



Administrative Appeals Tribunal

10 May 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
CANBERRA ACT 2600

Dear Secretary

Clarification to Hansard

I write to you concerning evidence provided to the Senate Standing Committee on Legal and Constitutional Affairs during the Additional Estimates hearing on 23 March 2021 and the additional hearing on 14 April 2021.

The Administrative Appeals Tribunal (AAT) has identified the following evidence that requires clarification.

Evidence of Ms Sian Leathem, Registrar, Administrative Appeals Tribunal

Karen Synon

Senator Carr and Senator Watt asked questions at the hearing about the amounts paid to a number of members of the AAT, including Karen Synon for the 2019–20 year. On page 84 of the transcript of the hearing held on 23 March 2021, the following exchange occurred between Senator Carr, Senator Watt and Ms Leathem:

Senator WATT: Could we get the same information for member Synon as well. Was she level 2 or 3 and what was her daily fee?

Ms Leathem: She was also level 2.

Senator Stoker: It might be useful that these sums are set by the Remuneration Tribunal and not within the discretion of government.

Senator KIM CARR: That's fair enough.

Senator WATT: So she was level 2. Does that mean she had the same daily fee as member Bygrave?

Ms Leathem: The current rate is \$949 as the daily rate.

The AAT wishes to clarify that, during 2019–20, Ms Synon was a Member (level 2) only on 30 June 2020.

Ms Synon became a member of the AAT when the former Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT) were amalgamated with the AAT on 1 July 2015. On 30 June 2015, she had been reappointed as a part-time member of the MRT

and RRT for a term of five years. On 1 July 2015, Ms Synon was taken to be a part-time Member of the AAT for the remaining balance of her term of appointment by operation of item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015*.

Members who transitioned to the AAT were not taken to be appointed at level 1, level 2 or level 3 under section 6(3) of the *Administrative Appeals Tribunal Act 1975* (AAT Act). Members have been appointed at one of these levels only if newly appointed or reappointed to the AAT on or after 1 July 2015.

Between 1 July 2015 and 29 June 2020, Ms Synon was therefore neither a part-time Member (level 1), a part-time Member (level 2) nor a part-time Member (level 3). Ms Synon was reappointed as a part-time Member (level 2) on 30 June 2020.

The AAT also wishes to clarify that, for the period from 1 July 2019 to 29 June 2020, the applicable daily fee for Ms Synon as a member who had previously been a member of the MRT or RRT was \$945 as specified in the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019*. Her daily fee for 30 June 2020 was \$949.

Applications finalised by decision

On page 91 of the transcript of the hearing held on 23 March 2021, the following exchange occurred between Senator Carr and Ms Leathem:

Senator KIM CARR: I've got the idea. When I look at your annual report for 2019-20, I see that only 58 per cent of applicants were finalised by a decision. That's correct, isn't it?

Ms Leathem: That, I believe, is correct.

The AAT wishes to clarify that, in 2019–20, 58% of applications for review of decisions were finalised by the AAT making a decision on the merits under section 43 of the AAT Act or section 349 or 415 of the *Migration Act 1958*. That is, the AAT made a decision to:

- affirm the decision under review
- vary the decision under review
- set aside the decision under review and substitute a new decision, or
- remit a matter to the decision-maker for reconsideration in accordance with any directions or recommendations of the Tribunal.

The AAT makes a range of other types of decisions to finalise applications.

Section 13 of the AAT Act

On page 97 of the transcript of the hearing from 23 March 2021, the following exchange occurred between Senator Carr and Ms Leathem:

Senator KIM CARR: The Governor-General can terminate the appointment of a member if the member is a part-time member, or a full-time member for that matter, if they have been unavailable for work for more than three months. That's correct, isn't it?

Ms Leatham: Yes, it is.

The AAT wishes to clarify that, in relation to full-time members of the AAT, section 13 of the AAT Act provides that the Governor-General may terminate the appointment of a member if the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

Part-time member timesheets

On page 6 of the transcript of the additional hearing held on 14 April 2021, the following exchange occurred between Senator Watt and Ms Leatham:

Senator WATT: Thank you. One of the things that Senator Carr asked for was for you to bring copies of all documents that Members Barry, Plain, Harkess, Synon and Bygrave provided to the Tribunal in respect of the hours they worked over specified periods. I understand you haven't provided that material. Would you be able to provide copies of that material to the secretariat?

Ms Leatham: I can't, for the very reason that the basis on which they're remunerated does not involve time sheets. That's why I've provided the explanation that sessional members are remunerated when they finalise a matter. That triggers the payment in most instances. Of course we will look in greater detail, if you want to provide the questions on notice, to see what information we hold.

The AAT wishes to clarify that, at the relevant time, Karen Synon was a part-time member of the Migration and Refugee Division and she completed timesheets as described in the *MRD Part-time Member claim and approval process Guide* tabled on 14 April 2021.

Member Louise Bygrave

On page 8 of the transcript of the additional hearing held on 14 April 2021, the following exchange occurred between Senator Watt and Ms Leatham:

Senator WATT: Yes. I suppose I'm particularly interested in Members Plain, Harkess, Barry and Bygrave, and I will have questions about them to follow. But, more generally, could we get a list as well?

Ms Leatham: We can do that. I might note—I provided evidence on this at the last hearing—that Member Bygrave works across multiple divisions. She does some work for the SSCSD, which would involve remuneration based on finalisation of matters, but she also does work in the General Divisions and NDIS, which are based on the time sheet model, which, as I explained, is the way it happens in the General Division. So the arrangements will depend on the nature of the work that the particular members are undertaking, and in Member Bygrave's case it will be a combination depending on the work she's done over the period.

Member Bygrave is assigned to all divisions of the AAT except the Migration and Refugee Division and the Security Division. While she only finalised cases in the General Division, National Disability Insurance Scheme and Social Services and Child Support Division in 2019–20, since her appointment she has also undertaken work in the Taxation and Commercial and Veterans' Appeals Divisions.

Yours sincerely

Sian Leathem
Registrar