had controversial terms as president of the NSW Anti-Discrimination Board and as NSW privacy commissioner, resigning from both roles in 2003, after he was investigated for improperly acting in a discrimination case on behalf a friend who won a payout.

That investigation was recently raised by two lawyers in *The Sydney Morning Herald*, who called for Puplick's removal from the AAT, because he "could not recognise a conflict of interest".

The *SMH* quoted from a report on the incident in which the NSW Ombudsman wrote: "I had no confidence that he would, into the future, have recognised and acted appropriately should a similar conflict of interest have occurred between his roles as Privacy Commissioner or ADB President on the one hand and his personal or other professional relationships on the other."

Sydney lawyer Mark Tarrant told the *SMH*: "Despite showing open contempt for the importance of avoiding conflict of interest, despite securing a financial settlement for a close friend who owed him thousands of dollars [and] despite having no legal training whatsoever Mr Puplick now enjoys the same protections and immunities as a Justice of the High Court."

"Mr Puplick's appointment as as senior member of the AAT has been a serious public policy failure."

How Liberal staffers, candidates and MPs arrived at the AAT

With their mates at the top of the Administrative Appeals Tribunal, the Liberal government was able to fill the ranks with former staffers, party faithfuls and failed candidates.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 26, 2019

Scoring a full-time job as an independent senior member on the Administrative Appeals Tribunal's migration and refugee division in May 2016 doesn't seem to have cramped Denis Dragovic's outside activities.

Dragovic was an unsuccessful Liberal candidate for preselection in the Victorian federal seat of Goldstein earlier that same year. The long-time party member still writes on controversial issues for conservative publications *The Australian* and *The Spectator*, while simultaneously hearing appeals by asylum seekers whose applications have been rejected by the federal government.

A few months after his appointment to the AAT in 2016, he entertained the question "Is Islam compatible with Australian values?" in *The Spectator*. In July last year, he complained that "if we continue to allow the so-called elites to trash religion, ignore research and make spurious associations then it's inevitable that religious communities will turn inwards". And in June this year, Dragovic addressed the religious freedom legislation being mooted by the government which appointed him, writing in *The Australian* that "there is concern that legislating religious protections could open a pathway to anti-blasphemy laws and sharia. For the cultural elites this is fearmongering or a straw man argument."

Dragovic is one of dozens of appointments in the Melbourne office of the AAT made by the current federal government.

Inq's analysis shows that after six years, only nine members from Victoria's Migration and Refugee Tribunals have been kept on. Almost 90% of current AAT members who can hear migration and refugee cases in the state — among them a

mixture of unsuccessful Liberal candidates and former Liberal staffers — were appointed since the Coalition took office.

The spin doctor

Tony Barry was communications director for Victorian opposition leader Matthew Guy's losing 2018 election campaign. Three months after that defeat, despite having no legal qualifications or any experience in the legal profession, Barry was appointed by Attorney-General Christian Porter as a part-time senior member of the AAT.

Barry is a Liberal Party long-termer. He started in the party's Victorian headquarters in 2003, and served as a federal campaign manager in the lead-up to the 2006 state election, as well as the party's Victorian deputy director. He was also a staffer for Malcolm Turnbull in 2009.

In between roles, he penned editorials for the Institute of Public Affairs' magazine as the conservative think-tank's director of finance and development. He was also employed by Liberal polling firm Crosby/Textor, where he spearheaded a behind-the-scenes lobbying campaign to help the tobacco industry fight the ALP government's plain packaging reforms in 2011.

Barry hears cases in most of the AAT's divisions: Freedom of Information, Migration and Refugee, National Disability Insurance Scheme, Security, Social Services and Child Support, Veterans' Appeals, and General matters.

The Abbott staffer

Helen Moreland worked for close to four years as a senior adviser on social policy to Tony Abbott, when he was opposition leader and prime minister. Prior to working with Abbott, Moreland worked in public relations and communications roles, including for Racing Victoria. Between 2015 and her appointment to the AAT in August 2017, she was employed by the Liberal-friendly issues management firm Newgate.

Moreland has no legal qualifications and has begun studying for a law degree while employed as a full-time AAT member on up to \$245,000 per annum. She is set to complete her studies in 2024, the same year her appointment expires.

The Liberal lifer

Donald Morris has worked for the Liberal Party his entire professional life. He started in Tasmania with senator John Watson; was speech-writer/researcher for the Tasmanian governor; private secretary to three senate presidents (2001-2007); worked for Tasmanian Liberal leader Will Hodgman (2007-2010); was senior adviser to Victorian premiers, Ted Baillieu and Denis Napthine; and was a senior adviser to the government's former senate leader Eric Abetz.

Morris has no law degree. Despite this, he was appointed in 2016 as a senior member of the AAT — paid up to \$385,000 a year until 2024.

The one-time Party president

Helen Kroger was a member of the Young Liberals in the 1970s, rising up the ranks to become Victorian Liberal Party president from 2003 to 2006. She is a former Liberal senator and was once married to Victorian Liberal grandee Michael Kroger. In 2016 she made an unsuccessful run for the federal seat of Bruce.

Helen Kroger has no legal qualifications. She was appointed as a part-time member of the AAT in 2017 and has reportedly maintained a Liberal Party role as president of the party's women's committee.

Unsuccessful Liberal candidates

Donna Petrovich, a former Liberal Party member of the Victorian Legislative Council, failed to win election in federal parliament in 2013, and in 2014 failed in a bid to gain a seat in Victoria's lower house. She also made a failed preselection bid for the seat vacated by defeated Victorian premier Denis Napthine. Petrovich has no law degree. She was made a part-time member of the AAT in December 2018.

Nick McGowan too has twice failed in his attempts to be elected to parliament, in 2013 and 2018. McGowan, a Facebook friend of Abbott loyalist [Michael Cooke](#), was

appointed to the Migration Review Tribunal in 2014, without being interviewed for the role. McGowan has no legal qualifications. He is a full-time member of the AAT, appointed until 2024.

How Tony Abbott made sure the AAT would never come under scrutiny

Appointments to the Administrative Appeals Tribunal were once subject to review via a separate council... until the Abbott government gutted it.

DAVID HARDAKER AND JUSTINE LANDIS-HANLEY

SEP 27, 2019

Quis custodiet ipsos custodes? “Who guards the guards?” was the Roman poet Juvenal’s famous question. In the case of Australia’s vast legal octopus, the Administrative Appeals Tribunal, the answer is very simple: *nemo* — nobody.

The stacking of the AAT with political cronies has carried on unabated because there is no active official body with the power to raise the alarm over a government’s appointments.

Actually such a body — with specific power to keep a check on the credentials of AAT members and the overall integrity of the tribunal — does exist in the AAT’s legislation. The only problem is it ceased to function after the Abbott government removed its funding.

The Administrative Review Council — made up of independent statutory office holders such as the Commonwealth Ombudsman and the Law Reform Commission president — was identified as an “efficiency saving” under the National Commission of Audit 2013-14, run by businessman Tony Shepherd.

At the time, Finance Minister Mathias Cormann abolished the council as one of a series of cuts “eliminating waste and duplication”, aimed at making the public sector “as effective and transparent as possible”, though the precise cost-saving has never

been detailed. For the Liberal Party, the decision to remove the council is a remarkable turnaround from early parliamentary debates on the AAT, when then-opposition leader John Howard considered the establishment of the Review Council to be particularly important.

When former president of the Australian Human Rights Commission and former dean of Sydney University Law School Gillian Triggs was appointed as a member of the Council from 2012 to 2017, she was “very honoured”, she said, “because it has such an important role as a check and balance ... on government behaviour”.

Triggs recalls that nothing happened for the first few months after her appointment, and when she asked the head of the attorney-general’s department why she hadn’t received any information about the next meeting she was told, “Oh, don’t worry, it hasn’t met for a long time. And we don’t have any plans to meet in the future.”

THE REVIEW COUNCIL FROM RIGHT TO LEFT PROF. JOHN MCMILLIAN,
PROF. GILLIAN TRIGGS, MR COLIN NEAVE, JUSTICE DUNCAM KERR CHE,
SUE TONGUE, PROF. ROSALIND CROUCHER.

A year later she asked again, but was informed that the Review Council “was just a superfluous body” and was told “not to worry about it”.

Triggs can see the comical side to being on a high-powered Canberra body that didn’t actually do anything, but it comes with regret: “We have a growing power of the executive, a growing discretion of the executive, and a diminution in the capacity to challenge those government decisions.”

Another former Council member, former ombudsman and information commissioner John McMillan AO, confirmed that the council effectively ceased to operate in 2013 — prior to being defunded — when the attorney-general’s department stopped convening meetings of the council.

John McMillan said he has “no doubt” that if the council was still meeting it would take an active interest in the appointments process — “even without a [directive] from the attorney general’s office to do so”.

“Having a merit-based, apolitical, independently-run appointments process is important for the AAT. It is a matter of great importance to the integrity of the administrative law system,” McMillan said.

“The council always stood ready to ... define the basic principles that should be followed to oversee the administrative law system,” McMillan told *Inq*.

Abolishing the ARC meant there was no independent body to ensure the attorney-general adhered to the laws governing the AAT. That legislation says a person “must not” be appointed as an AAT member unless he or she is a legal practitioner of the High Court or Supreme Court and has been “so enrolled for at least five years”. The exception, according to the legislation, is for someone who “in the opinion of the governor-general has special knowledge or skills relevant to the duties of a senior member or member” — a provision designed to allow, for example, specialist medical input, rather than for the government of the day to appoint political fellow-travellers.

The government officially abolished the ARC in May 2015, in the month before the new enlarged AAT began — at the same time as then-attorney-general George Brandis changed the AAT’s appointments process, giving himself the right to appoint who he wished, without interviews or a selection panel. He could waive the appointments process if he had found a “suitable person who is appropriately qualified, to quote the official ‘Protocol for Appointment’”.

While the selection process is cloaked in secrecy, it’s also impossible to discover information about the qualifications, experience, background or salaries of AAT members through government publications or websites.

In response to a series of detailed questions about members’ credentials, the AAT refused to provide *Inq* with any specific information.

“The *Administrative Appeals Tribunal Act 1975* provides for the appointment of members on the basis of their relevant ‘special knowledge or skills’ or enrolment as a ‘legal practitioner’,” an AAT spokesperson told us. “The AAT is reviewing the report of the scheduled statutory review undertaken by the Hon Ian Callinan AC, former justice of the High Court of Australia. We are working closely with government as

they consider the recommendations. Appointments to the AAT are a matter for government.”

As for Attorney-General Christian Porter, he provided us with a succinct response: “I have and will continue to ensure that any appointments are made on merit.”

Have you had any dealings with the AAT? Anything you think our readers might like to hear about? Drop us a line at boss@crikey.com.au.

