

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Administrative Appeals Tribunal

Question F:

Senator Hon Kim Carr asked the following question on 1 December 2021:

With reference to the article in the Daily Telegraph on 30 October 2021 by Piers Akerman entitled “Penalising AAT members weakens out country’s borders” and, in particular, Mr Akerman’s reference to “[s]ome senior members” being “rewarded by being assigned ‘special’ projects that significantly reduce their workload”, please:

1. identify, by name, every senior member or deputy president in the Migration and Refugee Division who has been assigned a “special” project;
2. explain the extent to which the assignment of that project has “significantly reduce[d] their workloads”; and
3. explain what the “special” project is and why the Tribunal assigned it to the relevant member.

The response to the Honourable Senator’s question is as follows:

No Deputy Presidents undertake work in the Migration and Refugee Division (MRD) other than the Division Head, Deputy President Jan Redfern.

The article which is the subject of the question is based on an incorrect premise. No senior members have been assigned special projects that have significantly reduced their workload. A number of senior members have a reduced caseload benchmark to take into account work undertaken as part of their responsibilities as Executive Members or Practice Leaders as outlined in Attachment A. Further, from time to time some senior members have been asked to work on ad-hoc projects, but this has not further reduced their existing caseload benchmark.

As such, the answer to the Honourable Senator’s question is as follows:

1. Senior Member Dr Denis Dragovic has represented the Division Head on various committees and has actively participated in the Tribunal’s COVID response working group. Senior Member Justin Owen has worked with registry in reviewing arrangements in place for the support of members. Senior Members Antoinette Younes, Louise Nicholls and Kate Millar have assisted the Division Head in reviewing the expressions of interest register for member appointments.
2. This work did not reduce the respective workload or caseload benchmarks of these senior members.
3. See the response to question 1. These senior members were asked to complete this work by the Division Head as she considered they were the most suitable to undertake the role.

Additional contextual information is provided in Attachment A to assist the Committee.

Attachment A

The Migration & Refugee Division (MRD) is the largest division in the Tribunal with more lodgements and finalisations than the other divisions combined. The MRD, and its predecessor, has had a long-standing practice of designating leadership and executive roles to senior members to undertake important and often time-consuming leadership and executive management functions to assist the Division Head (and before that the Principal Member) in ensuring that the business of the Division is conducted in the most efficient and effective manner.

The work undertaken by these senior members with designated executive roles enhances the productivity and effectiveness of work done in the Division and this has been evidenced by the increasing number of finalisations over the past few years in relation to what has become an increasingly complicated and aged caseload overall.

There are senior members who have been nominated as Executive Members for each region and they have overall responsibility for the management of the caseload and oversight of the membership in each location. This involves liaising with members within their teams about the constitution of cases, over time cases, any issues that may be raised in relation to successful appeals, professional development, approval of leave and timesheets, liaison with registry about administrative issues impacting members and generally providing advice, guidance and assistance where required in relation to the conduct of reviews. There are 151 active members in the MRD and each Executive Member has oversight of between 12 and up to 25 members in each location. This role can be very time-consuming and was especially difficult during the pandemic when Executive Members took on the added responsibility of engaging with members working remotely to ensure the MRD could continue to undertake the important work of the Division.

The role of an Executive Member is set out in the position description in Attachment B. Based on assessments that this role would generally involve at least 2 to 3 days additional work each week, it was determined by the Division Head a number of years ago to provide senior members assigned this role with a reduction in their annual benchmark of 50%. In addition, Executive Members are expected to undertake the more difficult reviews. Accordingly, any reduction in benchmarks is intended to take into account the time spent by the senior member in undertaking these functions.

There are also senior members who have been nominated as Practice Leaders for each caseload or particular areas. It is the role of the Practice Leader to have national oversight over their practice area, which includes identifying significant cases for constitution to particular members, identifying any legal or practice and procedure issues that need to be communicated to members more generally, liaising with the legal services area to amend or update decision precedents or legal commentaries, undertaking the reviews of the more significant cases, examining the caseload and any particular trends or issues that may need to be communicated to members, arranging regular focus groups or professional development training for members on developments in the law and, where appropriate, working with early case assessment registrars to triage cases and identify projects so that cases can be finalised in a more timely manner.

The role of Practice Leader is set out in the position description in Attachment B. Based on assessments that this role would generally involve at least 2 to 3 days additional work each week, it was determined by the Division Head a number of years ago to provide senior members assigned this role with a reduction in their annual benchmark of 50%. In addition, Practice Leaders are expected to undertake the more difficult reviews. Accordingly, any reduction in

benchmarks is intended to take into account the time spent by the senior member in undertaking these functions.

An additional practice leadership role of Chair of the MRD Professional Development Committee was created in March 2021. This role involves, amongst other things, coordination and leadership of MRD member professional development initiatives.

From time to time the Division Head may ask senior members to undertake discrete projects in working with registry. As noted in the response, senior members are not given any additional discounts for undertaking this work and it is absorbed as part of their general executive role. .

Two senior members have dual roles. Senior Member Louise Nicholls is both Executive Member of the protection team in the Sydney registry and the Practice Leader with national responsibility for the oversight of the visitor caseload. Senior Member Nicholls has been allocated an additional benchmark reduction of 10% to take into account these additional responsibilities. Senior Member Kate Millar is assigned to multiple divisions. She works across MRD and the General Division (GD) where she has been assigned the role of Practice Leader for Social Services and Child Support (Tier 2) matters in the G&OD. Senior Member Millar works equally between MRD and GD and is therefore given a 50% reduction in her benchmark to reflect the work undertaken in the GD. Like all Executive Members in the MRD, she is allowed a 50% reduction in her MRD benchmark to take into account the work involved in this role.

The table below lists MRD Senior Members who have a leadership role in the Division and the related adjustment to the benchmark for the current financial year as of 10 December 2021:

Senior Member	Leadership role	Benchmark reduction	Notes
Louise Nicholls	Executive Member for NSW Protection team and Practice Leader for the Visitor caseload	50% 10%	Executive Member (EM) Practice Leader (PL) role
Justin Owen	Executive Member for NSW Migration team	50%	Standard reduction for EM
Jason Pennell	Executive Member for Vic Protection team	50%	Standard reduction for EM
Dr Denis Dragovic	Executive Member for Vic Migration team	50%	Standard reduction for EM
James Lambie	Executive Member for Qld Member team	50%	Standard reduction for EM
Kate Millar	Executive Member for SA/NT Member team and Practice Leader for Social Services and Child Support (Tier 2) Matters in the G&OD	50% 50% of MRD benchmark ie 75%	Reduction for work in GD Standard reduction for EM
Antoinette Younes	Practice Leader for Bridging, Cancellations and Other caseloads	50%	Standard reduction for PL
Kira Raif	Practice Leader for Family and Partner caseloads	50%	Standard reduction for PL
Rania Skaros	Practice Leader for Business and Skilled caseloads	50%	Standard reduction for PL
Shahyar Roushan	Practice Leader for Protection caseload	50%	Standard reduction for PL
Michael Ison	Chair of MRD Member Professional Development Committee	50%	Standard reduction for role

Note: Senior Members Louie Hawas, Grant Chapman and Michael Cooke are not included in this table as they do not hold leadership roles in the MRD and do not receive a discount to their benchmark. Senior Members Rachel Westaway, Perry Wood and John Cipolla previously held leadership roles in the MRD but now work in other divisions and are no longer active with the MRD.

Attachment B

Position Description

Executive Member:

This position has regional responsibility for supporting and mentoring local Members to facilitate high quality and consistent decision-making regarding the objects in section 2A of the Act.

The role has primary responsibility for the oversight, support and mentoring of Members in the relevant region.

The Executive Member will:

- Report to the Division Head or their Deputy as nominated, and liaise and work collaboratively with other Executive Members and Practice Leaders
- Implement the caseload strategy, as approved by the Division Head, in relation to their team
- Ensure compliance with directions made by the President or the Division Head about the conduct of reviews and the conduct of the business more generally in the Division
- Preside over and decide cases of greater complexity or significance and support the Division Head in managing remittals from the higher courts
- Provide a mechanism through which information can be communicated in a timely manner to Members and their feedback can be conveyed to the Division Head and senior leadership. Including conducting, at least quarterly, Member meetings with their team
- Monitor Member workload and proficiency and liaise with the Division Head and relevant Practice Leaders on Member availability and capacity, specifically with regard to case allocations
- Support Members to deliver high quality and timely decisions, including reviewing court remittals and Member performance data, and arranging professional development or mentoring for Members who may require or seek assistance
- Provide comment and input into Member Periodic Evaluation and Development (PED) program
- Provide comment and input into any Member appraisal process
- Co-sit with, and mentor, new Members and Members starting new caseloads

- Provide a point of escalation for any Member pay-related or case weighting issues, and investigate and respond to Member complaints as required
- Work collaboratively and in partnership with Tribunal Services staff (including Registry, Early Case Assessment Registrars, MRD Caseload Strategy Executive Support Section)

Executive Members are expected to display the following competencies as outlined in the Members' Professional Development Handbook:

- Support the leadership of the Division Head, promote innovation and support a shared vision of the AAT, whilst being visible and available
- Communicate with influence, responding sensitively to and considering differing viewpoints, overcoming barriers and using communication as a tool to build collaborative working relationships
- Understand and respond positively to change, contributing constructively to change initiatives by helping others understand the benefits and challenges
- Display a high degree of self-awareness, leading by example, engaging with others in a constructive manner and displaying emotional intelligence
- Support the culture and demonstrate the values as contained in the High-Level Operating Model (HLOM)

Selection Criteria:

- Appropriate tertiary qualifications in law, or a relevant discipline, or high-level experience in a relevant field, including administrative, migration or refugee/humanitarian decision-making
- Experience in the management of statutory appointments in a court, tribunal, or decision-making body or significant experience in the context of a decision-making environment.
- Demonstrated experience in mentoring and developing Members, implementing high-level strategies in the public or private sectors and collaborating with others
- Well-developed hearing craft and case management skills and the ability to develop these in others
- Experience in working in a complex, fast paced decision-making environment.
- A track record of demonstrated leadership qualities and a preparedness to step up to challenges.

Position Description

Practice Leader:

This position supports the Division Head and has national responsibility for coordinating and managing a designated practice area to ensure high-quality and national consistency in the conduct of reviews and delivery of decisions, having regard to the objects in section 2A of the Act.

The Practice Leader will:

- Report to the Division Head or their Deputy as nominated and liaise and work collaboratively with other Practice Leaders and Executive Members
- Formulate the caseload strategy for their assigned practice area for consideration by the Division Head
- Identify significant cases, caseload trends and changes in the law impacting their practice area and formulate strategies and professional development, and provide timely communication and recommendations in relation to these matters to the Division Head or their Deputy as nominated
- Ensure that any strategies formulated are in compliance with directions made by the President or the Division Head about the conduct of reviews and the conduct of the business more generally in the Division
- Oversee national allocations in accordance with the caseload strategy for their assigned practice area in collaboration with Executive Members, Early Case Assessment Registrars and MRD Caseload Strategy Section
- Support and enhance the technical knowledge of Members working in their practice area, including through establishing communities of practice and developing suitable professional development resources
- Support and enhance the delivery of high quality and timely decision-making in the practice area by working collaboratively with Executive Members. This may include reviewing court remittals and identifying examples of high quality decisions and practices
- Identify strategies to promote consistency in decision-making, including presiding over and publishing written reasons in significant matters highlighting or determining complex or contentious issues in their practice area
- Preside over and decide cases of greater complexity or significance and support the Division Head in managing remittals from the higher courts
- Liaise with external stakeholders, including attending regular meetings with the Department of Home Affairs as required, and assist in delivering stakeholder engagement events and activities for the practice area

Practice Leaders are expected to display the following competencies as outlined in the Members' Professional Development Handbook:

- Support the leadership of the Division Head, promote innovation and support a shared vision of the AAT, whilst being visible and available
- Communicate with influence, responding sensitively to and considering differing viewpoints, overcoming barriers and using communication as a tool to build collaborative working relationships
- Understand and respond positively to change, contributing constructively to change initiatives by helping others understand the benefits and challenges
- Display a high degree of self-awareness, leading by example, engaging with others in a constructive manner and displaying emotional intelligence
- Support the culture and demonstrate the values as contained in the High-Level Operating Model (HLOM)

Selection Criteria:

- Appropriate tertiary qualifications in law, or a relevant discipline, or high-level experience in a relevant field, including administrative, migration or refugee/humanitarian decision-making
- Experience in a court, tribunal, or decision-making body or significant experience in the context of a decision-making environment.
- Demonstrated experience in mentoring and developing Members, implementing high-level strategies in the public or private sectors and collaborating with others
- Strong analytical and technical skills and experience
- Well-developed hearing craft and case management skills and the ability to develop these in others
- Experience in working in a complex, fast-paced decision-making environment.
- A track record of demonstrated leadership qualities and a preparedness to step up to challenges.