

# SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

## Administrative Appeals Tribunal

### Question G:

**Senator Hon Kim Carr asked the following question on 8 December 2021:**

**In relation to the current AAT Appointments Protocol:**

1. Under the Protocol, the President of the AAT is required to seek expressions of interest by public advertisement every year. Was the most recent call for expressions of interests on 16 April 2021? If not, when was it?
2. What is the process for assessing applications?
3. Has a selection panel been appointed?
4. Has the selection panel met?
5. Have any applicants been invited for an interview? If so, how many?
6. When will applicants be interviewed?
7. When will recommendations be made to the Attorney-General?

**The response to the Honourable Senator's question is as follows:**

#### **Question 1**

The most recent call for expressions of interest in appointment to the Administrative Appeals Tribunal (AAT) was published online on 16 April 2021 and in major newspapers on 17 April 2021.

#### **Questions 2 to 7**

The AAT consults the register of expressions of interest when a need is identified for particular member positions. The processes for assessing expressions of interest differ depending on the seniority of the position(s) and the urgent need for the position(s) to be filled. In all instances, candidates are assessed against the competencies listed in the advertisement and any additional criteria relevant to specific roles.

In 2021, the AAT conducted 3 processes to identify candidates to fill the following positions. The below explains these processes further and answers questions 2-7 in each of these 3 different contexts.

#### ***Senior Members, National Disability Insurance Scheme Division (NDISD)***

Since amalgamation, the number of applications lodged in the NDISD has grown exponentially. Unlike other divisions, the NDISD does not currently have a member leadership support structure in place where Senior Members assist the Division Head with the management of the division's caseload and membership. At the President's request, the Division Head of the NDISD, Deputy President Fiona Meagher, assessed candidates who had expressed interest in working in the NDISD at the Senior Member level against the following criteria:

- Whether the person expressing an interest had training, knowledge or experience relating to disability or other relevant knowledge or experience that will assist the member in considering matters relating to the NDIS.
- General decision-making experience and/or substantial experience of litigation.
- Managing complex hearings where both parties appear.
- The urgent need, and hence likely lead time, for the person expressing an interest to be able to quickly contribute to the work of the NDISD.
- The need to develop general guidance with respect to decision making in the NDIA pursuant to the NDIS Act.
- In respect of leadership roles, the ability to contribute to the development of jurisprudence, consider more complex cases, help with developing and mentoring other members, the implementation of the caseload strategy and assist with the development of training.
- The location of the person expressing an interest noting the desirability for national coverage of capable members approximately proportionate to lodgements in the respective registries.
- Where a person has expressed an interest and is already a member of the Tribunal, the needs of the Division to which they are currently primarily assigned, and concomitant likelihood of disruption to the work of the Tribunal.

Due to the comprehensive assessment and verification of the candidates' expressions of interest and the urgent need for the positions to be filled, interviews were not conducted. The President made recommendations to the Attorney-General on 15 October 2021.

#### ***Senior Member, Migration and Refugee Division (MRD), Perth***

Since amalgamation there has been no Senior Member based in Perth to provide leadership to MRD members in that location. At the President's request, the Division Head of the MRD, Deputy President Jan Redfern PSM, shortlisted candidates who had expressed interest in working in the MRD at the Senior Member level, located in Perth. Four candidates were invited to interview, one of whom withdrew prior to interview. A panel comprising Deputy President Jan Redfern, Deputy President Bernard McCabe and Ms Narelle Bell interviewed the remaining 3 candidates on 22 November 2021. The applicants were assessed against the competencies for an Executive Member. Recommendations were made by the panel and on 24 November 2021, the President wrote to the Attorney-General with a recommendation.

#### ***Additional members, MRD***

Given the continued need for additional members for the MRD to deal with the significant backlog of cases, the President approved the Division Head of the MRD, Deputy President Jan Redfern PSM, to undertake a process to review the expressions of interest register with a view to making recommendations to the Attorney-General about new members to be appointed to work in the MRD. Deputy President Jan Redfern and 3 Senior Members shortlisted candidates who had expressed interest in working in the MRD at the Member level. Forty-six candidates were invited to interview, 3 of whom withdrew prior to interview. A panel comprising Deputy President Jan Redfern, retired Federal Circuit Court Judge, Nick Nicholls, and Ms Narelle Bell was established. The shortlist was reviewed by the independent members of the panel. A further four candidates were invited to interview, of which one declined. The panel interviewed 46 candidates on 6, 8, 10 and 15 December 2021. It is anticipated that recommendations will be made by the President to the Attorney-General in due course.

# SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

## Administrative Appeals Tribunal

### Question H:

**Senator Hon Kim Carr asked the following question on 8 December 2021:**

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

1. What was the process for assessing applications?
2. Was a selection panel been appointed?
3. Did the selection panel meet?
4. Were any applicants invited for an interview? If so, how many?
5. When were applicants interviewed?
6. When were recommendations made to the Attorney-General?
7. How many of the applicants were ultimately appointed to the Tribunal?

**The response to the Honourable Senator's question is as follows:**

#### **Question 1**

A call for expressions of interest in appointment as a member of the Administrative Appeals Tribunal (AAT) was first advertised on 8 August 2019.

The AAT consults the register of expressions of interest when a need is identified for particular member positions. The processes for assessing expressions of interest differ depending on the seniority of the position(s) and the urgent need for the position(s) to be filled. In all instances, candidates are assessed against the competencies listed in the advertisement and any additional criteria relevant to specific roles.

In 2020, the AAT conducted 2 processes to identify candidates to fill the following positions. The below explains these processes further and answers questions 2-7 in respect of 2 specific contexts.

#### **Questions 2 to 7**

##### ***Division Heads***

The President established a panel comprising the Honourable Jennifer Boland AM, Mr Iain Anderson and Mr Michael Tidball to assess candidates for 2 Division Head positions – one for the National Disability Insurance Scheme Division and one for the Social Services and Child Support Division. The panel reviewed the expressions of interest and compiled a shortlist. Seventeen candidates were invited to an interview, with 1 withdrawing prior to interview. The remaining 16 candidates were interviewed on 25, 27, 28 and 29 May 2020. The panel convened remotely when settling a shortlist, after each interview, and to discuss referee comments. The President wrote to the then Attorney-General on 24 July 2020 with recommendations. One candidate was ultimately appointed to the AAT.

***Additional members, Migration and Refugee Division (MRD) and General Division (GD)***

Given the continued need for additional members for the MRD to deal with the significant backlog of cases, the AAT conducted a process to fill 12 member positions for the MRD. The AAT also required a part-time member for the General Division who was medically qualified.

Due to the significant volume of expressions of interest and to assist the panel, senior staff reviewed the candidates' CVs and highlighted those who appeared to have relevant experience and qualifications. A panel comprising Mr Alan Wilson QC, Ms Nancy Hennessy and Mr Cameron Gifford reviewed the full list of candidates, as well as the expressions of interest and CVs of those marked as potentially suitable. The panel provided its assessment of the candidates to the President for his consideration. The President wrote to the then Attorney-General on 23 April 2020 with recommendations. Three candidates were ultimately appointed to the AAT.