Administrative Appeals Tribunal

Office of the Registrar
Michael Hawkins AM

13 June 2024

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

Dear Secretary

I write to clarify evidence provided at the 2024-25 Budget estimates hearing of the Senate Legal and Constitutional Affairs Legislation Committee on 31 May 2024.

On page 48 of the Proof Committee Hansard, in response to questions from Senator Scarr about the outcome of reviews of decisions made under section 501 and section 501CA of the *Migration Act 1958* in the current and previous financial years, I said:

> **Mr Hawkins:** Of the 367, there were 142 affirmed and 184 set aside.
> …
>
> **Mr Hawkins:** It was 212 set aside and 134 affirmed. I'll add one other observation there, just for clarity: in 2022-23 we also had 43 that amounted to nine per cent of the cases that were no jurisdiction. In this year we have only had four matters that were no jurisdiction, which accounts for one per cent.

I wish to clarify my evidence to confirm that the two figures I gave for outcomes where the original decision was set aside also included outcomes where the original decision was varied. I note that, in response to further questions from Senator Scarr (on pages 48 and 52), I confirmed the figures I had provided in my earlier evidence regarding set aside decisions.

At pages 52-53 of the Proof Committee Hansard, when explaining to Senator Scarr the options available after an Administrative Appeals Tribunal member has made a decision in regard to the review of a decision made under section 501 or section 501CA, I said:

> **Mr Hawkins:** Following a decision by a member, the decision is communicated to all parties—applicants and the department. We normally advise the parties one day before a decision is to be handed down, and a hard copy of the decision is express posted to the applicant. Upon the time of the decision being made—I've got to

> be careful about the terminology—the applicant and the department have 35 days to appeal to the Federal Court. It's my understanding that in section 501(1) and section 501(2) matters the minister would have the capacity to effectively quash the decision of the tribunal under section 501A, and decisions under 501CA could be quashed under section 501BA. But that is a matter for the minister, if he believes the character requirements haven't been satisfied and it's in the national interest.

I wish to clarify my evidence to confirm that a hard copy of the decision is posted to all parties to the application for review, not just the applicant.

At page 55 of the Proof Committee Hansard, when responding to questions from Senator Ghosh about the Administrative Review Council (ARC), I said:

> **Mr Hawkins:** The Administrative Review Council, to my knowledge, has not been in operation for some time. It's to be—I'm not sure what the word is—reactivated with the new tribunal. I think the findings of the robodebt royal commission are sufficient to justify the position of the ARC on its own. So, where there are systemic issues, it gives the president the opportunity to report those to the ARC, for the ARC to be sending notices to the different departments and requesting, if not demanding, responses from them and publishing those responses.

I wish to clarify my evidence to confirm that, under the *Administrative Review Tribunal Act 2024*, the President may inform relevant Ministers, relevant Commonwealth entities and the ARC of any systemic issues. When the relevant Minister or relevant Commonwealth entity is notified of a systemic issue by the President, they must inform the ARC of the actions they have taken, or propose to take, in relation to the systemic issue. The ARC must then publish a description of the information provided by the Minister or the Commonwealth entity in its annual report.

Your sincerely

Michael Hawkins AM
Registrar