



Administrative Appeals Tribunal

15 December 2021

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

Dear Secretary

Clarifications to Hansard

I write to you concerning evidence provided to the Senate Standing Committee on Legal and Constitutional Affairs during the Supplementary Budget Estimates hearing on 26 October 2021.

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

Evidence of Ms Sian Leathem, Registrar, Administrative Appeals Tribunal

Liaison with staff in the office of former Attorney-General The Hon Christian Porter MP

On page 6 of the transcript, in responding to a question from Senator Carr concerning liaison between the AAT and staff in the former Attorney-General's Office in relation to the AAT's responses to certain questions on notice, Ms Leathem said:

Ms Leathem: Senator, as I tried to set out in my response to the Committee's letter, there was—and for the purposes of full disclosure we've attached the various different versions in the responses—there was a conversation on 15 December between me and a senior adviser where we discussed amendments to the answers.

The AAT wishes to clarify that Ms Leathem spoke to the Senior Adviser in the former Attorney-General's Office on 16 December 2020 rather than 15 December 2020.

Records relating to persons appointed as members of the AAT

On page 12 of the transcript, in responding to questions from the Chair and Senator Scarr about a person who was appointed to the AAT but was not sworn in and did not take up their appointment, Ms Leathem said:

Ms Leathem: I apologise. We'll have to obviously review our processes to make sure that for any member—it's an unusual situation but I understand what you're saying. We will make sure that we attend to that and that there is no capturing of any members unless they have been sworn in and they take up their membership.

...

Ms Leathem: ... We need to ensure that if somebody doesn't get sworn in and take up their appointment, they are not recorded on our system.

The AAT wishes to clarify that the Tribunal is required to maintain records in accordance with the *Archives Act 1983* in relation to all persons who are appointed by the Governor-General as members of the AAT, even if they do not ultimately take an oath or affirmation of office under section 10B of the *Administrative Appeals Tribunal Act 1975* (AAT Act) or otherwise take up the appointment. The AAT maintains a register relating to each person appointed to the AAT and, at a minimum, maintains a copy of:

- each instrument of appointment to the AAT under section 6 of the AAT Act
- any instrument assigning a non-presidential member to one or more Divisions of the AAT under section 17C of the AAT Act, and
- any written resignation given to the Governor-General under section 15 of the AAT Act (when given to the AAT).

The AAT may also need to add a person who does not take an oath or affirmation of office to other AAT systems depending on the circumstances.

Members contacted regarding their inclusion in AAT responses to questions on notice

On pages 13, 25 and 27 of the transcript, in responding to questions from Senator Scarr and the Chair about contact with members referred to in the AAT's responses to questions on notice sent to the Committee on 8 October 2021, Ms Leathem said:

(Page 13)

Ms Leathem: ... We did notify all of the members who were the subject of the questions on notice to let them know that the material was being provided. ...

...

(Page 25)

Ms Leathem: [inaudible] before we provided our responses to the questions on notice on, I believe, 8 October, which was the deadline set by the committee for responding to those, we emailed each of the members who were included in any of the responses to the questions on notice just to inform them of the material that was going to be submitted to the committee and to indicate that, in light of the time frames, if there were any errors or things that needed clarification, they were invited to let us know and we would look to make those corrections if necessary. That was simply because the time frames didn't permit us more time to be able to consult more broadly with the members.

...

(Page 27)

Ms Leathem: My recollection is that's in the email that was distributed to all members, but once I can get a copy of that we can confirm that that is the case.

The AAT wishes to clarify that emails were sent on 7 and 8 October 2021 to then current members of the Tribunal referred to in the responses, with the exception of 8 members who were not emailed in relation to certain responses relating to them. The AAT has subsequently emailed current members and former members for whom the AAT has a current email address. Further information is set out below and in the responses to LCC-SBE21-74 and LCC-SBE21-75.

Veterans' Appeals Division – proportion of applications finalised within 12 months of lodgement

On page 15 of the transcript, in responding to questions from Senator Carr about caseload statistics for the 2020–21 financial year, the following exchange occurred between Senator Carr and Ms Leathem:

Senator KIM CARR: If we go to the Veterans' Appeals Division, 48 per cent of applications are being finalised within 12 months of lodgement. That's correct, isn't it?

Ms Leathem: Yes, that's correct.

The AAT wishes to clarify that the proportion of Veterans' Appeals Division applications finalised in the 2020–21 financial year within 12 months of lodgement was 57%. Of the applications finalised in the Veterans' Appeals Division in the period from 1 July 2021 to 30 September 2021, 48% were finalised within 12 months of lodgement.

Communications from members in relation to the responses to questions on notice

On pages 26, 27, 28, 29, 37 and 38 of the transcript, in responding to questions from the Chair and Senator Carr about communications with members referred to in the AAT's responses to questions on notice sent to the Committee on 8 October 2021, the following exchanges occurred between the Chair, Senator Carr and Ms Leathem:

(Pages 26, 27 and 28)

Ms Leathem: We have given members the opportunity to come to us if they have any concerns about the data. I've had some queries from members and I've had some further information submitted, but at this stage there's nothing to indicate the information was inaccurate. It's more around providing more context around some of those responses.

CHAIR: Some members have indicated to you that they have concerns about the answers to questions on notice provided on 8 October. Can I draw your attention to an email that you sent to members on 8 October in relation to questions on notice? Are you familiar with, or do you recall, that email to members?

Ms Leathem: Yes, I do.

...

CHAIR: If you can provide a copy of that email to the committee, I will return to some questions in relation to that. I'm concerned that members were not given an appropriate amount of time to respond. This email was on the morning of 8 October and you submitted the answers to questions on notice on 8 October, so there was essentially no time. Now we've heard that some members have raised concerns about the responses and yet, again, we have not been made aware of this. We have not been made aware that—

Ms Leathem: Could I clarify. I haven't been made aware by any members of any errors in the information. There have been concerns raised by some members about the provision of the information—

Senator KIM CARR: I'm not surprised!

Ms Leathem: and I sought to explain that we were required to provide the information because of the decision to decline the PII claim.

CHAIR: Yes. There were some issues in relation to context. Some further information was provided. Are you sitting on that information? Is there any reason why we haven't been furnished with that further information?

Ms Leathem: The only further information that I've been provided was members who were interested in providing—for example, the answers may have asked for a specific period of time for work that they'd undertaken. I have one member who's given me a more complete record of the work that they have undertaken over an extended period of time. I have indicated that if they wish to make their own submission to the committee they're willing to do so, but there's nothing in that information that alters the accuracy of the questions on notice responses that we've provided to date.

...

CHAIR: We're about to receive this email, but isn't it the case that you advised members: 'In the time available to prepare this response'—that's the response to questions on notice on 8 October—it has not been possible to thoroughly review the data nor validate it for accuracy, and the data provided in relation to finalisations does not provide a full and accurate representation of a member's workload and output'? Is that what you said to members?

Ms Leathem: That is what I said to members, yes.

CHAIR: And then you've gone on to say: 'Should you identify any errors or issues that require correction, please email me those details and we will be able to consider and submit to the committee at a later date.'

Ms Leathem: Yes. That's correct.

CHAIR: You've told me that some members have emailed you, and yet, in relation to wanting to provide further information to your responses to the committee on 8 October, we have not received any further information. You undertook to members that you would furnish that information to the committee.

Ms Leathem: Yes. I've only received one email from one member with some additional information. I have discussed with that member whether they would prefer to submit it themselves or whether they would like the AAT to submit it. Can I be clear that there haven't been any errors identified to me at this point in time that would require a

correction, but I'm very happy to furnish the information in relation to the information the member has provided—

...

(Page 29)

Senator KIM CARR: ... One person has said they want further context provided. Is that correct, Registrar, that one person wants further context?

Ms Leathem: That's correct.

...

(Page 37)

CHAIR: Thanks, Senator Scarr. I have a couple of questions before we go to lunch. I want to refer back to the email of 8 October, which has now been tabled. Thank you for providing that to the committee. I want to confirm that, in relation to the responses to questions on notice 78, 80, 81, 82, 83 and 62, as stipulated in the email to members of 8 October, the attachments to this email reflect what was submitted to the committee. So there were no changes?

Ms Leathem: That's correct.

CHAIR: Thanks, Ms Leathem. You've indicated in the email—and we did obviously speak about this earlier, but I just want to reiterate this issue—'In the time available to prepare this response, it has not been possible to thoroughly review the data nor validate it for accuracy, and the data provided in relation to finalisations does not provide a full and accurate representation of a member's workload and output.' Have you, in the three or so weeks since this time, validated the responses for accuracy?

Ms Leathem: That process was referring to the fact that we hadn't been able to check with the members as to whether or not they had any discrepancies with the data. As I've indicated, nobody has been able to show any error or correction that needs to be made. But there has been some further contextual information provided by one member. As I've already said I'd do, I'll pass that on to you. But in terms of the validation of the data, it is sound as far as we understand. I'll just ask Mr Matthews to clarify that his team, who assisted with this matter, hasn't been made aware of any other problems with the data.

...

(Page 38)

CHAIR: You're not confident in this email to members because you've said, 'It's not possible to validate it for accuracy.' Since 8 October, what work has been undertaken by the AAT to validate the accuracy of the questions provided to this committee?

Ms Leathem: The validation involves firstly inviting members. If their records or their understanding of their workload differs in any way from the material that has been provided there, that opportunity has been given. I'm not aware that anybody to date has raised any concerns about errors. Otherwise, we are confident that the material and the data that have been provided are accurate, subject to that qualification I gave about data entry from time to time.

On 7 October 2021, all but 2 of the then current members referred to in the proposed responses to LCC-BE21-60 (Members – Paid recreation leave), LCC-BE21-61 (Full-time members – Applications finalised) and LCC-BE21-146 (Leaves of absence) were emailed the information included in the proposed responses relating to them. On 8 October 2021, all but 6 of the then current members referred to in the responses to the following questions on notice were emailed a copy of the responses sent to the Committee that day: LCC-AE21-78 (Member benchmarks and performance); LCC-AE21-80 (Applications finalised by full-time members); LCC-AE21-81 (Applications finalised by part-time members); LCC-AE21-82 (Part-time members – hours worked); LCC-AE21-83 (Applications finalised by specific part-time members); and LCC-BE21-62 (Part-time members – Payment where no applications finalised).

The AAT wishes to clarify that, as at the date of the hearing on 26 October 2021, a number of members had responded to these emails with queries about information included in the responses relating to them and/or providing additional information about their circumstances.

- Twelve members provided information or raised questions about particular data items. Changes were required to information about leave for 4 members set out in LCC-BE21-60 and LCC-BE21-146. The details relating to 3 of the members were amended before the responses were sent to the Committee on 8 October 2021. The fourth change, which was raised after the responses had been sent and related to the classification of an amount of unpaid leave, had not been made as at the date of the hearing. A revised version of LCC-BE21-146 is being prepared to send to the Committee. In relation to the responses to the other questions on notice, no errors requiring correction had been identified at that time. Three changes have subsequently been identified. Revised versions of the responses to LCC-AE21-78 and LCC-AE21-80 correcting these errors have been prepared.
- Seventeen members provided additional information about their circumstances which did not identify any errors or issues that required correction.

Following the hearing on 26 October 2021, the AAT has emailed current and former members referred to in responses to the questions on notice, other than 7 former members for whom the AAT does not have a current email address. The emails attached the tabled responses and asked members to advise whether there is any additional information they would like to provide regarding the matters covered in the AAT's responses and/or any errors or omissions they consider require correction. We await confirmation as to how the additional information should be provided to the Committee.

Evidence of Mr Jamie Crew, National Director, Tribunal Services, Administrative Appeals Tribunal

National Disability Insurance Scheme Division – median time to finalise applications

On page 15 of the transcript, in responding to questions from Senator Carr about caseload statistics for the 2020–21 financial year, the following exchange occurred between Senator Carr, Ms Leathem and Mr Crew:

Senator KIM CARR: If we look at disabilities, the medium waiting time there is 19 weeks. Is that correct?

Ms Leathem: I might just invite the national director tribunal services to look at the case load statistics in more detail, if you're interested.

Mr Crew: In 2021, the median time to finalise in the National Disability Insurance Scheme was 23 weeks. That's up from 2019-20 at 18 weeks.

The AAT wishes to clarify that the figure of 23 weeks stated by Mr Crew was the median time to finalise applications in the National Disability Insurance Scheme Division for the 2020–21 financial year.

New member induction

On pages 16 and 18 of the transcript, in responding to questions from Senator Carr about particular members, Mr Crew said:

(Page 16)

Mr Crew: Mr Kendall was appointed on 25 February 2019 and was inducted on 25 March 2019. ...

...

(Page 18)

Mr Crew: Member Ranson, again, was appointed on 25 February 2019 and inducted on 25 March 2019.

...

Mr Crew: ... Deputy President Pascoe was appointed on 25 February 2019 and was inducted on 25 March 2019.

The AAT wishes to clarify that the face-to-face induction program attended by Deputy President Pascoe, Member Kendall and Member Ranson took place in the week of 25 March 2019 and commenced on Wednesday, 27 March 2019.

Social Services and Child Support Division

On page 16 of the transcript, in responding to a question from Senator Carr about Member Ranson, Mr Crew said:

Mr Crew: No, in fact, Mr Ranson works across a number of divisions, so he doesn't just work in the migration and refugee division. In fact, in 2021 he exceeded his benchmarks for the MRD but also did work across the general division and social securities, the CSD division.

The AAT wishes to clarify that, when he stated "social securities, the CSD division", Mr Crew intended to refer to "the Social Services and Child Support Division" of the AAT.

Member Joseph Francis

On page 18 of the transcript, in response to questions from Senator Carr about Member Francis, the following exchanges occurred between Senator Carr and Mr Crew:

Senator KIM CARR: ... He managed to finalise two cases. They must have been incredibly complex. Two cases in four months! That's correct, isn't it?

Mr Crew: In 2018-19?

Senator KIM CARR: That's right.

Mr Crew: That's correct, yes.

Senator KIM CARR: He sat across a number of divisions, including Social Services, Child Support, older Australians and various others. This is the one where they've been waiting some months. People are receiving a pension of \$882 a fortnight, and Mr Porter's campaign manager is getting \$10,000 a fortnight. That's also correct, isn't it?

...

Mr Crew: ... Could I just clarify in relation to Member Francis: he finalised four matters, but two were substantive matters.

The AAT wishes to clarify that, while Member Francis has been assigned to the Social Services and Child Support Division, he has only undertaken work in the Migration and Refugee Division since he was appointed to the AAT.

Yours sincerely

Sian Leathem
Registrar