



Administrative Appeals Tribunal

25 February 2022

Senator the Hon Sarah Henderson
Chair
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Senator Henderson,

Additional information regarding Deputy President Fiona Meagher's role and workload

During the Administrative Appeals Tribunal's appearance before the Committee at 2021–22 Additional Estimates on 15 February 2022, a number of questions were asked about Deputy President Fiona Meagher. I am writing to provide the Committee with additional contextual information about Deputy President Meagher's role and workload.

Deputy President Meagher was appointed as a full-time Senior Member on 3 November 2018. Then Senior Member Meagher performed, at the request of the President, Justice Thomas, an oversight function of the National Disability Insurance Scheme Division (NDIS Division) in the absence of a Division Head. On 17 December 2020, Ms Meagher was appointed as a Deputy President and assigned as Head of the NDIS Division.

During the AAT's appearance, reference was made to statistical information relating to Deputy President Meagher which the AAT provided in response to questions on notice asked in the context of the Senate Legal and Constitutional References Committee inquiry into the performance and integrity of Australia's administrative review system. For completeness, the full set of workload statistics relating to Deputy President Meagher which were provided is extracted below.

10	14	15	16	17	18	20	28	29	30	31	42	43	44	45	46	47	48	49
Case events						Finalisations – Applications finalised by substantive decision, by Division and area of work					Other finalisations					Decisions		
Financial year	Division	Total case events ^d	Substantive hearings	Directions hearings	Interlocutory hearings	Total AAT	Migration & Refugee (Total)	Migration	Refugee	National Disability Insurance Scheme (Total)	Consent decisions	No jurisdiction	Extension of time refusals	Dismissed	Other*	Written decisions	Oral Decisions	% of reserved decisions finalised within 60 days
2018-19	Total	29	9	15	5	29	29	18	11	0	61	1	0	0	2	31	2	N/A
	MRD	2	2	0	0						0	0	0	0	2	31	1	
	G&OD	27	7	15	5						61	1	0	0	0	0	1	N/A
	SSCSD	0	0	0	0						0	0	0	0	0	0	0	
2019-20	Total	103	5	79	19	5	2	2	0	3	182	2	0	4	3	5	2	0%
	MRD	2	2	0	0						0	0	0	0	0	2	0	
	G&OD	101	3	79	19						182	2	0	4	3	3	2	0%
	SSCSD	0	0	0	0						0	0	0	0	0	0	0	
2020-21	Total	194	4	162	28	2	2	2	0	0	186	13	0	5	1	5	3	N/A
	MRD	0	0	0	0						0	0	0	0	0	2	0	
	G&OD	194	4	162	28						186	13	0	5	1	3	3	N/A
	SSCSD	0	0	0	0						0	0	0	0	0	0	0	

Reference was made at the hearing to the number of applications Deputy President Meagher finalised by substantive decision in 2018–19, 2019–20 and 2020–21: that is, by way a decision on the merits under section 43 of the *Administrative Appeals Tribunal Act 1975* to affirm the decision under review, vary the decision, or set the decision aside and substitute a new decision or remit the matter for reconsideration. I also gave evidence about the total number of case events Deputy President Meagher conducted in 2020–21, being 194.

As shown in the table above, the 194 case events conducted by Deputy President Meagher comprised 4 substantive hearing days, 162 directions hearings, and 28 interlocutory hearings in 2020–21.

The table above also shows that Deputy President Meagher finalised a large number of applications by making consent decisions: 61 in 2018–19, 182 in 2019–20 and 186 in 2020–21.

Further detail of Deputy President Meagher’s activities over the period in question is set out below.

2018–19: oversight role with respect to the NDIS Division, including:

- review of systems, processes and pathways for NDIS matters, including assessment of matters on hand;
- stakeholder liaison;
- participation in and provision of advice to the AAT’s Accessibility Advisory Group.

2019–20: oversight role with respect to the NDIS Division and other organisational projects, including:

- triage and early case assessment in excess of 370 NDIS applications, including monitoring matters on hand;
- coordinating and delivering member and staff professional development sessions, including Disability Confidence Training nationally;
- stakeholder liaison including with the National Disability Insurance Agency, Department of Social Services, representatives of legal aid commissions and disability advocates, including peak bodies;

- implementing new systems and processes to enhance access for applicants;
- participation in and provision of advice to the single case management solution project team;
- participation in and provision of advice to the AAT's Tribunal Leadership Group, Accessibility Advisory Group, Transformation Committee and 2020 National Conference Subcommittee.

2020–21: oversight role with respect to the NDIS Division (including as Division Head from December 2020) and other organisational projects, including:

- triage and early case assessment in excess of 750 NDIS applications, including monitoring matters on hand;
- preparation and progressive implementation of a comprehensive caseload strategy;
- coordinating and delivering member and staff professional development sessions;
- stakeholder liaison;
- development of NDIS Division-specific resources and information materials;
- enhancing and refining systems and processes to enhance access for applicants;
- participation in and provision of advice to the single case management solution project team;
- member of the AAT's Tribunal Leadership Group, Accessibility Advisory Group, Member Professional Development Advisory Group and Transformation Committee.

From commencing in an oversight role with respect to the NDIS caseload, Deputy President Meagher consistently worked to improve access to the Tribunal for people with disability. Throughout 2021 Deputy President Meagher regularly and diligently worked with the President and Registrar to respond to the significant increase in lodgements by implementing new and improved systems and processes.

By way of background with respect to the NDIS caseload, many NDIS matters resolve by consent, often as a result of alternative dispute resolution (ADR) processes mostly conducted by registrars, or by interlocutory or case management hearings conducted by members. It is a caseload which relies on very significant pre-hearing work to finalise matters. In 2020–21 61% of applications were resolved by consent, 8% were dismissed or finalised on the basis that the Tribunal lacked jurisdiction and 2% proceeded to a substantive decision on the merits, generally following a hearing.

Applications finalised by way of a consent decision are finalised by a member. Applications finalised by consent include:

- applications finalised by making a decision to affirm the decision under review, vary the decision, or set the decision aside and substitute a new decision or remit the matter for reconsideration in accordance with terms of agreement reached by the parties either in the course of an ADR process or at any stage of review proceedings, and
- applications dismissed by consent under section 42A(1) of the *Administrative Appeals Tribunal Act 1975*.

Before finalising an application by consent, a member must be satisfied that the proposed decision set out in the signed terms of agreement would be within the powers of the Tribunal and that it appears appropriate to make that decision. This assessment includes considering whether the proposed decision is one that can be lawfully made by a decision-maker

applying the relevant legislative criteria and the scope of the Tribunal's jurisdiction to review the decision.

Directions hearings are conducted by a Tribunal member to discuss the progress of a case or deal with issues arising in a case (case management), sometimes on the basis of referral from a registrar, and frequently occur in the most complex matters.

Interlocutory hearings are held in relation to an application made by a party that relates to an application for a review of a decision, including any of the following kinds of application: to extend the time to lodge an application for review; that the Tribunal does not have jurisdiction to review the decision; to be joined as a party to a proceeding; to make confidentiality orders; to stay the operation or implementation of the decision under review; to dismiss an application; or to reinstate an application. Members may make various interlocutory orders and directions on the papers, but these are not recorded as case events and therefore not included in the case events data for members.

Typically, an interlocutory or case management hearing in any of the above categories takes over an hour. Sometimes because of the complexity of the matter or because adjustments are required to be made to facilitate accessibility to the hearing, there may need to be more than one hearing to resolve any given issue. Initial preparation for such hearings may take several hours as there will often be weighty medical and allied health reports to read, given the centrality of the adequacy and quality of evidence to many of the applications

I would be grateful if you could bring the contents of this letter to the attention of the Committee.

Yours sincerely,

Jamie Crew
Registrar a/g