



Senator The Hon. Kim Carr

Senator for Victoria



Ms Sian Leathem
Registrar
Administrative Appeals Tribunal
Level 6, 83 Clarence Street
SYDNEY
NSW 2000

26 May 2021

Dear Registrar,

RE: APPEARANCE AT SENATE ESTIMATES

Ahead of the Estimates hearing tomorrow by the Legal and Constitutional Affairs Committee, I write in relation to responses to Questions on Notice that the Tribunal provided to the Committee yesterday – weeks after they were due.

First, in relation to the Tribunal's response to Question on Notice LCC-AE21-78, the Tribunal has refused to provide the Committee with information about how certain members are performing against their benchmarks. You write:

While 2018–19 was a complete year, the AAT considers that to provide benchmark results for individual members for any year would not be reasonable because they do not give a complete or accurate representation of the member's work. As explained above, the primary purpose of the benchmarks is to support planning and allocation of resources to deal with the Division's caseload. While a member's results against their individual benchmarks are considered as part of monitoring their work, this is only one of the indicia that are taken into account.

As you know, there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament unless the Parliament has expressly provided otherwise.

As you also know, your reason for not providing benchmark results for individual members – that you do not think it would "give a complete or accurate representation of the member's work" – is not a valid basis for withholding information .

Accordingly, in relation to Question on Notice LCC-AE21-78, the Tribunal should come to tomorrow's hearing with all of the requested information. Alternatively, the Tribunal – or the Attorney-General – will have to make a public interest immunity claim which can then be considered by the Committee and the Senate.

Second, in relation to the Tribunal's responses to Questions on Notice LCC-AE21-80, LCC-AE21-81 and LCC-AE21-82, the Tribunal has refused to provide the Committee with:

- the names of full-time members and part-time members who finalised fewer than 25 applications in 2018/19, 2019/20 and 2020/21; and
- the names of part-time members who worked fewer than 24 hours in 2018/19, 2019/20 and 2020/21.

Your stated reasons for not providing those names is not a valid basis for withholding information from the Senate and the Tribunal should therefore come to tomorrow's hearing with the relevant details. Alternatively, the Tribunal – or the Attorney-General – will have to make a public interest immunity claim which can then be considered by the Committee and the Senate.

Third, in relation to the Tribunal's response to Question on Notice LCC-AE21-83, the Tribunal's reason for withholding details about how many applications individual members have finalised is not a valid basis for withholding information from the Senate.

The Tribunal should come to tomorrow's hearing with the requested details. Alternatively, the Tribunal – or the Attorney-General – will have to make a public interest immunity claim which can then be considered by the Committee and the Senate.

Fourth, in relation to the Tribunal's response to Question on Notice No LCC-AE21-79, the Tribunal should be prepared to answer detailed questions about the members who have taken more than 4 weeks paid recreation leave – and paid leave other than sick, carers' or recreation leave.

Finally, in respect of the Tribunal's very late response to Question on Notice LCC-AE21-45, please be prepared to provide detailed information about the following:

- the revisions that the Tribunal made "on its own initiative" to Question on Notice LCC-AE20-58;
- the "written comments and suggestions" provided to the Tribunal by the Attorney-General's office in relation to Questions LCC-BE20-53; LCC-BE20-54; LCC-BE20-126; LCC-BE20-127; LCC-BE20-128; and LCC-BE20-167–LCC-BE20-240.

Yours sincerely,

Senator Kim Carr
Deputy Chair
Legal and Constitutional Affairs Legislation Committee
Labor Senator for Victoria