

The Hon Justice David Thomas
President
Administrative Appeals Tribunal

By email only: sian.leathem@aat.gov.au

16 April 2021

Dear President

As you will be aware, over many months Labor members of the Senate Legal and Constitutional Affairs Legislation Committee (“the **Committee**”) have asked the Administrative Appeals Tribunal questions – in public hearings and on notice – about the remuneration of part-time members.

Based on the material provided to the Committee, it appears that – in some cases – the amounts paid to at least four part-time members could only be justified if those members had completed the equivalent of at least 7 hours of Tribunal work a day for more than five days per week, sometimes for years on end. This is despite at least some of those members working in one or more other jobs.

I am not suggesting that any of those four members, or any other members of the Tribunal, have been over-charging or over-claiming. Rather, based on the evidence of the Tribunal at a hearing of the Committee earlier this week, it appears that the Tribunal has outdated and inconsistent remuneration policies that give rise to the serious possibility that part-time members in some divisions are being paid for more days and hours than they actually work.

As set out below, the appropriateness – and even the legal basis – of those policies is unclear.

At the very least, it is apparent that multiple part-time members are being paid tens of thousands of dollars more than their full-time equivalents are being paid at the Tribunal, despite those part-time members also being engaged in other forms of paid employment. This raises serious questions about whether Australian taxpayers are receiving value for money from part-time members of the Tribunal and from the Tribunal more generally.

In light of the above, I intend to write to the Auditor-General by no later than **24 April 2021** to request that he conduct a comprehensive audit of how part-time members of the Tribunal are being remunerated, including but not limited to the examples, policies and guidelines referred to in this letter.

However, I am conscious that many of the questions Labor members of the Committee have asked the Tribunal over the last 12 months or so remain unanswered and so we do not have a complete picture of how part-time members are being remunerated. For that reason, and because of the seriousness of the matters raised in this letter, I am reluctant to write to the Auditor-General until I have provided the Tribunal with an opportunity to respond to the Opposition’s concerns, which are set out in detail below, and to correct any possible misunderstandings.

I ask that you provide me with a response to the concerns outlined in this letter, including the concern about the legal basis of the Tribunal’s remuneration policies (particularly in respect of the remuneration of part-time members of the Social Services & Child Support division and of “sessional

part-time members" in the Migration and Refugee division), by close of business on Friday 23 April 2021.

Please note that, in the event I decide to proceed with my request for an audit, I intend to provide the Auditor-General with a copy of this letter along with a copy of any response(s).

I also note that any letter I send to the Auditor-General is likely to be made public.

Examples of part-time members being paid more than full-time equivalents

Based on the information provided by the Tribunal to the Committee:¹

1) Member Vanessa Plain was paid for working the equivalent of 117 days over the course of the 123-day period between 1 July 2020 and 1 November 2020. This is despite the fact that Ms Plain was also performing a significant amount of work as a barrister over the same period, such as providing pro bono assistance to the Victorian Liberal Party in a high profile legal challenge to public health measures introduced by the Victorian Government.

2) In 2019/20, Member Plain – as a part-time member – was paid approximately \$29,088 more than she would have received had she been appointed as a full-time member of the Tribunal.

3) In 2019/20, Member Jason Harkess was paid for working the equivalent of 266 days on the Tribunal. There were only 252 weekdays in Victoria in 2019/20 (excluding public holidays).

Moreover, Mr Harkess would have received \$221,700 in 2019/20 had he been appointed as a full-time member – \$70,353 less than he received as a part-time member. According to his public LinkedIn profile, Mr Harkess also held four other jobs over the same period.

4) In 2019/20, Member Anthony Barry was paid for working the equivalent of almost 260 days on the Tribunal. There were only 252 weekdays in Victoria in 2019/20

Had he been appointed on a full-time basis, Mr Barry would have been paid \$193,990 in 2019/20 – or \$57,129 less than he was paid as a part-time member who, according to information provided to the Committee by the Tribunal, also held two other jobs.

5) Member Louise Bygrave was paid:

- a. for working the equivalent of approximately 269 days in 2018/19 (despite there only being 250 weekdays in New South Wales excluding public holidays);
- b. for working the equivalent of approximately 265 days in 2019/20 (despite there only being 253 weekdays); and
- c. for working the equivalent of approximately 89 days between 1 July 2020 and 1 November 2020 (despite there only being 85 weekdays).

Like Members Plain, Harkess and Barry, Member Bygrave was paid many tens of thousands of dollars more as a part-time member than she would have been paid had she been appointed as a full-time member.

On what basis was the Tribunal satisfied that the members referred to above actually worked the number of days and hours that they were paid for?

¹ Note that the source material for the examples above, which has been provided to the Committee by the Tribunal, is set out in **Attachment A** and **Attachment B**. Further details about the four individual members referred to above – including how the figures have been calculated – can be found in **Attachment C**.

At the very least, these examples raise serious questions about the appropriateness of the remuneration policies that have been adopted by the Tribunal – particularly the policies that apply in relation to the Social Services & Child Support and the Migration and Refugee divisions (being the two divisions where the four members referred to above perform all or the majority of their work).

The Tribunal's Policies

In response to a request from Senator Kim Carr, the Tribunal provided the Legal and Constitutional Affairs Legislation Committee with internal policy documents relating to the payment of members.

Those policy documents raise serious concerns about the confused and inconsistent way in which part-time members in different divisions are remunerated. Given that those documents appear to be based on old and long-superseded determinations by the Remuneration Tribunal, I am also concerned that members in some divisions of the Tribunal – including the four members referred to above – are being remunerated in a manner that is inconsistent with the Remuneration Tribunal determinations that are currently in force. That is, I am concerned that, as a matter of policy, members of the Tribunal are being remunerated in a manner that is inconsistent with the law.

Social Services & Child Support Division (SSCD)

A copy of a document entitled "AAT Guidelines relating to the Payment of Fees to Part-Time Members of the Social Services & Child Support Division (SSCD)" ("the **SSCSD Payment Guidelines**") is enclosed with this letter at **Attachment D**.

The SSCSD Payment Guidelines purport to "outline the rules relating to the remuneration of part-time members of the SSCSD" in accordance with Clause B3.6 of the Remuneration Tribunal Determination 2015/20 ("2015/20 Determination") and Clause 2.5.4(ii) of Remuneration Tribunal Determination 2015/18 ("2015/18 Determination").

On the face of it, the SSCSD Payment Guidelines govern the remuneration of all part-time members of the Social Services & Child Support Division. This is despite the fact that:

1. Clause B3.6 of the 2015/20 Determination clearly applies to Tribunal members, and only to Tribunal members, who were former members of the Social Security Appeals Tribunal prior to the establishment of the amalgamated AAT;² and
2. the 2015/18 Determination is no longer in force.

Note that the footer of the SSCSD Payment Guidelines indicates that the document was approved on "3 November 2016" and has not been updated since.

In other words, it appears the Tribunal is paying part-time members of one of its largest and busiest divisions in accordance with a policy that is more than four years old and which is based on out-of-date, or largely irrelevant, Remuneration Tribunal determinations.

Of most concern is that part-time members of the Social Services & Child Support Division are not required to submit timesheets. Rather, they appear to be paid largely on the basis of formulas that simply assume that members have worked a certain number of days or hours in specified

² A cursory review of the table of current statutory appointments on the Tribunal's website reveals that the vast majority of members who sit on the Social Services & Child Support Division of the Tribunal were appointed after the 2015 amalgamation and so are not "transitional AAT members".

circumstances. So, for example, a member is paid “2 daily fees” for a “Child Support – departure hearing”, irrespective of whether the member actually spent 2 days working on that hearing.

It is difficult to see how such an approach to remuneration can be justified by reference to the Remuneration Tribunal determination. For example, under the SSCSD Payment Guidelines it appears possible that a member who finalises a “Child Support – departure hearing” matter could be paid 2 daily fees and yet only do one – or less than one – day of work. That appears to be inconsistent with clause 34(3) of the applicable Remuneration Tribunal determination, which provides that “[t]he maximum amount payable to the office holder for any one day is the daily fee for the office holder”.

The SSCSD Payment Guidelines also appear to be inconsistent with how part-time members of the general and other divisions of the Tribunal (other than the Migration and Refugee Division) are remunerated. As outlined in the document entitled “Guidelines Relating to the Payment of Daily Fees to Part-Time Members of the General and Other Divisions” at **Attachment E**, those members appear to be required to complete timesheets and are only remunerated for the work they actually do.

Migration and Refugee Division

A copy of the document entitled “AAT Guidelines relating to the Payment of Fees to Part-Time Members of the Migration and Refugee Division” (“the **MRD Guidelines**”) is set out at **Attachment F**.

Like the SSCSD Payment Guidelines, the MRD Guidelines appear to be based on an outdated Remuneration Tribunal determination and has not been updated for many years.

As with part-time members of the Social Services & Child Support Division, the remuneration of “sessional part-time members” of the Migration and Refugee Division appears to be based on a formula rather than on the basis of actual hours worked by members (see, eg, paragraphs 11 and 12 of the MRD Guidelines). And, as with the SSCSD Payment Guidelines, it is difficult to reconcile such an approach with the terms of the Remuneration Tribunal determination (see comments above in respect of the SSCSD Payment Guidelines).

The Amalgamation of the Administrative Appeals Tribunal, the Migration Review Tribunal, the Refugee Review Tribunal and the Social Security Appeals Tribunal

In her evidence to the Committee this week, Registrar Leathem provided some context for the inconsistent remuneration policies when she noted that “the [remuneration] arrangements were originally developed by the former tribunals, which now comprise the amalgamated AAT”.

However, while that history may explain why there are inconsistent remuneration policies across different divisions, it does not justify it. Nor does that evidence explain how those policies are consistent with the relevant Remuneration Tribunal determination which applies to the Tribunal generally.

It has been over 5 years since the Administrative Appeals Tribunal, the Migration Review Tribunal, the Refugee Review Tribunal and the Social Security Appeals Tribunal were amalgamated. Since the amalgamation, many members have sat across multiple divisions of the Tribunal, including the general division, the Social Services & Child Support Division and the Migration and Refugee Division. There is no evident justification for members who have been appointed or reappointed since the amalgamation to be remunerated differently according to the division they happen to sit on from time to time.

Please note that I have copied this correspondence to the Registrar of the Tribunal, Ms Sian Leatham.

I look forward to receiving your response by close of business on Friday 23 April 2021.

Yours sincerely

Mark Dreyfus QC MP
Shadow Attorney General
Shadow Minister for Constitutional Reform

Attached:

- **Attachment A:** Excerpt from the Tribunal's response to Questions on Notice LCC-BE20-167 – LCC-BE20-240
- **Attachment B:** Transcript, Senate Estimates, Legal and Constitutional Affairs Legislation Committee, 23 March 2021 (page 85)
- **Attachment C:** Further details about payments made to Members Plain, Harkess, Barry and Bygrave
- **Attachment D:** AAT Guidelines relating to the Payment of Fees to Part-Time Members of the Social Services & Child Support Division (SSCD)
- **Attachment E:** Guidelines Relating to the Payment of Daily Fees to Part-Time Members of the General and Other Divisions
- **Attachment F:** AAT Guidelines relating to the Payment of Fees to Part-Time Members of the Migration and Refugee Division

Attachment A

Member ^a	Amount paid (gross fees, employer superannuation contributions and any allowances)			
	2017-18	2018-19	2019-20	2020-21 to 1/11/2020
SM Shahyar Roushan	\$268,930.91	\$308,378.36	\$296,337.63	\$111,969.89
M Karen Synon ^b	\$167,942.80	\$201,158.07	\$241,298.25	\$84,282.00
SM William Stefaniak	\$234,206.63	\$135,712.16	\$27,067.06	\$0.00
M Michael Manetta	\$97,756.66	\$135,439.06	\$159,941.04	\$8,313.25
M Louise Bygrave	\$254,312.30	\$285,277.31	\$292,559.99	\$98,857.33
SM Rodrigo Pintos-Lopez	\$13,793.00	\$45,003.70	\$0.00	\$0.00
DP Richard Ian Hanger	\$43,512.56	\$191,384.68	\$132,741.66	\$23,487.75
SM Hedley Grant Chapman	\$102,909.13	\$255,268.22	\$247,311.43	\$33,754.50
M Helen Kroger	\$101,749.63	\$155,599.50	\$145,486.42	\$36,370.44
M Suzanne Boyce	\$2,892.88	\$0.00	\$2,545.88	\$0.00
M Meredith Jackson	\$62,026.32	\$174,803.30	\$187,246.03	\$50,376.70
M Brian Warren Stooke	\$125,104.00	\$168,298.21	\$184,004.39	\$91,992.25
M Donna Petrovich		\$67,211.10	\$138,253.96	\$51,957.76
SM Dominic Katter		\$15,699.02	\$158,119.12	\$44,484.37
M Anthony Barry		\$2,840.51	\$251,119.44	\$62,601.00
M Stephen Barton		\$2,759.22	\$5,160.11	\$4,221.91
M Jane Bell		\$25,752.65	\$106,035.56	\$45,033.69
M Dawn Fitzgerald		\$1,893.67	\$946.84	
M Ian Fletcher		\$1,745.43	\$10,321.14	
M John Griffin		\$1,745.43	\$11,127.94	\$0.00
M Stephen Parry		\$3,055.05	\$8,749.60	\$0.00
M De-Anne Kelly		\$22,993.45	\$205,429.57	\$81,641.57
M Fiona Zuccala		\$14,715.81	\$56,282.88	\$23,455.05
M Margaret Forrest		\$16,098.30	\$43,740.07	\$19,712.64
M Susan Reece Jones		\$17,475.01	\$110,763.49	\$52,539.30
M Andrew Tragardh		\$0.00	\$0.00	\$0.00
M Vanessa Plain		\$25,757.28	\$250,788.43	\$128,132.08
M Jason Harkess		\$69,759.30	\$292,053.18	\$68,994.21
M Hollie Hughes	\$22,077.18			

Notes:

a) DP = Deputy President; SM = Senior Member; M = Member.

b) Member Synon was appointed as a full-time Deputy President on 17 December 2020.

Attachment B

There may be circumstances in which that is a necessary thing, but I'll make this observation: in 2019 the Attorney-General was able to make a statement about the 'Alan Johns' matter in his answer to Senator Patrick's question in the Senate. That would lead me to think that perhaps something might have been able to be stated publicly about that earlier.

Senator MOLAN: In the changing strategic circumstances and the changing situation that the DG of ASIO describes to us quite regularly, is the probability of this kind of case occurring in the future likely to increase? Is there a need for this kind of case, I guess is what I'm asking.

Mr Donaldson: When you say case, if you are referring to prosecutions of this type—

Senator MOLAN: Correct, that's what I was referring to.

Mr Donaldson: I'm not really in a position to advise you of that. Certainly, the Director-General of ASIO would be in a far better position to give you an informed view on that.

Senator MOLAN: Thank you very much.

CHAIR: Mr Donaldson, thank you for your time in giving evidence today. You can be dismissed. Good luck in all your work.

Mr Donaldson: Thank you.

Administrative Appeals Tribunal

[17:40]

CHAIR: I welcome officers from the Administrative Appeals Tribunal. Would you like to make an opening statement before we go to questions?

Ms Leathem: No, thank you.

CHAIR: To questions. Senator Carr.

Senator KIM CARR: I have been seeking information from the AAT for quite a while now. I'm going to continue to seek information from you. I find that failure to provide information quite bewildering. I would ask you, again, if you could provide me with information as to a number of the payments made by the Commonwealth to a number of the members of the AAT. Of the \$241,298.25 paid to member Karen Synon in 2019-20, how much of that amount was for gross fees, how much was for superannuation contribution and how much was for allowances?

Ms Leathem: I have the information in relation to Karen Synon's earnings in 2019-20. Was that what you were asking for?

Senator KIM CARR: Yes, please.

Ms Leathem: The daily fee was an amount of \$203,004, with superannuation of \$38,164.75 and an allowance of \$129.50.

Senator KIM CARR: How much, in gross terms for that year of those three categories? That is, of the \$241,000, can you just give me those figures in aggregate?

Ms Leathem: The breakdown I have given you is the \$203,004 for the daily fees, and the \$38,164.75 and \$129.50.

Senator KIM CARR: What are the details for the allowances that were paid for 2019-20?

Ms Leathem: My understanding is the only allowance that was payable related to a data allowance, which, in the COVID response, the AAT provided to a number of staff and members who were required to work either entirely or largely at home for a period of the pandemic.

Senator KIM CARR: Similarly for member Louise Bygrave. For the period of 2017-18, \$254,312.30 was paid to Louise Bygrave. How much was for superannuation contribution and how much was for allowances?

Ms Leathem: I only have daily fees and superannuation in relation to her. I'm not aware of any allowances being paid during that period.

Senator KIM CARR: What was the superannuation contribution?

Ms Leathem: My information is that that was \$33,937.68.

Senator KIM CARR: So the remainder of the \$254,000 is paid in normal payments. Is that right?

Ms Leathem: It is daily fees, yes.

Senator KIM CARR: We go to the period of 2017-18. There were no allowances at all.

Ms Leathem: I'm looking at the table that I've been provided and it's giving me daily fees, superannuation and the total amount, so it doesn't appear there were any allowances.

Senator KIM CARR: Of the 285,277.31 for the period of 2018-19, how much was the superannuation and how much was for allowances?

Ms Leathem: There were no allowances. Superannuation was \$35,041.31.

Senator KIM CARR: In 2019-20, there was \$295,559.99 paid in total. How much of that was for superannuation and how much was for allowances?

Ms Leathem: There was \$41,340.99 for superannuation, no allowances.

Senator KIM CARR: There was another figure of \$98,857.33 for between the period 1 July 2021 and November 2020. How much of that was superannuation and how much was allowances?

Ms Leathem: There were no allowances. Superannuation was \$13,921.83.

Senator KIM CARR: Is it the case that the member Bygrave was at level 2 or 3 as a member for her daily fee? Do you have that figure there for that classification?

Ms Leathem: Just bear with me.

Senator KIM CARR: You're being very helpful. Thank you very much.

Ms Leathem: She is member level 2.

Senator WATT: What does that make her daily fee?

Ms Leathem: I do have that. Member level 2 part-time is \$949.

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.

Senator KIM CARR: If I could turn to member Anthony Barry. It says \$251,119 for the period of 2019-20. How much of that was superannuation and how much was for allowances?

Ms Leathem: There were no allowances. Superannuation was \$39,739.44.

Senator KIM CARR: Can you confirm he is a level 3 member?

Ms Leathem: I understand he is a member level 3.

Senator KIM CARR: What's the daily figure for a level 3?

Ms Leathem: It is \$813 a day.

Senator KIM CARR: Member Jason Harkess—\$292,053 for the period of 2019-20. How much was that superannuation and how much was allowances?

Ms Leathem: Member Harkess in 2019-20: daily fees \$253.79; mobile data allowance, \$129.50; and superannuation \$38,974.50. I will just add that I understand when we tabled our response we omitted the \$129.50 data allowance. But that's now—

Senator KIM CARR: But you're providing it now.

Ms Leathem: That's right.

Senator KIM CARR: That's fair enough. Is he a level 2 member as well?

Ms Leathem: Yes, he is.

Senator KIM CARR: These are all questions that have already been asked. We're just going through the routine.

CHAIR: We do need to share the call, so we will obviously need to be continuing after dinner.

Senator WATT: There is one more member that Senator Carr has questions for. If we could just cover that one off, please.

Senator KIM CARR: You could ask the question, if you want to rotate it. But we have a pattern here.

CHAIR: I know the pattern but we've got one more minute. Then we'll need to share the call.

Senator KIM CARR: Vanessa Plain, in the period of 2019-20, had \$250,788. What's the superannuation contribution?

Ms Leathem: It was \$33,467.43.

Senator KIM CARR: Were there any allowances?

Ms Leathem: No.

Senator KIM CARR: From the period from 1 July 2021 back through to November 2020, I have a figure of \$128,032. How much of that was superannuation?

Ms Leathem: It was \$17,099.8.

Senator KIM CARR: Were there any allowances?

Ms Leathem: No.

CHAIR: Senator Carr, you have reached your allotted time. I might have to—

Senator KIM CARR: If you can let me finish.

Senator WATT: This is his very last question.

CHAIR: The last question? Okay.

Senator KIM CARR: Is he a level 2 member?

Ms Leathem: Yes.

CHAIR: If you want to ask further questions, we'll need to continue after dinner. I've got a few questions for you. As the Assistant Minister reiterated before, the AAT, I understand, pays its part-time members as per the daily fee set by the Remuneration Tribunal.

Ms Leathem: Yes. That's correct.

CHAIR: Can you explain how the daily fee is calculated?

Ms Leathem: Under the Remuneration Tribunal determination, the daily fee effectively crystallises when the member has worked seven hours. There is a variety of ways in which that is managed internally. So, for example, in the social services and child support division, there has been for a long time part-time member payment guidelines, which effectively calculate the effort required by a member in preparation, hearing time and decision-writing time for particular types of matters. Then once the member has finalised the matter, they become entitled to in some cases a daily fee. In some more complex matters, it might be a day-and-a-half or a two-day fee, depending on the type of work. That has been based over many years of data or feedback about how long those matters are likely to take members to complete over the course of the life of the matter.

CHAIR: I understand the AAT will often use part-time members to target backlogs and as surge capacity when caseloads are particularly busy. Is that correct?

Ms Leathem: It's certainly the case that, in the migration and refugee division, where we have a large backlog, and in the social services and child support division, where we often have surges in particular case loads, we do tend to rely on part-time members more than we would at other times, for example. So sessional members are well able to then devote time to finalising more matters than we would otherwise be able to.

CHAIR: Can I ask you to inform the committee as to the numbers of applications finalised by the following members—Ms Louise Bygrave Mr Anthony Barry, Ms Vanessa Plain, Mr Jason Harkess and Deputy President Karen Synon please?

Ms Leathem: Can I ask for what period in particular you might be talking about?

CHAIR: It would be helpful to look at the last couple of financial years. What are some of the helpful data that you have? I'm keen to understand how you would rank or rate these finalisation rates?

Ms Leathem: I've only got some information in relation to 2019-20. I would qualify by saying obviously we're not comparing apples with apples here. The type of work that members tend to do depends on the case load they're doing. For example, if you're doing a student visa, it might only take half a day, typically, to finalise a matter. If you're doing a complex protection matter, it might be four days.

CHAIR: Yes, I understand.

Ms Leathem: So their finalisation data is not very instructive in some cases. But I can tell you for people. For example, Tony Barry in the 2019-20 year finalised 263 applications.

CHAIR: What about Ms Louise Bygrave?

Attachment C

Ms Vanessa Plain, Mr Jason Harkess and Ms Louise Bygrave are “Level 2” part-time members of the Tribunal. Under the applicable Remuneration Tribunal determination, the maximum amount payable to those members for any one day was \$930 in 2018/19,³ \$949 in 2019/20⁴ and \$949 in 2020/21.⁵

Mr Barry is a “Level 3” part-time member and so, in 2019/20 and 2020/21, the maximum amount payable to him for any one day was \$813.

Based on the information the Tribunal has provided to the Committee:

1. Victorian-based member Vanessa Plain was paid **\$111,033** in daily fees between 1 July 2020 and 1 November 2020, during which time there were 123 days in total (including weekends and public holidays).

If Ms Plain was paid only for the hours she actually worked on the Tribunal, it appears that she would have had to work the equivalent of 117 days over that 123-day period (noting that 117 days multiplied by Ms Plain’s daily fee of \$949 is \$111,033). And that would have been in addition to her work as a barrister over the same 123-day period – work which included the provision of pro bono legal advice to the Victorian Opposition and appearing in (among other cases) a widely-publicised and politically contentious legal challenge to public health restrictions introduced by the Victorian Government (again, pro bono).⁶

2. According to the information provided by the Tribunal, Ms Plain was also paid \$250,788.43 (including \$33,467.43 in superannuation) in 2019/20. That is \$29,088 more than she would have received had she been appointed as a full-time “Level 2” member (noting that such members were paid \$221,700 in 2019/20).
3. Victorian-based member Jason Harkess was paid \$292,053.18 (including \$38,974.50 in superannuation and a \$129.50 data allowance) in 2019/20. That means that Mr Harkess was paid approximately \$252,949 in daily fees over that period.

If Mr Harkess was paid only for the hours he actually worked on the Tribunal, it appears that he would have had to work the equivalent of over 266 days during that period (being \$252,949 divided by Mr Harkess’ daily fee of \$949). In 2019/20, I understand there were 252 weekdays in Victoria (excluding public holidays).

Like Ms Plain, Mr Harkess is also a barrister at the Victorian Bar and, based on his public LinkedIn profile, he also appears to have been working lecturer at Monash University (as well as holding two additional jobs).

If Mr Harkess had been appointed as a full-time member, he would have been paid \$221,700 in 2019/20 – or \$70,353 less than he was paid as a part-time member.

³ Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2018, clauses 33(3) and 35.

⁴ Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2019, clauses 34(3) and 36.

⁵ Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020, clauses 34(3) and 36.

⁶ See Michael Fowler and David Estcourt, “Lawyers behind Liberals-backed curfew challenge facing impartiality questions” (26 September 2020) < <https://www.theage.com.au/national/victoria/lawyers-behind-liberals-backed-curfew-challenge-facing-impartiality-questions-20200923-p55vih.html> >.

4. Victorian-based member Anthony Barry was paid \$251,119.44 (including \$39,793.44 in superannuation) in 2019/20. That means that Mr Barry was paid approximately \$211,326 in daily fees over that period.

If Mr Barry was paid only for the hours he actually worked on the Tribunal, it appears that he would have had to work the equivalent of almost 260 days over that period (being \$211,326 divided by Mr Barry's daily fee of \$813). In 2019/20, there were 252 weekdays in Victoria (excluding public holidays).

As you know, Mr Barry was also working as a federal lobbyist during 2019/20.

If Mr Barry had been appointed as a full-time member, he would have been paid \$193,990 in 2019/20 – or \$57,129 less than he was paid as a part-time member.

5. New South Wales-based member Louise Bygrave was paid:
- \$285,277.31 (including 35,041.31 in superannuation) in 2018/19 – approximately \$67,927 more than she would have been paid as a full-time member; and
 - \$292,559.99 (including \$41,340.99 in superannuation) in 2019/20 – approximately \$70,860 more than she would have been paid as a full-time member.

Ms Bygrave was also appears to have been paid \$98,857.33 (including \$13,921.83 in superannuation) between 1 July 2020 and 1 November 2020.

If Ms Bygrave was paid only for the hours she actually worked on the Tribunal over each of the periods referred to above, it appears that Ms Bygrave would have had to work:

- the equivalent of approximately 269 days in 2018/19 (noting that, in New South Wales, there were 250 weekdays that year excluding public holidays);⁷
- the equivalent of approximately 265 days in 2019/20 (noting that, in New South Wales, there were 253 weekdays that year excluding public holidays);⁸ and
- the equivalent of approximately 89 days between 1 July 2020 and 1 November 2020 (noting that, in New South Wales, there were 85 weekdays over that period excluding public holidays).⁹

⁷ Excluding superannuation, I understand Ms Bygrave received \$250,236 in 2018/19. If one divides that figure by her daily fee, one gets approximately 269 days.

⁸ Excluding superannuation, I understand Ms Bygrave received \$251,219 in 2018/19. If one divides that figure by her daily fee, one gets approximately 265 days.

⁹ Excluding superannuation, I understand Ms Bygrave received \$84,935 for the work she did between 1 July 2020 and 1 November 2020. If one divides that figure by her daily fee, one gets approximately 89 days.

Attachment D

AAT GUIDELINES RELATING TO THE PAYMENT OF FEES TO PART-TIME MEMBERS OF THE SOCIAL SERVICES & CHILD SUPPORT DIVISION (SSCSD)

REFERENCES: Remuneration Tribunal Determinations 2015/20 and 2015/18

In accordance with Clause B3.6 of Remuneration Tribunal Determination 2015/20 and Clause 2.5.4 (ii) of Remuneration Tribunal Determination 2015/18, these guidelines outline the rules relating to the remuneration of part-time members of the SSCSD of the Administrative Appeals Tribunal. The guidelines also provide direction on what the President generally considers to be reasonable for the purposes of certifying claims submitted by part-time members. The guidelines are designed to assist part-time members to complete claims for payment of fees.

Questions relating to pay claims, especially non-case related claims, should be directed to the District Registrar.

THE BASIC RULES

Part-time members are paid for undertaking official business which may include a hearing, preparation for a hearing, decision-writing and travel time (other than for travel between the member's home and the AAT registry in which the member is based).

The SSCSD is a high-volume jurisdiction. Part-time members usually only attend the AAT premises to conduct a hearing. Preparation and decision writing is ordinarily undertaken off-site and often on a date other than the hearing.

Standard durations of time have been set for reviews heard by members in the SSCSD. One daily fee is certified as reasonable to cover the preparation, hearing and decision-writing for most reviews irrespective of the dates on which the work is carried out. The duration of time allowed for activities has been set by reference to the statutory objectives to which the Tribunal is subject and to best performance. It would be inequitable to pay more to part-time members who take longer than an efficient part-time member.

To ensure compliance with the Determinations, a part-time member can only be paid a maximum of 14 days in a fortnight.

If the time taken by a member to perform Tribunal work is ...*	They will be paid...
Less than 'one day' **	Nil immediately, but the hours will be carried over and aggregated and paid in blocks of one day.
More than 'one day' on any single day	For one day. Members will be paid one day's remuneration for work on any single day even if in excess of the equivalent total hours.
<p><i>*work is defined as being any approved activity under these guidelines including travel</i> <i>**for members appointed prior to 1 July 2015 one day comprises 5 hours. For members appointed or reappointed after 1 July 2015 one day comprises 7 hours.</i></p>	

HEARING-RELATED FEES (Part A claims)

Application	FEE
Standard Centrelink matter (includes preparation, hearing and decision-writing/oral reasons)	1 daily fee
Child Support – non-departure hearing (includes	1 daily fee

preparation, hearing and decision-writing/oral reasons)	
Child Support – departure hearing (includes preparation, hearing and decision-writing/oral reasons)	2 daily fees
‘Linked’ matters involving an FTB care dispute with both a care and debt decision where there are two or more application numbers: <ul style="list-style-type: none"> • a part A claim for one daily fee will be submitted for the first matter • a part A claim of one hour will be submitted for the second matter. • a part B claim for particular circumstances that warrant claiming of additional decision-writing or preparation time 	<ul style="list-style-type: none"> • 1 daily fee for main matter. • One hour for the linked matter (for additional decision). • (+ Part B claim for additional time on linked matter if required).
Child Support –departure directions hearing (includes preparation, directions hearing and drafting directions)	65% of a daily fee
Child Support directions issued (without conducting an actual directions hearing)	50% of a daily fee
Child Support departure dismissal for <ul style="list-style-type: none"> • non-attendance • failure to comply with directions (Part B claims may be also be made if appropriate). • failure to appear at directions hearing 	50% of a daily fee
Dismissal – applicant non-attendance (includes preparation, attendance for hearing, short decision)	50% of a daily fee
Dismissal - withdrawal at hearing (includes preparation, hearing, and where applicable short decision)	50% of a daily fee
Dismissal - for other reasons	50% of a daily fee
Sitting as second member no decision-writing (includes preparation, hearing, decision-checking)	50% of a daily fee
Child Support departure sitting as second member no decision-writing (includes preparation, hearing, decision-checking)	1 daily fee

OTHER BUSINESS (Part B claims)

There should be no expectation that a part-time member will be paid for all time engaged on official business of the SSCSD. As noted above, the duration of time allowed for activities has been set by reference to the statutory objectives to which the Tribunal is subject and to best performance. It would be inequitable to pay more to part-time members who take longer than an efficient part-time member.

However, the time spent on the following activities may be claimed as Other Business (Part B) in accordance with the guidelines set out in the table below.

The President has authorised the Division Head to certify, on his behalf, claims made on Part B. Such claims will not be considered by the Division Head unless recommended by the relevant Deputy Division Head. Part B claims might be made for:

- *Significant* additional time (of not less than 1 hour above the standard allocation) for preparation, hearing or decision-writing
- Mentoring new members at the request and with the approval of the Division Head
- Attending approved Tribunal meetings and activities that form part of the Members' Professional Development Program
- Participating in outreach or liaison activities at the request and with the approval of the Division Head
- Travel time (except for travel from home to the local registry – which includes from Newcastle or Wollongong to Sydney for those members who frequently sit in Sydney – or travel to local professional development activities).
- Other activities conducted at the express direction or request of the Division Head.

Members' conferences may not attract full remuneration. Part-time members will be notified in advance if full remuneration is not to be paid. Attendance at Tribunal functions (such as Christmas parties, celebrations or farewells) will not attract payment.

From time to time the Division Head may request or direct members to participate in activities that are in addition to regular case-related work. These activities will be specifically identified by the Division Head and do not include activities related to the general responsibility of members to remain knowledgeable of and participate in the operations of the Division and AAT. For example, members requested to participate in working groups convened for the testing of new software applications will be able to submit Part B claims.

GUIDELINES FOR CLAIMING TIME AS 'OTHER BUSINESS'

Activity	Comments	Fee payable	
Additional preparation time	Such claims are expected to be rare given that, historically, few Part B payments had been made for additional preparation.	Approved in hourly increments (claims for less than 1 hour will not be considered).	
Additional hearing time (including where a hearing is adjourned and reconvened following receipt of additional information).	If a hearing is reconvened or goes for longer than the specified time a member can submit a Part B claim for additional hearing time over an hour, calculated in hourly blocks.	Additional hearing time:	Fee payable
		1 – 59 minutes	0
		60 minutes – 119 minutes	One hour
		120 minutes – 179 minutes	Two hours
Additional decision-writing time	Such claims are expected to be confined to complex Centrelink matters and Child Support change of assessment cases and to be infrequent, particularly in light of the Division's objective that statements of reasons be succinct. Analysis of any material provided after the hearing is part of decision-writing.	Approved in hourly increments.	

Activity	Comments	Fee payable
Deferrals	<p>Where more than one member constitutes the Tribunal and a decision is deferred until receipt of further documents, a part-time member(s) who does not write the decision may claim for the time taken to read and discuss the documents.</p> <p>Where one part-time member constitutes the Tribunal and <i>defers</i> making a decision until receipt of further documents, the time to consider those documents is regarded as part of the decision-writing time.</p>	<p>Approved in hourly increments.</p> <p>No fee payable; however, if necessary, the member can lodge a claim for additional decision-writing time.</p>
Professional Development	<p>Induction – formal program</p> <p>Induction – orientation in local registry</p> <p>Mentoring scheme (mentee)</p> <p>Mentoring scheme (mentor)</p>	<p>Up to 3 days for an induction program arranged by the Division Executive and Principal Registry. Includes reasonable travel time as applicable.</p> <p>Up to 1 day.</p> <p>To be determined once mentoring scheme is developed.</p> <p>To be determined once mentoring scheme is developed.</p>
	<p>Other professional development activities such as conferences and seminars</p> <p>The 'Guidelines on AAT Financial Support for Part-time Members' Professional Development Activities' (March 2013) includes details relating to the payment of daily fees associated with professional development such as conferences and seminars.</p> <p>Where a Member's participation in professional development activities is supported by the Division Head and approved by the President, it may include financial support in the form of the payment of a daily fee or part thereof in respect of the Member's time for participating in the activity and, where relevant, travelling to and from the venue for the activity.</p> <p>Members may only claim for activities offered by external providers if a member's participation is supported by the Division Head and prior approval has been given by the President to attend the activity. Where the Tribunal organises professional development activities for its Members, all costs associated with the activities, whether or not conducted on the Tribunal premises, will be paid together with a daily fee or part thereof and, where relevant, travelling time.</p>	
Approved 'outreach' activities	The time spent in undertaking the activity (including reasonable	Hourly fee approved to a maximum of one daily fee.

Activity	Comments	Fee payable						
	preparation and travelling time) may be claimed.							
Cancellation fees	Where all work on a particular day is cancelled and a member has been given fewer than 5 working days' notice Cancellations due to ill health	50% of a daily fee <table border="1"> <thead> <tr> <th>Person who is ill</th> <th>Fee Payable</th> </tr> </thead> <tbody> <tr> <td>Member (self)</td> <td>Nil</td> </tr> <tr> <td>Member (other than self)</td> <td>As per cancellation fees above (unless matters proceeds with available member only)</td> </tr> </tbody> </table>	Person who is ill	Fee Payable	Member (self)	Nil	Member (other than self)	As per cancellation fees above (unless matters proceeds with available member only)
Person who is ill	Fee Payable							
Member (self)	Nil							
Member (other than self)	As per cancellation fees above (unless matters proceeds with available member only)							
Travel time	On the day of a planned activity – Reasonable travel time On the day before or after the planned activity – reasonable travel time may be claimed but only where it is considered unreasonable for the member to travel on the day of the planned activity	Reasonable travel time is defined as follows: <table border="1"> <thead> <tr> <th>Means of Travel</th> <th>Travel Time</th> </tr> </thead> <tbody> <tr> <td>By air</td> <td>1. Up to 1 hour prior to scheduled flight time 2. Scheduled flight time 3. Up to 1 hour after scheduled flight time</td> </tr> <tr> <td>Other than by air</td> <td>Actual travel time Travel time will be calculated from the time that the member left the location (ie home or registry) from where the travel commenced</td> </tr> </tbody> </table> <p>Note: A member can only claim up to 'one day' on any single day for travel or a combination of travel and participation in the planned activity that necessitated travel.</p>	Means of Travel	Travel Time	By air	1. Up to 1 hour prior to scheduled flight time 2. Scheduled flight time 3. Up to 1 hour after scheduled flight time	Other than by air	Actual travel time Travel time will be calculated from the time that the member left the location (ie home or registry) from where the travel commenced
Means of Travel	Travel Time							
By air	1. Up to 1 hour prior to scheduled flight time 2. Scheduled flight time 3. Up to 1 hour after scheduled flight time							
Other than by air	Actual travel time Travel time will be calculated from the time that the member left the location (ie home or registry) from where the travel commenced							
Other	Activities conducted at the express direction or request of the Division Head.	As advised by Division Head.						

LODGING CLAIMS

Part-time members are to lodge pay claims in the relevant system as directed by the Division Head.

It is the responsibility of the member to submit Part B claims on a fortnightly basis. These claims ought to be lodged promptly after finalisation of the relevant case.

Pay claims for periods less than a daily fee will be carried over until accumulated hours reach the daily fee amount. A member will be paid out any carry over on a pro-rata basis at the end of their appointment.

Attachment E



GUIDELINES RELATING TO THE PAYMENT OF DAILY FEES TO PART-TIME MEMBERS OF THE GENERAL and OTHER DIVISIONS

REFERENCES: Remuneration Tribunal Determination 2017/09

In accordance with clause 2.5.4 of Remuneration Tribunal Determination 2015/10 these guidelines outline the rules relating to the remuneration of part-time members of the General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Security Division, Veterans' Appeals Division and Taxation and Commercial Division of the Administrative Appeals Tribunal, other than the members receiving an annual fee in accordance with the provisions of clause 2.6. of the Determination. The guidelines also provide guidance on what the President generally considers to be reasonable for the purposes of certifying claims submitted by part-time members. The guidelines are designed to assist part-time members to complete claims for payment of daily fees.

Reference should also be made to the '*Guidelines on AAT Financial Support for Part-Time Members' Professional Development Activities*'.

THE BASIC RULES

Part-time members are paid for undertaking official business which may include a hearing or other case event, preparation for a hearing or other case event, decision writing and travel time (other than for travel between the member's home and the AAT registry in which the member is based).

If the time taken by a member to perform Tribunal work is...*	they will be paid...
Less than 7 hours 'one day'**	Nil immediately, but the hours will be carried over to the next day the member works and aggregated and paid in blocks of one day.
More than 7 hours on any 'one day' on a single day **	For one day. Members (at all levels) will be paid one day's remuneration for work on any single day even if in excess of 7 hours.
<i>* Work is defined as being any approved activity under these guidelines including travel.</i>	
<i>** For members with a term of appointment commencing prior to 1 July 2015 'one day' comprises 5 hours. For members with a term of appointment commencing after 1 July 2015 'one day' comprises 7 hours.</i>	

SITTING TIME

ADR processes, directions hearings and interlocutory hearings

For an ADR process, a directions hearing or an interlocutory hearing, members may claim from the listed starting time through to the conclusion of the ADR process, directions hearing or interlocutory hearing less any amount of time taken for lunch.

Hearings

For any day on which there is a hearing or resumed hearing, members may claim from the listed starting time of the hearing/resumed hearing through to the conclusion of the hearing/resumed hearing on that day less any amount of time taken for lunch. The following periods of time will be paid:

- time spent waiting for a hearing to commence after the listed starting time has passed
- adjournments within a day during the course of the hearing, including for settlement negotiations or preparing for the delivery of an oral decision on that day
- the time spent travelling to, and attending, a place for the purposes of a viewing.

A minimum of 1 hour can be claimed as sitting time for a hearing if it is concluded within one hour of the listed starting time and no cancellation fee is payable.

[Please note that for **certification** and audit purposes sitting times are confirmed against times recorded in the Tribunal's case management system.]

OTHER BUSINESS

The actual time spent on the following activities may be claimed as Other Business:

- preparation for ADR processes, directions hearings, interlocutory hearings and hearings
- discussion with other members of a multi-member panel prior to the commencement or after the conclusion of a hearing
- decision writing
- other file-related business
- attending Tribunal meetings and activities that form part of the Members' Professional Development Program
- participating in working groups convened by the Tribunal
- considering applications for warrants or the exercise of other *persona designata* powers and conducting proceeds of crime examinations
- administration
- approved outreach or liaison activities (including reasonable preparation time), and
- travel time (except for travel from home to the local registry or travel to local professional development activities).

Please note: Time spent reading submissions is claimed either as preparation time or decision writing time (refer below).

Attending a members' conference may not attract full remuneration. Part-time members will be notified in advance if full remuneration is not to be paid. Attendance at Tribunal functions (such as Christmas parties, celebrations or farewells) will not attract any payment.

GUIDELINES FOR CLAIMING TIME AS 'OTHER BUSINESS'

Preparation for case events	The following table sets out the maximum amount of preparation considered reasonable for a particular type of case event without application to the President for an extended period:	
	Type of event	Time
	Conferences	Up to 30 minutes
	Conciliations and mediations	Up to 1 hour
	Case appraisals and neutral evaluations – whether in person	Up to 1 hour

	<table border="1"> <tr> <td>or on the papers</td> <td></td> </tr> <tr> <td>Directions hearings and interlocutory hearings</td> <td>Up to 1 hour</td> </tr> <tr> <td>Hearings – in person</td> <td>For a one-day hearing – Up to 1 hour For a two-day hearing – Up to 2 hours For a hearing listed for 3 days or more – 1 hour per listed hearing day up to a maximum one daily fee</td> </tr> <tr> <td>Hearings on the papers</td> <td>Up to 1 hour</td> </tr> </table> <p>The actual time spent preparing for a case event is payable for matters which are cancelled whether or not the 5 full working days' notice was given.</p>	or on the papers		Directions hearings and interlocutory hearings	Up to 1 hour	Hearings – in person	For a one-day hearing – Up to 1 hour For a two-day hearing – Up to 2 hours For a hearing listed for 3 days or more – 1 hour per listed hearing day up to a maximum one daily fee	Hearings on the papers	Up to 1 hour
or on the papers									
Directions hearings and interlocutory hearings	Up to 1 hour								
Hearings – in person	For a one-day hearing – Up to 1 hour For a two-day hearing – Up to 2 hours For a hearing listed for 3 days or more – 1 hour per listed hearing day up to a maximum one daily fee								
Hearings on the papers	Up to 1 hour								
Reading submissions	No separate claims may be made for reading submissions. Time spent reading submissions is to be claimed either as preparation time or decision writing time.								
Discussion before or after a hearing	Members may claim up to a total of 30 minutes on each day on which a hearing or resumed hearing is held for discussions that are undertaken with the other members of a multi-member panel prior to the listed starting time of the hearing or following completion of the hearing.								
Decision writing	<p>The amount of decision writing time that a member may claim is linked to the length of the related hearing. Decision writing time includes time spent on reviewing or editing a draft decision.</p> <p>Where decision writing is shared between more than one part-time member, writing time will be apportioned between the members. The limits set out below apply to set the total amount of writing time that may be claimed by those members. Where decision writing is shared between a full-time member and a part-time member, the part-time member may claim up to 50% of the limits set out below.</p> <table border="1"> <thead> <tr> <th>Type of event</th> <th>Time</th> </tr> </thead> <tbody> <tr> <td>Hearings – in person</td> <td> <ul style="list-style-type: none"> Where the total actual hearing time is <u>3 hours or less</u> – actual writing time of up to 3 hours may be claimed. Where the total actual hearing time is <u>more than 3 hours</u> – actual writing time of up to the equivalent number of hearing hours (rounded up to the nearest hour) may be claimed. <p>Examples:</p> <ul style="list-style-type: none"> If a hearing took 2 hours and 30 minutes on a single day, up to 3 hours of writing time may be claimed; If a hearing took 4 hours and 15 minutes on day 1, 5 hours on day 2 and 3 hours and 15 minutes on day 3, a total of 13 hours writing time may be claimed. </td> </tr> <tr> <td>Hearings – on the papers</td> <td>Up to 3 hours.</td> </tr> </tbody> </table>	Type of event	Time	Hearings – in person	<ul style="list-style-type: none"> Where the total actual hearing time is <u>3 hours or less</u> – actual writing time of up to 3 hours may be claimed. Where the total actual hearing time is <u>more than 3 hours</u> – actual writing time of up to the equivalent number of hearing hours (rounded up to the nearest hour) may be claimed. <p>Examples:</p> <ul style="list-style-type: none"> If a hearing took 2 hours and 30 minutes on a single day, up to 3 hours of writing time may be claimed; If a hearing took 4 hours and 15 minutes on day 1, 5 hours on day 2 and 3 hours and 15 minutes on day 3, a total of 13 hours writing time may be claimed. 	Hearings – on the papers	Up to 3 hours.		
Type of event	Time								
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Hearings – on the papers	Up to 3 hours.								
Preparing written opinion	Up to 3 hours may be claimed for preparing a written opinion following a case appraisal or neutral evaluation, whether conducted in person or on the papers.								

<p>Other file-related business</p>	<p>The actual time spent undertaking other activities on files (e.g. preparing directions or dealing with requests for a consent decision) may be claimed. As noted below, where a member submits a claim for such work, details of each application worked on must be recorded on the claim form including the amount of time claimed and a description of the work completed.</p>												
<p>Professional Development</p>	<p>The time spent participating in activities that are part of the Members' Professional Development Program may be claimed as outlined below.</p> <p>Induction</p> <table border="1" data-bbox="451 557 1465 775"> <thead> <tr> <th data-bbox="451 557 874 600">Type of event</th> <th data-bbox="882 557 1465 600">Time</th> </tr> </thead> <tbody> <tr> <td data-bbox="451 602 874 689">Induction program arranged by the Principal Registry</td> <td data-bbox="882 602 1465 689"> <ul style="list-style-type: none"> Up to 3 days Reasonable travel time as applicable </td> </tr> <tr> <td data-bbox="451 692 874 775">Induction – orientation in local registry</td> <td data-bbox="882 692 1465 775"> <ul style="list-style-type: none"> Up to 1 day </td> </tr> </tbody> </table> <p>Mentoring Scheme)</p> <p>Members participating in the Mentoring Scheme may claim for the actual time spent on the activities outlined below.</p> <table border="1" data-bbox="432 952 1477 1608"> <thead> <tr> <th data-bbox="432 952 887 994">Role in Mentoring Program</th> <th data-bbox="895 952 1477 994">Activity</th> </tr> </thead> <tbody> <tr> <td data-bbox="432 996 887 1285">Member being mentored</td> <td data-bbox="895 996 1477 1285"> <ul style="list-style-type: none"> Up to 15 meetings in the 12 month period Observation of two Tribunal hearings arranged by the Mentor with the assistance of the relevant Executive Deputy President and District Registrar Feedback session following a hearing that has been observed by the member's mentor or the mentor's delegate. </td> </tr> <tr> <td data-bbox="432 1288 887 1608">Mentor <i>(for each mentoring relationship)</i></td> <td data-bbox="895 1288 1477 1608"> <ul style="list-style-type: none"> Up to 15 meetings in the 12 month period Observation of two hearings conducted by the member being mentored and the provision of feedback at the end of the hearings in person or by telephone (The mentor may delegate this task to another member who may claim for the time spent observing the hearing and providing feedback.) </td> </tr> </tbody> </table> <div data-bbox="432 1630 1477 1675" style="border: 1px solid black; padding: 5px;"> <p>Approval must be sought from the President for additional meetings and time.</p> </div> <p>Other professional development activities such as conferences and seminars</p> <p>The 'Guidelines on AAT Financial Support for Part-Time Members' Professional Development Activities' includes details relating to the payment of daily fees associated with professional development such as conferences and seminars.</p> <p>Members will be paid a daily fee for attending AAT National Conferences which are traditionally held every two years.</p> <p>The Tribunal will not pay a daily fee for preparing for or participating in externally organised activities or in respect of travelling time other than in special circumstances.</p>	Type of event	Time	Induction program arranged by the Principal Registry	<ul style="list-style-type: none"> Up to 3 days Reasonable travel time as applicable 	Induction – orientation in local registry	<ul style="list-style-type: none"> Up to 1 day 	Role in Mentoring Program	Activity	Member being mentored	<ul style="list-style-type: none"> Up to 15 meetings in the 12 month period Observation of two Tribunal hearings arranged by the Mentor with the assistance of the relevant Executive Deputy President and District Registrar Feedback session following a hearing that has been observed by the member's mentor or the mentor's delegate. 	Mentor <i>(for each mentoring relationship)</i>	<ul style="list-style-type: none"> Up to 15 meetings in the 12 month period Observation of two hearings conducted by the member being mentored and the provision of feedback at the end of the hearings in person or by telephone (The mentor may delegate this task to another member who may claim for the time spent observing the hearing and providing feedback.)
Type of event	Time												
Induction program arranged by the Principal Registry	<ul style="list-style-type: none"> Up to 3 days Reasonable travel time as applicable 												
Induction – orientation in local registry	<ul style="list-style-type: none"> Up to 1 day 												
Role in Mentoring Program	Activity												
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Mentor <i>(for each mentoring relationship)</i>	<ul style="list-style-type: none"> Up to 15 meetings in the 12 month period Observation of two hearings conducted by the member being mentored and the provision of feedback at the end of the hearings in person or by telephone (The mentor may delegate this task to another member who may claim for the time spent observing the hearing and providing feedback.) 												

Professional Development	Moreover, the President may decide to approve participation in an activity but on the basis that registration fees will be paid by the Tribunal but that all or part of other associated costs should be borne by the Member.
Approved outreach or liaison activities	Where a Member's participation in an outreach or liaison activity is approved by the Division Head, it may include financial support in the form of the payment of a daily fee, or part thereof, in respect of the Member's time for participating in the activity, including reasonable preparation time, and travelling to and from the venue for the activity. A maximum of one days fee is payable.
Warrants and other persona designata functions, including proceeds of crime examinations	<p>Members may claim the actual time spent dealing with applications for warrants or the exercise of other persona designata powers. However, if the member deals with an application during an adjournment in a hearing or is otherwise being paid for that period, the time may not be claimed.</p> <p>For proceeds of crime examinations, members may claim from the listed starting time through to the conclusion of the examination on that day less any amount of time taken for lunch.</p>
Administration	Where a part-time member is the Executive Deputy President for a registry, the actual time spent undertaking these responsibilities may be claimed. Claims for other administrative activities that are not related to particular applications such as arranging professional development activities may be made subject to the President's prior approval.

SEEKING ADDITIONAL TIME

If a member considers that the time required to prepare for, or write the decision for, a matter is likely to exceed the times specified in the guidelines as reasonable, the member should submit a minute to the Executive Deputy President through the relevant District Registrar, outlining the basis for the claim for additional time and seeking approval for additional time. Approval should be requested in advance where possible. However, if this is not possible or it is difficult to estimate in advance the amount of additional time that may be required, the minute should be submitted for consideration at the earliest opportunity following completion of the preparation or the decision.

A template minute ('General and Other Division part-time member request for additional preparation and/or writing time') is available on the intranet to be completed and submitted to the Executive Deputy President.

CANCELLATION FEES

<p>Where all work on a particular day is cancelled and a member has been given fewer than 5 working days' notice</p> <p>(A member must be given 5 full working days' notice or a cancellation fee will be paid)</p>	<p>50% of one day's fee is payable.</p> <p><i>With the exception of when the part-time member is on circuit (refer below)</i></p>						
<p>Where the hearing of each matter listed before a member on a particular day:</p> <ul style="list-style-type: none"> • does not proceed because, for example, a party fails to appear or the applicant withdraws the application prior to commencement; or • proceeds but is discontinued because, for example, the applicant withdraws the application, the parties hand up terms of agreement or the hearing cannot proceed on that day and is adjourned to a date to be fixed. 	<p>A minimum of 50% of one day's fee is payable.</p> <p>If the total sitting time or other time spent by the member on that day preparing for or undertaking other business relating to the hearing(s) or any other scheduled case event (e.g. a directions hearing) exceeds 2½ hours (or 3 1/2 hours for a member <i>with a term of appointment commencing after 1 July 2015</i>), the member will not be paid the cancellation fee but will be paid for the actual time spent on those activities.</p> <p>The maximum payment for the day will be one daily fee.</p> <p><i>With the exception of when the part-time member is on circuit (refer below)</i></p>						
<p>Unscheduled work conducted on Tribunal premises</p>	<p>Where a member is requested by the Registry to undertake unscheduled work on a day for which a cancellation fee is due to be paid, that unscheduled work will be paid in addition to the cancellation fee in accordance with these guidelines up to a maximum of 2½ hours (or 3 1/2 hours if the member's term of appointment commenced after 1 July 2015). This means the maximum payment for the day is one daily fee. Where a member works more than 2½ hours (or 3 1/2 hours if the member's term of appointment commenced after 1 July 2015) the additional time worked will not carry over.</p>						
<p>Where all work on a particular day is cancelled and a member has been given 5 or more working days' notice of the cancellation</p>	<p>Nil</p>						
<p>Cancellations due to ill health</p>	<table border="1" style="width: 100%; border-collapse: collapse; margin: 0 auto;"> <thead> <tr> <th style="text-align: left; padding: 2px;">Person who is ill</th> <th style="text-align: left; padding: 2px;">Fee payable</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Member (self)</td> <td style="padding: 2px;">Nil</td> </tr> <tr> <td style="padding: 2px;">Member (other than self)</td> <td style="padding: 2px;">As per Cancellation Fees above</td> </tr> </tbody> </table>	Person who is ill	Fee payable	Member (self)	Nil	Member (other than self)	As per Cancellation Fees above
Person who is ill	Fee payable						
Member (self)	Nil						
Member (other than self)	As per Cancellation Fees above						

[Please note: Where a member has prepared for a hearing which is cancelled prior to being notified of the cancellation, the member may claim for that preparation time.]

TRAVEL AWAY FROM HOME REGISTRY

<p>Travel time</p>	<p>Whilst on circuit:</p> <ul style="list-style-type: none"> On the day of a hearing: Reasonable travel time is included in the Minimum Payment provisions below. On the day before or after a hearing has taken place Reasonable travel time may be claimed but only where it is considered unreasonable for the member to travel on the day of the hearing. <p>Travel other than on circuit: As per above rules based on whether it is reasonable to expect the member to travel on the day of the planned activity.</p> <p>Reasonable travel time is defined as follows:</p> <table border="1" data-bbox="424 745 1409 1055"> <thead> <tr> <th>Means of Travel</th> <th>Travel Time</th> </tr> </thead> <tbody> <tr> <td>By air</td> <td>1. Up to 1 hour prior to flight time 2. Flight time 3. Up to 1 hour after flight time</td> </tr> <tr> <td>Other than by air</td> <td>Actual travel time Travel time will be calculated from the time that the member left the location (ie home or registry) from where the travel commenced.</td> </tr> </tbody> </table>	Means of Travel	Travel Time	By air	1. Up to 1 hour prior to flight time 2. Flight time 3. Up to 1 hour after flight time	Other than by air	Actual travel time Travel time will be calculated from the time that the member left the location (ie home or registry) from where the travel commenced.
Means of Travel	Travel Time						
By air	1. Up to 1 hour prior to flight time 2. Flight time 3. Up to 1 hour after flight time						
Other than by air	Actual travel time Travel time will be calculated from the time that the member left the location (ie home or registry) from where the travel commenced.						
<p>Minimum Payment whilst away from home office</p>	<p>Whilst on circuit a part-time member will be paid a full daily fee for each day or part day listed to work whether or not the part-time member works.</p>						

LODGING CLAIMS

Claims are to be submitted on a monthly basis for all work undertaken in the previous month. It is the responsibility of the member to submit claims on a monthly basis.

A completed Claim Form must be submitted to the relevant District Registrar **by close of business on the 7th day of the following month** to ensure payment is made in the next pay cycle. If a form is received after this date, payment is likely to be made in the following pay cycle. The monthly pay day is the final Thursday of the month.

A member may complete work for a different registry in a month or for more than one registry in the same month. The table below identifies to which District Registrar a claim form should be sent.

Work undertaken	Forward Claim Form to
Home registry only or home registry and another registry	Home District Registrar. Your home District Registrar will ensure that the interstate District Registrar assesses the work completed for the other registry.
Interstate registry only	Interstate District Registrar

Work will be costed to the registry for whom the work was undertaken.

RECORDING TIME AND PAYMENTS

1. Every item claimed must be accounted for as Sitting Time, Other Business or a Cancellation Fee.
2. Claims under Other Business must be accompanied by a specific description of the Other Business.
3. Work can be undertaken on any day – it is not restricted to Monday to Friday.
4. Members should record the actual number of hours worked. The guidelines will then be applied to determine the member's entitlement to be paid.
5. All work **must** be recorded:
 - in hours or minutes, ie not percentages or x/5ths/7ths of a day;
 - in minutes where work is of less than 1 hour;
 - on a daily basis, ie 3/5/10... and 4/5/10... not 3-4/5/10.
 - where travel time is claimed as Other Business, by reference to a specific date
6. A member can only be paid a maximum of the daily fee on any given day.
7. If a member has not completed five hours work (or seven hours work, if the member's term of appointment commenced after 1 July 2015) on a particular day (day 1) it will carry over to the next day. If on the next day of work (day 2):
 - the member works five hours (or seven hours, if the member's term of appointment commenced after 1 July 2015) or more then they are paid a daily fee and their carry-over from the previous day (day 1) is maintained; or
 - the member does not work five hours (or seven hours, if the member's term of appointment commenced after 1 July 2015) or more on that second day then the number of hours worked is added to the carry-over balance:
 - should the number of hours in the balance now total five hours (or seven hours, if the member's term of appointment commenced after 1 July 2015) or more then the member will be paid a daily fee and any remaining carry over will be carried over to the next day worked;
 - should the number of hours in the balance still total less than five hours (or seven hours, if the member's term of appointment commenced after 1 July 2015) then the balance will carry over to the next day worked.
8. Any carry-over balance at the end of a month is carried over to the next month.
9. A member will be paid out any carry over on a pro-rata basis at the end of their appointment.
10. Payment of any outstanding entitlement to the 10 day minimum annual payment (or 5 day minimum annual payment, if the member's term of appointment commenced after 1 July 2015) will be made in the final pay in the financial year based on work completed in the preceding 12 months.

AMENDMENT SCHEDULE

Amendment Date	Clauses (if applicable)	Amendment Details
June 2012	-	<p>Updating of Remuneration Tribunal Determination from 2011/10 to 2012/09.</p> <p>Updating of position title from Assistant Registrar to Executive Director, Operations.</p>
April 2013		<p>Updating in line with the '<i>Guidelines on AAT Financial Support for Part-Time Members' Professional Development Activities</i>' that were issued in March 2013.</p>
September 2015		<p>Updating of Remuneration Tribunal Determination from 2012/09 to 2015/10.</p> <p>Updating of position title from Executive Director, Operations to Division Registrar</p> <p>Insert provision for payment for participation in Approved Outreach or liaison activities</p> <p>Remove provisions relating to Appraisal Scheme</p>
March 2016		<p>Updating in line with the '<i>Guidelines on AAT Financial Support for Part-time Members Professional Development Activities</i>': Other professional development activities such as conferences and seminars.</p>
September 2017		<p>Updating of Remuneration Tribunal Determination from 2015/10 to 2017/09.</p> <p>Change for 'Seeking Additional Time' arrangements to be determined by Executive Deputy Presidents.</p>

Attachment F

AAT GUIDELINE FOR THE PAYMENT OF ANNUAL AND DAILY FEES TO PART-TIME MEMBERS OF THE MIGRATION AND REFUGEE DIVISION (MRD Part-Time Member Guideline)

REFERENCES:

Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination 2018 (the Determination)

AAT Guideline on Members' Terms and Conditions (AAT Guideline)

Purpose

1. In accordance with s.33(3) of the Determination, the AAT may establish arrangements about the nature, reasonableness and duration of official business being claimed prior to payment of any daily fee.
2. This MRD Part-Time Member Guideline complements the AAT Guideline and outlines the rules relating to payment of a fee to a part time Member in the MRD, including arrangements established by the President about the nature, reasonableness and duration of official business to be reviewed prior to the payment of any daily fee.

Part-time Members

3. Part-time Members may be engaged under the following remuneration structures:
 - a. Annual fee part-time Member; or
 - b. Sessional part-time Member.
4. Remuneration of all part-time Members in the MRD is dealt with in Part 4 of the Determination.

Annual Fee Part-Time Member

5. The President may direct, under s.18B of the *Administrative Appeals Tribunal Act 1975*, that a part-time Member work a specified number of days each week.
6. The remuneration of annual fee part-time Members is determined according to the statutory office they hold, the number of days per week they are directed to work and the relevant employment conditions applicable to them. The annual fee is paid by fortnightly instalments and covers all activities undertaken by the annual fee part-time Member in performing the duties of their office.

Sessional Part-Time Members

7. Sessional part-time Members are not subject to a President's direction specifying the number of days each week they are required to work.
8. A sessional part-time Member will only be paid for official business. Official business includes, but is not limited to, hearings, preparation for hearings, reading submissions, decision writing and travel time other than for travel between the person's home and principal place of work. The nature, reasonableness and duration of official business

being claimed will be reviewed prior to payment of any daily fee according to the matters set out in this MRD Part-Time Member Guideline.

9. The maximum amount payable to a sessional part-time Member per day is one daily fee. Daily fees will be paid on a fortnightly basis and will not be paid pro-rata.
10. Standard durations of time for particular matters, or categories of matters, may be set by the Migration and Refugee Division Head, reviewed, and adjusted from time to time. In setting a standard duration of time, relevant considerations may include, but are not limited to, the AAT's statutory objectives and the reasonable expectations for the completion of matters, as informed by indicative benchmarks for caseload categories, by a Member who meets the competency framework.
11. Where a standard duration of time applies, that time will only count towards payment of a daily fee upon that case being finalised. Standard durations of time will not be counted pro-rata.
12. For example, the standard duration of time for a case may be 0.5 case days, with that time only being credited upon the finalisation of that case. The finalisation of two 0.5 case day cases is necessary for payment of one daily fee (2 x 0.5 case days = 1 case day = 1 daily fee). Finalisation of a third 0.5 case day would not attract a second daily fee until another full case day is reached. In contrast, finalisation of a 2 case day case would attract payment of two daily fees (1 x 2 case days = 2 case days = 2 daily fees).
13. Schedule A to this MRD Part-Time Member Guideline sets out the matters, or categories of matters, where a standard duration of time applies. It is set by the Migration and Refugee Division Head and is subject to review and adjustment from time to time.
14. Any claim for payment of a daily fee based on, or including, an aggregate of hours that exceeds a standard duration of time must be made as an Additional Time (Part B) claim to the Division Head and will only be approved in exceptional circumstances.

Additional Time (Part B claims)

15. Requests to claim Additional Time (of not less than 1 hour above the standard allocation) for hearing related activities or decision writing must be made in writing and submitted to the Division Head for approval prior to a claim for fee being made. Requests to claim additional time will only be approved where exceptional circumstances are shown to apply.
16. Time spent on certain activities may also be claimed as Additional Time. The following matters are generally considered to be acceptable forms of Additional Time for the purposes of a Part B claim:
 - a. Mentoring new Members at the request and with the approval of the Division Head
 - b. Attending approved Tribunal meetings, training and activities that form part of the Members' Professional Development Program

- c. Other activities conducted at the express direction or request of the Division Head (for example, requests by the Division Head to participate in a working group convened to test a new software application)

17. Attendance at Tribunal functions (such as Christmas parties, celebrations or farewells) does not count as official business hours and will not attract payment.

Lodgement and Payment of Claims

18. Annual fee part-time Members must submit a timesheet in the Aurion system. District Registrars' are responsible for processing and approving timesheets, having regard to the AAT Guideline, this MRD Part-Time Member Guideline and any other direction or guideline that may apply.

19. Sessional part-time Members are not required to lodge a claim for payment of their daily fee. Fortnightly payment will be processed based upon reports generated by the MRD's case management system and referred to District Registrars for approval.

20. Fees will not be paid on a pro-rata basis unless it is the part-time Member's final claim for payment following the end of their appointment. In all other cases, a claim for less than 7 official business hours will be carried over until an aggregate of 7 official business hours is reached.

21. Except for Additional Time (Part B) claims that must be directed to the Division Head, all other questions about part-time Member fees should be directed to the District Registrar in the first instance.

ATTACHMENT 6



Extract from Response to Question on Notice "A" - the Tribunal from Senator Carr - Legal ar Constitutional Affairs References Committee Deputy President Fiona Meagher

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41			
Member information																																											
Fraternities - Applications finalised by substantive decision, by Division and area of work																																											
Administrative notes																																											

Excerpt from Response to Question on Notice "A" to the Tribunal from Senator Carr - Legal and Constitutional Affairs References Committee
 Senior Member Diana Benk

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Member Information																		
Title	Surname	First name	Postnominal	Member type	Full-time/Part-time	First continuous appointment date (Members who were, immediately before 1 July 2015, members of the MRD or SSCSD are listed as commencing 1 July 2015)	Appointment end date	Financial year	No. of daily fees paid	Total remuneration	Administrative roles	Division	Total case events ¹	Substantive hearings	Directions hearings	Interlocutory hearings	AOR	
Major General	MELICK	AZE Gregory	AO RFD SC (Rtd)					2011-20	85	\$192,634.93	Executive Member	MRD	0	28	31	0	0	
Major General	MELICK	AZE Gregory	AO RFD SC (Rtd)					2020-21	118	\$267,785.70	Executive Member	MRD	0	24	24	10	0	
Mr	MOLLOY	Ian		Deputy President	Part-time	11/04/2013	10/06/2023	2018-19	18	\$48,472.82		SSCSD	0	36	19	11	6	0
Mr	MOLLOY	Ian						2019-20	12	\$30,154.03		MRD	0	36	19	11	6	0
Mr	MOLLOY	Ian						2020-21	12	\$29,253.90		SSCSD	0	25	5	15	4	1
Mr	O'LOUGHLIN	Francis	QC	Deputy President	Part-time	23/08/2009	30/06/2024	2018-19	18	\$48,045.32		MRD	0	46	18	28	2	0
Mr	O'LOUGHLIN	Francis	QC					2019-20	24	\$55,473.80		SSCSD	0	46	18	28	2	0
Mr	O'LOUGHLIN	Francis	QC					2020-21	21	\$53,361.26		MRD	0	87	20	60	3	4
Mr	SOSSO	John		Deputy President	Part-time	30/05/2016	31/10/2024	2018-19	90	\$245,160.33		SSCSD	0	42	9	33	0	0
Mr	SOSSO	John						2019-20	N/A ²			MRD	0	42	9	33	0	0
Mr	SOSSO	John						2020-21	N/A ¹			SSCSD	0	40	32	8	0	0
Senior Member (Full-time)	BENK	Diana		Senior Member	Full-time	1/07/2015	31/12/2024	2018-19		\$322,447.31	Oversight of SSCSD at President's request	MRD	1215	1214	1	0	0	0
Ms	BENK	Diana						2019-20		\$28,933.91	Oversight of SSCSD at President's request	SSCSD	1215	1214	1	0	0	0
Ms	BENK	Diana						2020-21		\$367,840.89		Total	1156	1156	0	0	0	0
Mr	BILLINGS	John		Senior Member	Full-time	1/07/2015	30/06/2019	2018-19		\$213,890.55	Practitioner Manager	MRD	56	56	0	0	0	0
												SSCSD	0	0	0	0	0	0
												MRD	0	0	0	0	0	0

