



ACCOUNTABILITY
ROUND TABLE

The Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary

Administrative Review Tribunal Bill 2023

Thank you for giving us the chance to submit to your inquiry into this Bill.

The Accountability Round Table aims to improve standards of accountability, transparency, ethical behaviour and democratic practice in governments and parliaments in Australia and comprises members with judicial, legal, political, organisational and media expertise.

We were consulted during the policy and legislative development process that led to the Bill. In many respects the Bill would significantly improve the arrangements for merit review of administrative decisions. There is much which we strongly support, for example the reinstatement of an Administrative Review Council to keep under notice and advise on the overall operation of the system of administrative review and appeal.

However, in one central respect the Bill falls short of what is needed: the arrangements proposed for the appointment of Tribunal members. This is ironic, as the appointment practices of the former Government in relation to the Administrative Appeals Tribunal (AAT) were what the Attorney-General put forward as the main reason for starting again with a new body rather than amending the AAT.

The Bill requires (clauses 205, 207, 208 and 227) that before a person is appointed to the Tribunal the Minister must be satisfied that the process of assessing candidates:

- ☐ Is merit-based
- ☐ follows public advertising
- ☐ complies with any requirements of the regulations.

Clause 4 of the Bill provides that an assessment is 'merit-based' if it:

- ☐ is made of the comparative suitability of the candidates for the office using a comparative selection process
- ☐ is based on the relationship between the candidate's skill, expertise, experience and knowledge and those required for the position
- ☐ takes into account the need for a diversity of skills, experiences etc.

The problem is however that there is a gaping hole in this seemingly excellent process for ensuring merit: there is no mention of who exactly is making these assessments.

Although there is a provision (clause 209) for the Minister to appoint independent selection panels, who would be bound to follow these criteria, there is nothing in the process mandated by the legislation that requires him to do so.



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Furthermore, there is nothing to ensure that the results of any deliberations, by a selection panel or anyone else, are considered in the Minister's decisions.

Our concern is that, without amending the arrangements for appointments in these respects, we could end up with the same problems as before. To avoid this, two changes must be made to the bill:

1. The use of independent selection panels should be required, not merely enabled.
2. The Minister should be required to appoint only candidates assessed as suitable by the panels. If there are exceptional circumstances where this is not practicable the Minister should be able to make an appointment outside the panel process, but such an appointment must:
 - a. meet all the other requirements of being merit-based AND
 - b. only take effect after the Minister has tabled a statement of reasons for the appointment decision in the relevant House.

A further change, which would increase public confidence in the Tribunal, would be to add a clause that barred former members of the Commonwealth Parliament from being appointed to the Tribunal for two years from the end of their term.

The bill with these changes will ensure a non-partisan review tribunal. This would mark a significant step towards the [National Integrity System](#) for Australia we are advocating.

We are available to answer any questions about our submission, or to respond to any other proposals made to the committee. I may be contacted as set out below.



Stuart Hamilton
Secretary

31 January 2024

