

Position Information Package

Appointment as a Judge of the Federal Court of Australia and President of the Administrative Appeals Tribunal

The Government invites expressions of interest from, and nominations of, suitable persons for appointment as a judge of the Federal Court of Australia who will also serve as the President of the Administrative Appeals Tribunal.

The President of the Tribunal must be a judge of the Federal Court. Accordingly, a current judge may be appointed as the next President. Alternatively, the next President could be selected from outside the judiciary and appointed as a judge prior to being appointed as the President.

The current President of the Tribunal, the Hon Justice Garry Downes AM, has announced that he will retire from the Presidency in May 2012. It is expected that the next President will commence at this time.

Information on the Federal Court of Australia and Administrative Appeals Tribunal

The Federal Court of Australia is a superior court of record and a court of law and equity. It has original jurisdiction under more than 150 Acts of Parliament and a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Magistrates Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Federal Court consists of the Chief Justice and judges.

The Administrative Appeals Tribunal is an independent body that reviews a broad range of administrative decisions made by Australian Government Ministers, officers, authorities and tribunals. The Tribunal performs a vital function in the Australian Government's administrative review system, providing a mechanism of review that is fair, just, economical, informal and quick. The President, with the assistance of the Registrar, is responsible for the management of the Tribunal and its resources. The Tribunal consists of the President, other presidential members (who may be judges or deputy presidents), senior members and members. Further information on the Tribunal is provided below.

The Appointment Process

Should the next President be appointed from outside the judiciary, the appointment process will follow the Government's *Judicial Appointments* policy. This process includes:

- broad consultation to identify persons who are suitable for appointment
- publishing public notices seeking expressions of interest and nominations
- publishing of requisite qualities for appointment on the Attorney-General's Department website, and
- establishing appointments advisory panels to assess expressions of interest and nominations against the requisite qualities for appointment and to develop a shortlist of highly suitable candidates.

The process is aimed at ensuring:

- greater transparency and public confidence in the judicial appointments process
- that all appointments are based on merit, and
- that everyone who has the qualities for appointment as a judge or magistrate is fairly and properly considered.

Persons under consideration for appointment should also be aware that enquiries relevant to their suitability for appointment may be made of referees and others, in particular, judicial officers and persons holding office in legal professional bodies. These enquiries will be made discretely and with regard to the privacy of persons under consideration, and will be treated with the utmost confidentiality and used only to assist in the selection process.

Further details on the *Judicial Appointments* policy can be found at:

[http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_CourtAppointments?open&query=judicial appointments](http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_CourtAppointments?open&query=judicial+appointments)

Statutory Qualifications

Subsection 6(2) of the *Federal Court of Australia Act 1976* provides that a person cannot be appointed as a judge of the Federal Court unless they are or have been a judge of a State court or have been enrolled as a legal practitioner for five years. Subsection 7(1) of the *Administrative Appeals Tribunal Act 1975* provides that the President of the Tribunal must be a judge of the Federal Court.

Requisite Qualities for Appointment

The successful appointee must have the following personal and professional qualities to the highest degree:

- legal expertise
- decision-making skills
- the ability (or the capacity quickly to develop the ability) to deliver clear and concise judgments
- integrity, impartiality, tact and courtesy
- a commitment to professional development
- leadership skills, including the ability to inspire a sense of purpose and direction, build organisational capacity and steer and manage change
- ability to manage the administrative affairs of the Tribunal with the assistance of the Registrar
- strategic thinking, conceptual and analytical skills
- the capacity to work effectively under pressure
- the ability to cultivate productive internal and external working relationships, including strong interpersonal and communication skills, and
- the capacity to inspire respect and confidence.

Call for Expressions of Interest and Nominations

Expressions of interest

Those interested in lodging an expression of interest should complete and submit the expression of interest documentation available for downloading at

<http://www.ag.gov.au/aatemployment>.

The required information includes:

- the candidate's full name, date of birth, address and contact details
- the candidate's present position and date of admission to practice
- the candidate's educational and professional qualifications, areas of legal expertise and relevant experience, so as to show that they possess the requisite qualities for appointment
- the candidate's statement of claims against the requisite qualities for appointment on page 2
- the names of at least three referees, preferably drawn primarily from the candidate's peer group and including at least one referee who can attest to the candidate's general character, and
- a private interests declaration.

Nominations

Those interested in nominating another person for appointment should complete and submit the nomination documentation available for downloading at <http://www.ag.gov.au/aatemployment>.

The required information includes:

- the nominator's full name, address and contact number, and the capacity in which the nominator knows the nominee
- the nominee's full name, address, contact numbers, date of birth and nationality
- the nominee's present position and date of admission to practice
- the nominee's educational and professional qualifications, areas of legal expertise and relevant experience, so as to show that the nominee possesses the requisite qualities for appointment, and
- a statement that the nominee has agreed to being considered for appointment.

In addition, to enable nominations to be processed, all nominees will be required to provide a private interests declaration. Nominees will be contacted by the Attorney-General's Department about the declaration.

The closing date for expressions of interest and nominations is **Monday 21 November 2011**.

Expressions of interest and nominations can be submitted via e-mail or post at the following addresses:

E-mail: aat.appointments@ag.gov.au

or

Post: AAT Appointments
Access to Justice Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Please note that we do not require copies of qualifications or certificates at this stage.

Terms and conditions

Judges of the Federal Court are appointed by the Governor-General to age 70. The term of the President of the Tribunal will be determined by the Government at the time of appointment. If the appointee ceases to be the President of the Tribunal they would continue to serve as a judge of the Federal Court.

The salary of a judge of the Federal Court is \$391,140 per annum. The President of the Tribunal does not receive remuneration beyond their judicial salary.¹ Judges accrue six months long leave after five years of service. When travelling within Australia on official business, a judge of the Federal Court is entitled to the highest available class of airline travel and travelling allowance at rates set by the Remuneration Tribunal.

Under the *Judges' Pensions Act 1968*, Federal Court judges are entitled to a non-contributory pension of 60% of current judicial salary after attaining the age of 60 years and having served 10 years or more as a judge or upon retirement on the ground of permanent disability or infirmity. Pro rata pension is payable after six years service as a judge upon retirement at age 70.

Full information on terms and conditions is available on the Remuneration Tribunal's website at <http://www.remtribunal.gov.au/judicialRelatedOffices/default.asp?menu=Sec3&switch=on>.

¹ An expense of office allowance of \$2,118 a year is payable to a sitting judge who also holds the Presidency on a part-time basis.

FURTHER INFORMATION ON THE FUNCTIONS OF THE ADMINISTRATIVE APPEALS TRIBUNAL

Merits Review

The *Administrative Appeals Tribunal Act 1975* (the Act) provides that, in carrying out its functions, the Tribunal:

- must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick
- should conduct proceedings with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit, and
- is not bound by the rules of evidence and can inform itself in any manner it considers appropriate.

The Tribunal has jurisdiction to review decisions made under more than 400 separate Acts and legislative instruments. Decisions in the areas of social security, taxation, veterans' affairs and workers' compensation constitute the bulk of the Tribunal's workload. The Tribunal also reviews decisions in areas such as bankruptcy, civil aviation, citizenship, corporations law, customs, freedom of information, immigration, industry assistance, passports and security assessments made by ASIO.

The Tribunal reviews decisions 'on the merits'. This means that the Tribunal considers afresh the facts, law and policy relating to a decision.

The Tribunal can have regard to the evidence that was before the primary decision-maker and any additional evidence that the parties put before it, either in documentary form or orally at hearings. The Tribunal can also call for further evidence if it thinks this is necessary.

The Tribunal must determine the correct or preferable decision in all the circumstances and will affirm, vary or set aside the decision under review.

The Tribunal must give reasons for its decision, either orally or in writing. Where a decision is given orally, a party may request written reasons. Written reasons for a decision must include the Tribunal's findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

A party to a proceeding before the Tribunal may appeal to the Federal Court from any decision of the Tribunal in that proceeding but only on a question of law.

Parties are not required to be legally represented in proceedings before the Tribunal but can be represented if they wish.

The Tribunal is organised into a number of divisions:

- General Administrative Division
- Security Appeals Division
- Taxation Appeals Division, and
- Veterans' Appeals Division.

Case Management

The Tribunal has a case management process that aims to deal with applications in a flexible and timely manner. It is designed to promote:

- the orderly and controlled passage of matters from lodgement to resolution
- the achievement of case management targets
- the equitable treatment of parties
- the effective use and allocation of Tribunal resources, and
- the maintenance and enhancement of public confidence in the Tribunal.

On receipt of an application in relation to which the Tribunal has jurisdiction, the Tribunal notifies the decision-maker that the application has been made. Within 28 days of receiving notice of an application, the decision-maker must provide to the Tribunal and to the applicant a statement of reasons for the decision and all documents that are relevant to the review.

One or more conferences, conducted by a conference registrar or a Tribunal member, are held with the parties to discuss the issues in dispute, identify any further material that parties may wish to obtain and explore whether the matter can be settled. Conferences also provide an opportunity to discuss the future conduct of the application and, in particular, whether another form of alternative dispute resolution (ADR) may assist in resolving the matter. The other forms of ADR available in the Tribunal are conciliation, mediation, case appraisal and neutral evaluation.

The Tribunal assists the parties to attempt to reach an agreed resolution, while ensuring that appropriate steps are taken to prepare for hearing those matters that do not settle. Parties are expected to play an active role in identifying legal and factual issues early in the pre-hearing process. This encourages early resolution of disputes or, where that is not possible, a clear framework within which the parties can prepare for hearing.

Where an agreed resolution cannot be reached, the Tribunal conducts a hearing and makes a formal decision. For the purposes of the hearing, the Tribunal may be constituted by one, two or three members.

Additional Functions

In addition to carrying out their functions under the Act, members of the Tribunal may exercise powers under a number of other Acts.

The President and all deputy presidents and full-time senior members, and any part-time senior member or member who has been enrolled as a legal practitioner for at least five years, may be nominated to undertake the following functions:

- issue telecommunications interception warrants and stored communications warrants under the *Telecommunications (Interception and Access) Act 1979*
- issue warrants and exercise related powers under the *Surveillance Devices Act 2004*, and
- vary controlled operation authorities under the *Crimes Act 1914*.

The President and all deputy presidents, and any senior member who has been enrolled as a legal practitioner for at least five years, may be nominated to make orders allowing information given to the Inspector of Transport Security to be disclosed to another government agency under the *Inspector of Transport Security Act 2006*.

The President and all deputy presidents may be appointed as issuing authorities in relation to the making of continued preventative detention orders under the *Criminal Code Act 1995*.

All members of the Tribunal are authorised to exercise a range of powers under the *Education Services for Overseas Students Act 2000* and the *Migration Act 1958* relating to the monitoring of compliance with student visa conditions.

The President and all deputy presidents, and any senior member or member who has been enrolled as a legal practitioner for at least five years, may be appointed as an approved examiner under the *Proceeds of Crime Act 2002*. Approved examiners are authorised to issue examination notices at the request of the Commonwealth Director of Public Prosecutions and oversee compulsory examinations in connection with confiscation proceedings.

Corporate Business

The President has established a number of committees comprising Tribunal members and senior staff to provide advice and assistance in specific areas relating to the management of the Tribunal and its resources. Members may participate in committee work.

Further information about the Tribunal may be obtained from the Tribunal's website at <www.aat.gov.au>.