



DR SOPHIE SCAMPS MP
FEDERAL MEMBER FOR MACKELLAR

7 March 2024

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

by email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Re: Submission to the Senate Inquiry into the Administrative Review Tribunal Bill 2023 (ART Bill) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (Consequential and Transitional Bill)

Thank you for the opportunity to provide a submission to the Committee's inquiry into the ART Bill.

My submission relates specifically to one of the stated intentions of the Bill: to 'improve the transparency and quality of government decision-making and improve public trust and confidence in the Tribunal'.

I believe the proposed appointments process to the ART is not adequately robust, independent or transparent to prevent it from being misused for political purposes or cronyism in the future in the same way the Administrative Appeals Tribunal (AAT) was.

Summary

The AAT represented one of the most important pillars of Australian democracy for 47 years. However, the Jobs for Mates culture surrounding appointments to the AAT in recent years compromised the professional competence and independence of the body and undermined the public's trust in it.

This was deemed to be so serious that in December 2022 the Albanese Government decided to abolish and replace the AAT with a new body to be called the Administrative Review Tribunal (ART).

As stated above, the intention of abolishing the AAT and establishing the ART as its replacement was to ensure that appointments to the Tribunal could not be compromised by cronyism. The stated aim was 'improve the transparency and quality of government decision-making and improve public trust and confidence in the Tribunal'.



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I believe the proposed appointments process to the new ART is not adequately robust, independent or transparent to prevent it from being misused for political purposes or cronyism in the future in the same way the AAT was.

Recommendation – The adoption of an arm’s length appointments framework as proposed in my *Transparent and Quality Public Appointments Bill 2023 (Ending Jobs for Mates Bill)*, including the use of an independent selection panel to decide on a short list of appropriately qualified candidates for ART appointments.

My detailed submission is attached to this letter.

Yours faithfully,

Dr Sophie Scamps MP



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Submission of Dr Sophie Scamps MP

Senate Standing Committee on Legal and Constitutional Affairs

Inquiry into Administrative Review Tribunal Bill 2023 and related bills

1. Introduction

In February 2023, I introduced a private member's bill to the House of Representatives, *The Transparent and Quality Public Appointments Bill 2023*, which aimed to transform the process of appointments to major Commonwealth positions. Underlying the Bill was the critical and urgent need to restore the public's trust in our democratic processes and institutions after a decade of cronyism and party-political appointments had eroded that trust.

In this term, the new Government has made some very significant steps to boost the integrity of our political system including establishing the National Anti-Corruption Commission and announcing in December 2022 that the Administrative Appeals Tribunal (**AAT**) would be abolished because the independence and competence of the institution had been too deeply compromised by cronyism and political appointments in recent years. This was a highly significant decision as the AAT is a crucial pillar of our democracy, tasked with holding governments and departments to account by reviewing their decisions.

In late 2023, the Administrative Review Tribunal Bill 2023 (**ART Bill**) was introduced to Parliament to establish the AAT's replacement institution, the ART. However, the ART Bill does nothing to address the very flaw which resulted in the demise of the AAT. The Bill lacks a mechanism that ensures the independent assessment of candidates for important ART roles, as well as any transparency mechanisms to give confidence in that assessment and selection process.

2. *Transparent and Quality Public Appointments Bill 2023*

My "Ending Jobs for Mates" Bill, drafted in consultation with the Centre for Public Integrity, would ensure that all major Commonwealth public appointments are made within an independent and transparent framework.

The Bill would legislate a Public Appointments Commissioner (**PAC**) and departmental Independent Selection Panels (**ISP**), overseen by a Parliamentary Joint Committee on Appointments. Importantly, the Committee overseeing the PAC and the ISPs would not have a government-led majority, guaranteeing independence from the government of the day.

Under my proposed bill, a degree of Ministerial discretion would be maintained (an important element of our Westminster system of government) as the final decision regarding the successful candidate would remain with the relevant Minister. However, the minister may only choose from the shortlist of candidates selected by the ISP.



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Such a framework would ensure that key positions in our democratic institutions are filled through an independent, transparent, and expertise-based appointment process. Applying anything less to the ART will see it beset by the same fatal flaw which resulted in the abolition of its predecessor.

A copy of my Private Member's Bill – *The Transparent and Quality Public Appointments Bill 2023* – and its Explanatory Memorandum are available [here](#). This bill was drafted in partnership with the Centre for Public Integrity, a group with deep expertise in the integrity of Australia's political system. I refer to my Private Member's Bill and Explanatory Memorandum here in an effort to demonstrate that introducing amendments that enable the incorporation of an independence requirement into the ART appointments process is straightforward - if there is the political will to do so.

3. The ART Bill

The ART Bill was introduced to Parliament on 7 December 2023. The Bill and its supporting documents are long on rhetoric about merits-based appointments and the need to ensure that appointees are properly qualified.

But the Bill as proposed currently lacks any mechanism to **ensure** an independent assessment of candidates is undertaken or any transparency mechanisms that would give confidence in the process.

For example, the Bill outlines that the Minister “may” establish assessment panels to assess candidates for appointment, but he is not required to do so. There is also no detail of who might be appropriate to serve on such a panel, or whether it must include independent members. There is certainly no requirement for the Minister to act on the advice of any panel, if he chooses to establish one. Nor is there a requirement that the Minister report to Parliament if he chooses a candidate the assessment panel did not recommend.

The use of panels in the ART appointment process as currently drafted in the Bill is entirely discretionary, and will therefore do nothing to ensure independence in the selection process.

Even the requirement that the assessment process be ‘merit-based’ in clause 4 of the Bill is inadequate. This is because the definition of ‘merit-based’ requires a ‘competitive selection process’: which process is undefined and vague, and not guaranteed to result in appointments on merit.

In summary, the process for appointment of members to the ART as set out in the current draft of the Bill lacks:

- a) any specificity on the requirement to advertise positions;
- b) a clear definition of merit;



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- c) a requirement to involve assessment panels in the selection process;
- d) a requirement to appoint from a shortlist of candidates proposed by an independent panel; and
- e) a requirement to report to Parliament if the Minister selects a candidate not on the shortlist.

The framework established in my Ending Jobs for Mates Bill would remedy these deficiencies in the ART Bill.

4. 'Merit' vs 'Independence'

Since introducing my Ending Jobs for Mates Bill in February 2023, I have sought to negotiate amendments to other government bills which would establish an independent selection process for major appointments under those bills. Examples include the *Infrastructure Australia Amendment (Independent Review) Bill 2023*, the *Parliamentary Workplace Support Service Bill 2023*, the *Jobs and Skills Australia Amendment Bill 2023* and the *Safeguard Mechanism (Crediting) Amendment Bill 2022*.

Each time I have proposed these amendments and sought to negotiate them with the government, the government has relied on the existence of 'merit' provisions in each piece of legislation as a basis for rejecting my amendments.

Each time, I have explained that there is a difference between merit and independence. Merit, of course, is critical – we must ensure that these important positions are filled only with the highest calibre of applicant, with expertise in the relevant field.

But a candidate could fulfil that requirement – have ideal qualifications for the job – but also have been the best man at the Attorney-General's wedding. Or could take her summer holidays with the Minister for Infrastructure. Ministers could hypothetically handpick those 'well-qualified' friends for a role, and then be in a position to have significant influence over them in the execution of their duties.

'Merit' and 'independence' are not the same thing.

5. The case for independence in ART appointments

When the Attorney-General announced the abolition of the AAT in December 2022, he stated that the "AAT's public standing has been irreversibly damaged as a result of the action of the former government over the last nine years."¹ He went on to say:

[with the appointment of] as many as 85 former Liberal MPs, failed Liberal candidates, former Liberal staffers and other close Liberal associates without any merit-based selection process ... the former government fatally compromised the

¹ The Hon Mark Dreyfus KC MP, Albanese Government to abolish Administrative Appeals Tribunal, [Media Release](#), 16 December 2022, accessed 7 March 2024.



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AAT, undermined its ***independence*** and eroded the quality and efficiency of its decision-making.² [Emphasis added.]

Analysis by The Australia Institute found that up to 40% of appointments to the AAT under the Morrison Government were ‘jobs for mates’ style political appointments. There is nothing in the new Bill that prevents this happening again.

So it is clear – there is a problem that requires a solution. To fail to address this problem in the new Administrative Review Tribunal would be to make the very same mistake again, unnecessarily (having, as we do, the opportunity to learn from our mistakes), and at huge cost to the taxpayer.

6. Conclusion

Why would the Government take the extraordinary step of abolishing one of the Commonwealth’s crucial democratic institutions because its appointment process was fatally flawed, only to replace it with a new institution which suffers the same flaw? It does not make sense.

The solution to genuinely end the jobs for mates culture that has pervaded federal politics in recent years is simple: my Ending Jobs for Mates Bill, or similar framework in relevant legislation. The process it establishes would be effective, cheap and easy to implement.

The National Anti-Corruption Commission is tasked with investigating alleged corruption after it has occurred. However, Parliament should strive to strengthen the integrity infrastructure of our democracy wherever possible so that corruption and the erosion of our democracy is prevented. To not legislate a mandated, independent appointments process in the new ART would be to leave a critical pillar of our democracy weakened and vulnerable to distortion.

Prior to the 2022 election the Albanese Government promised to rebuild trust in the integrity of our democracy and democratic institutions. Without a mandated and legislated independent selection process for the ART, the Government will fail to do this.

² The Hon Mark Dreyfus KC MP, *Albanese Government to abolish Administrative Appeals Tribunal*, [Media Release](#), 16 December 2022, accessed 7 March 2024.