

## Transparent and Quality Public Appointments Bill 2023 (Cth)

The Transparent and Quality Public Appointments Bill (2023) Cth is designed to reform the appointments process for all major Commonwealth public appointments.

### I. Scope

The Bill captures almost all major Commonwealth public appointments via its application to any group of persons or person who is an '**accountable authority**' of a Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (Cth). This structure enables the Bill to capture the vast majority of public appointments; however, insofar as the definition of 'accountable authority' does not capture *all* relevant appointments, the Bill also allows for appointments to be captured via their inclusion in a Schedule to the Bill (see cl. 6 for appointments currently included in the Schedule).

For the avoidance of doubt, we note that the Bill will not apply to each and every Commonwealth appointment. In determining its scope we have been cognisant of the thorough process that it establishes, as well as the cost that process will entail: it is therefore proposed to apply only to those appointments warranting it.

We also note that Departmental Secretaries are specifically excluded from the scope of the Bill: the relationship between a Minister and Secretary is such that, in our view, it is appropriate that ministerial discretion in appointing Secretaries is not restricted.

### II. Appointments process

The Bill's operation is centered around the establishment of a **Public Appointments Commissioner (PAC)**, and **Independent Selection Panels (ISPs)**. A flowchart setting out the appointment process established by the Bill can be found at Figure 1.

#### a. Independent Selection Panels (ISPs)

Each Department will have an ISP. The ISP will always consist of:

- the PAC (who will be Chair of the ISP); and
- the relevant Secretary.

In addition, in each selection process conducted by an ISP, the Chair must appoint at least one (and no more than four) additional members. In making these appointments the Chair must have regard to the desirability of additional members having relevant expertise and experience, as well as the need to achieve a diversity of representation on the ISP.

#### b. Public Appointments Commissioner (PAC)

In addition to Chairing departmental ISPs, the PAC will be able to issue guidelines on the making of public appointments (cl. 13) and report annually in respect of public appointment selection processes (cl. 47).

### c. Process

Upon a Minister determining selection criteria relating to a vacancy (via disallowable legislative instrument), the relevant ISP is required to:

- advertise (for at least 10 consecutive business days, in at least three separate locations);
- run an interview process; and
- shortlist at least three candidates (NB if more than three candidates are listed, they must be numerically ranked) (cl. 10).

The criteria upon which the panel must base its selection of shortlisted candidates include:

- the relevant selection criteria (to be determined by the Minister);
- quality;
- experience; and
- integrity (cl. 10).

In assessing candidates, the ISP must also specifically consider opportunities to promote diversity in the public sector (cl. 10).

Upon conclusion of the selection process, the ISP must provide the Minister with a report setting out the shortlisted candidates and a comparative assessment of them (as well as a numerical ranking of the candidates, if there are more than three individuals shortlisted) (cl. 10). The ISP must also provide the Minister with a '**certification statement**' for each shortlisted candidate (cl. 10): this statement, which is simply a certification by the ISP that a person is eligible for appointment (and includes their rank, where ranking has taken place), is used to promote transparency of public appointments.

The Minister is then able to appoint any candidate shortlisted by the ISP (that is, the Minister will not be able to appoint a candidate who has not been shortlisted by the ISP) (cl. 11).

### d. Promotion of transparency

Within 7 days of the making of a public appointment that is not a '**significant integrity officer appointment**' (see below) the Minister must table in Parliament the certification statement prepared by the ISP in respect of the individual appointed. In the case of a significant integrity officer appointment, the parliamentary oversight committee established by the Bill (see below) must report to Parliament on whether it supports or opposes a proposed appointment before that appointment is made (NB this is not a veto right: see below in respect of interaction with veto provisions under other Acts) (cl. 52).

### e. Significant integrity officer appointments

The Bill creates additional protections for a subset of appointments known as '**significant integrity officer appointments**' (cl. 7). These include a requirement that a former superior court judge must sit on the ISP when such an appointment is being made (cl. 12), and a requirement that the parliamentary oversight committee report on whether it supports such an appointment before it is made.

### III. Interaction with other appointment provisions

The Bill makes clear that where any other Act requires that a parliamentary committee approve a proposed appointment before it can be made (as, for example, the *National Anti-Corruption Commission Act 2023* (Cth) does), that requirement is unaffected.

### IV. Oversight

Oversight of the Bill's operation and compliance with its provisions will be promoted by the ability of the PAC to report annually in respect of public appointments, as well as by the establishment of a **Parliamentary Joint Committee on Appointments** (cl. 50).

This committee cannot be composed of any more than 50 per cent of government members, and the Chair must not be a government member (cl. 51).

As well as reporting to the Parliament in respect of significant integrity officer appointments, the committee's functions include reporting annually to the Parliament on public appointments (cl. 52).

APPOINTMENT PROCESS ESTABLISHED BY THE TRANSPARENT AND QUALITY  
PUBLIC APPOINTMENTS BILL 2023 (CTH)

