



Administrative Review Reform Issues Paper – Summary

Overview

- The Australian Government is reforming Australia's system of administrative review. This reform will abolish the Administrative Appeals Tribunal (AAT) and establish a new federal administrative review body.
- The reform will also include a transparent, merit-based system of appointments. The reform is designed to ensure that Australia's system of administrative review is user-focused, efficient, accessible, independent and fair.
- Written submissions can be made on the [Attorney-General's Department website](#) by **12 May 2023**. There is also a [simplified survey](#) if preferred.

Introduction

- The introduction of the paper provides an outline of administrative review in Australia and the key reports which led to the establishment of the AAT, as well as more recent reviews and inquiries.
- The AAT is part of the Commonwealth administrative review landscape, which includes internal review, external merits review, the Ombudsman and other integrity agencies and judicial review.

Design

- This section of the paper outlines the nature of administrative review, as distinct from judicial review, and the key features of tribunals as distinct from courts. These key features include accessibility, diversity of membership, flexibility of process and cost-effectiveness.
- The paper seeks views on general principles that will shape the approach to procedures and powers in the new body, and the balance that should be struck between informality and flexibility, on the one hand, and certainty, thoroughness and harmonisation, on the other.
- The paper seeks views on what the legislated objectives of the new review body should be and how it could better assist government agencies to improve administrative decision-making practices across the Commonwealth.
- It also seeks views on whether a body similar to the Administrative Review Council should be established, and its role and membership.

Structure

- The paper considers the current divisional structure and possible alternatives, such as a practice group model, which could increase the ability of the new body to flexibly manage its workload and members.

- The paper seeks views on what structure would best support an efficient and effective administrative review body, including how members should be assigned/moved across categories of matters, and how legislation can support application of different procedures to specific categories of matters.
- The paper also seeks views on the role of the judiciary in the new body and whether it should retain the requirement that the President be a judge of the Federal Court.

Senior leadership

- The paper seeks views on the leadership structure of the new body and role descriptions, and the necessary skills and qualifications for these positions.
- It considers the functions and roles of the President and Registrar.
- The paper outlines existing arrangements for Deputy Presidents, Division Heads and Deputy Division Heads. It seeks views on what levels of senior leadership are needed in the new body, how the roles should be defined and what qualifications are required.
- The paper also considers how should responsibility for the effective operation of the body should be shared between senior leaders, general members, and public service staff.

Members

- The paper outlines the six current membership levels. It invites views on rationalising levels and the roles and responsibilities that should apply at each membership level.
- The paper invites views on the appropriate qualifications that members should hold and whether legal qualifications should be required or the concept of ‘special knowledge or skills’ should be clarified. It considers other ways to access expertise, including through tribunal-appointed experts and sessional members.
- The paper considers the role of part-time members (currently 57% of total members) in ensuring the efficient operation of the new body.
- It seeks views on the concept of “sessional members” who hear cases on an ad hoc basis, might be preferable, in clarifying their role in providing specialist expertise for particular matters.

Appointments and reappointments

- The paper outlines the Guidelines for appointing members to the AAT, published in December 2022, and seeks views on whether and how a merit-based appointment process should be legislated.
- The paper considers the appropriate duration of members’ terms, whether they should be fixed, and whether there should be a maximum limit to the total amount of time a person can be a member. It seeks views on the process for reappointment.
- The paper seeks views on identifying and declaring and managing conflicts of interest, and legislative guidance on outside employment, particularly for part-time members.

Performance management

- The paper invites views on legislative measures to ensure member performance and conduct can be managed appropriately in the new body. It acknowledges the importance of ensuring members are independent and unfettered in decision making.
- The paper outlines the existing grounds and process for terminating member terms (currently a high threshold requiring both houses of Parliament recommending removal of a member to the Governor-General). It compares the AAT's processes to state and territory tribunal processes and invites views on the appropriate grounds, thresholds and process for terminating or suspending the appointment of a member.

Making an application

- The paper outlines the various application requirements, timeframes, methods and fees that apply across the different areas of the AAT. The paper seeks views on how the new body can ensure that application methods and processes are accessible to all users, as well as opportunities for standardisation and simplification.
- The paper seeks views on minimum requirements for lodgement of an application in the new body, and the consequences if an application does not meet lodgement requirements.

Case management, directions and conferencing

- The paper seeks views on what powers would best support the new body to manage cases, including directions powers (and consequences for failing to comply), holding directions hearings and other kinds of interlocutory powers.
- It considers the role of case conferencing and whether it should be available for all matters including where the respondent does not appear.
- The paper also seeks views on whether, and in what circumstances, the new body should be able to expedite matters such as by limiting provision of new information (while affording procedural fairness) or making a decision on the papers.

Information provision and protection

- The paper seeks views on how information is provided to the AAT and to parties to a proceeding. It considers what powers the AAT has to gather information, how they operate across the divisions of the AAT and the extent to which they should be standardised.
- The paper also considers how sensitive or confidential information is protected, including in a national security context or for the protection of personal privacy. The paper seeks views on what powers the new body should have to protect information.

Resolving a matter

- The paper outlines the history and types of Dispute Resolution available in the AAT and seeks views on its availability and use in the new body.
- The paper considers how a matter can be resolved without a hearing, arrangements for hearings and circumstances in which a decision can be made without a hearing (known as 'on the papers'). It also considers what powers are needed to manage vexatious or frivolous applications.

- The paper invites views on whether some powers could be delegated to non-members, such as the power to remit to the original decision maker or to approve consent orders.

Decisions and appeals

- The paper outlines how the AAT can issue a decision and reasons for decision, being orally and in writing and the timeframes for doing so.
- It also considers appropriate timeframes for appeals and how the power to refer questions of law to the Federal Court should be framed in the new body.
- The paper seeks views on whether there should be a second tier of review in the new body either for particular matters or across all matters and how it should be accessed (e.g. through special leave, or the President's own motion).

Supporting parties with their matter

- The paper considers representation for parties (including legal and non-legal representatives) and whether leave should be required to appear with representation. It seeks views on whether there should be conduct requirements for representatives and how these should be enforced.
- The paper seeks views on what support services should be provided to applicants, either by the new body, government departments and agencies or other organisations.
- The paper considers what supports and services are needed to make the new body accessible to all users, including to ensure that a party with a disability is supported to participate in the matter in their own capacity. It seeks views on whether the new body should have the power to appoint a litigation guardian where this is not possible, and the requirements and processes for doing so.
- The paper also notes that the current AAT Act does not have specific protections for vulnerable or at-risk parties, and seeks views on how the new body can ensure safety in these circumstances.