

Dear Members of The Legal and Constitutional Affairs Legislation Committee

I respond to an invitation to comment upon recent Budget Estimates Hearings in which the performance of Tribunal members, including myself, have been raised. I wish to make the following observations:

1. I have no memberships, including past memberships, of any political party or affiliated groups. I have no connections, direct or indirect, to any former or current members of the Commonwealth or WA parliaments. Whilst past parliamentarians are presently working within the AAT Perth Registry I am not directly involved with them.
2. I am somewhat concerned, and to an extent, dismayed, by the recent publication of individual member names and their performance progress as against what are, in reality, *only aspirational* 'targets' or 'benchmarks'. Note I am not in any way questioning the essential role played by Senate Estimates in ensuring government bodies remain open and transparent, and accountable to parliament and the public in providing 'value for money' to the taxpayer. This, however, could have been pursued vigorously without naming individual members, who, upon my own observations over five years to date, are conscientious, fair and effective in the performance of this very significant duty on behalf of the people of Australia. The Tribunal plays a crucial role in ensuring that often impecunious and disadvantaged people receive a 'fair go' in their dealings with government.
3. I say this with due respect, but there is a perception that the decision to name individuals, including me, has been done for political point scoring. If that is so, I respectfully suggest this is not appropriate.
4. In any event, the basis behind the assessment of member performance is both inaccurate and inappropriate. It is only the Migration and Review Division that has a 'target' or 'benchmark' aspect to measuring performance. I am advised this is due to MRD being required to meet a certain number of

determined decisions to retain its budget for the approaching year. With respect to the nature of MRD work I hold the view this is inappropriate; further other Tribunal divisions are not dependent on this;

5. As observed by the Honourable Ian Callinan AC in his recent review of the Tribunal, the imposing of a 'benchmark' or 'target' is not helpful to the Tribunal's performance. It can be argued, in my view, that the use of such a measure is inappropriate within a caseload that deals with tens of thousands of applicants (and families) who stand to be removed from Australia or refused entry. These decisions do not impact solely on individual applicants; to the contrary, many decisions impinge on young families and children. The imposing of a benchmark or target can, unless the individual members are vigilant, motivate members to prioritise quantity over quality so as to give the appearance of being effective. This is, in my view, a significant threat to the independence of the Tribunal and its pivotal role in providing a fair system of review to applicants. It is the quality of decisions that should be valued, not mere quantity and current benchmarking is a push factor to the latter.
6. It is my view that a better system of performance needs to be established. By way of example, if Member A decides two hundred cases in a year and Member B decides one hundred and fifty, and Member A has regular successful appeals against his/her decisions by the FCCA and Member B very few, who is the better performer? Who reflects the statutory duties of the Tribunal better?

I am advised these comments are to be privy to committee members only and not to the Tribunal. If that is not so please advise me.

Yours sincerely

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Administrative Appeals Tribunal
Migration & Refugee Division
Perth Members