



Administrative
Appeals Tribunal

Senate Legal and Constitutional Affairs References Committee

Inquiry into the performance and integrity of Australia's administrative review system

Supplementary submission by the Administrative Appeals Tribunal

29 June 2022

Contents

Introduction	3
Issues raised in the Interim Report.....	4
AAT finalisation rates and resourcing.....	4
Further harmonisation of AAT procedures	6
Performance reporting issues	6
Access to the AAT	7
Impact of COVID-19	10
Issues relating to members	11
Conduct and conflicts of interest.....	11
Complaints process	12
Legal qualifications of members	14
Migration & Refugee Division	14
Workload, funding and member resourcing	14
Delays in case completion, case management and productivity	16
Immigration Assessment Authority.....	20
Annexure A – AAT Caseload Report (1 July 2021 to 30 April 2022)	23
Annexure B – Migration & Refugee Division benchmarks and case day weightings	24

Introduction

1. The Administrative Appeals Tribunal (AAT) presents this supplementary submission to further assist the Senate Legal and Constitutional Affairs References Committee (the Committee) with its inquiry into the performance and integrity of Australia's administrative review system.
2. The AAT's supplementary submission adds to material previously provided to the Committee which includes:
 - a. the AAT's submission dated 24 November 2021
 - b. responses to questions from the Chair of the Committee dated 1 December 2021, 8 December 2021 and 18 January 2022.
3. The Committee's interim report published on 31 March 2022 (the Interim Report) canvasses a range of issues raised in submissions to the inquiry and outlines suggestions and recommendations for improving the merits review system. This supplementary submission offers additional information relevant to a number of the issues covered in the Interim Report and in support of the following measures which the AAT believes would directly and positively impact on our ability to achieve our statutory objective to provide a mechanism of review of administrative decisions that is accessible, fair, just, economical, informal, quick, proportionate to the importance and complexity of the matter and that promotes public trust and confidence in the decision-making of the AAT.¹
 - a. Given the substantial increase in demand for our services since 1 July 2015:
 - (i) a review of the AAT's funding arrangements should be undertaken to ensure the AAT has a sustainable financial basis to carry out our work and which can adapt to changes in the volume of the caseload into the future
 - (ii) an increase in the number of members appointed to the AAT would be required to reduce the current backlog of cases, particularly in the Migration & Refugee Division, and deal with the incoming workload, including in the National Disability Insurance Scheme (NDIS) Division and Social Services & Child Support Division.
 - b. The development and implementation of a single case management solution (CMS) for the AAT is critical, and would help deliver a robust and enhanced suite of digital systems that will support a better and more efficient review process for AAT members, staff, parties and representatives as well as facilitate better and more accurate data capture and reporting.
 - c. Legislative changes in the following areas would help to promote more effective and efficient review processes and the overall management of the Tribunal:

¹ Section 2A of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

- (i) progress existing proposals to promote greater harmonisation of the legislation which governs the AAT's procedures, in particular proposals applying to the Migration & Refugee Division
 - (ii) empower the Tribunal to appoint a litigation guardian to promote access and fairness in circumstances where an applicant or other party does not have capacity to participate in the review process, and
 - (iii) establish a clearer framework for the President to deal with issues relating to the performance and conduct of members, including handling complaints about members, as a means to promote public trust and confidence in AAT decision making, and to align the AAT with similar arrangements that exist in other courts and tribunals.
4. In relation to the specific recommendations made in the Interim Report, each is a matter for Government. With respect to Recommendation 1, the AAT noted in its submission to the inquiry that it had benefitted from reports and guidance produced by the Administrative Review Council relating to standards and areas of tribunal operation.² It would support its reintroduction. With respect to Recommendation 2, the AAT supports merit-based appointments processes.

Issues raised in the Interim Report

AAT finalisation rates and resourcing

5. In the Interim Report, the Committee states that 'in order to assess the productivity of the AAT, it is necessary to consider the rates of finalisation of cases, and the time taken in which to do so'.³ The Interim Report refers to data extracted from the AAT's published caseload data reports about the timeframes for finalising cases and the proportion of applications where the decision under review changed for the period 1 July 2021 to 28 February 2022. Updated published figures for the period from 1 July 2021 to 30 April 2022 are at **Annexure A**.
6. The figures in Table 3.1 of the Interim Report and at Annexure A reflect that the time taken by the AAT to finalise applications varies considerably between divisions and for different types of cases. This is the result of a diverse range of factors which include the volume of applications received, the nature and complexity of the cases, differences in the procedures that apply to the review of decisions, the priority given to certain types of cases, and the overall level of resources available to deal with applications, particularly the number of members.
7. By way of example, the following table sets out the proportion of applications finalised within 12 months in the Freedom of Information Division, the Migration & Refugee Division and the Veterans' Appeals Division in the current and previous 2 financial years.

² AAT submission to the inquiry dated 24 November 2021 (AAT Submission), p.25.

³ Interim Report, para 3.5.

Total number of applications finalised and proportion finalised within 12 months, FOI, Migration & Refugee and Veterans' Appeals Divisions, 2019–20 to 2021–22 to 30 April 2022

	FOI Division		Migration & Refugee Division		Veterans' Appeals Division	
	Number	Proportion	Number	Proportion	Number	Proportion
2019–20	62	34%	26,402	28%	287	52%
2020–21	47	60%	23,246	20%	210	57%
2021–22 to 30 April 2022	61	46%	17,012	22%	171	56%

8. The Freedom of Information Division deals with the review of decisions made under the *Freedom of Information Act 1982*, the *Archives Act 1983* (except for those in respect of access to a record of the Australian Security Intelligence Organisation which are dealt with in the Security Division) and the *Privacy Act 1988*. The caseload overall is relatively small compared to other divisions but the number and complexity of the cases varies. As a result, figures for the percentage of FOI cases finalised within 12 months tend to fluctuate from year to year.
9. The Veterans' Appeals Division has a somewhat larger but still modest caseload with the number of applications decreasing over time. The time it takes to finalise a case in the Veterans' Appeals Division can often be impacted by the need to obtain further evidence, particularly medical evidence. The process of obtaining additional medical evidence, especially independent specialist medical examinations, can significantly delay matters where appointments are unavailable for weeks or months. This situation was further exacerbated in recent years by the impact of the COVID-19 pandemic on the availability of medical and other health experts. The proportion of cases finalised within 12 months in the Veterans' Appeals Division has remained relatively steady, taking into account the contributors to case complexity outlined above apply to many cases in this Division.
10. The longer time taken to finalise cases in these particular caseloads does not relate to a lack of members able to deal with the cases but primarily to other factors. This can be contrasted with the low proportion of cases finalised within 12 months in the Migration & Refugee Division. While there can be delays in progressing cases while awaiting further information (e.g. an independent expert's report on family violence in a partner visa case or country information from an overseas post in a refugee case), the delays in finalisations are primarily related to the number of members available to deal with applications to this Division following the significant increase in its workload after 1 July 2015. Further information relating to this issue which supports the appointment of additional members is set out in paragraphs 60 to 67 of this submission.

Further harmonisation of AAT procedures

11. The Interim Report refers to the statutory review of the AAT undertaken by the Hon Ian Callinan AC QC in 2018 (Callinan Report) which included recommendations for legislative reform to the AAT's procedures.⁴ The AAT's submission to the inquiry refers to our efforts to progress legislative reforms to reduce areas of unnecessary difference in the legislation governing the AAT's procedures and make available a more consistent set of case management powers and procedures across our divisions.⁵ Having different procedural regimes operating in different divisions of the AAT has an impact on the way the Tribunal functions as a whole and the strategies we can employ to implement more effective and efficient review processes.
12. The *Courts and Tribunals Legislation Amendment (2021 Measures No.1) Act 2022* received Royal Assent on 17 February 2022. The Act amended the *Administrative Appeals Tribunal Act 1975* (AAT Act) and other laws to improve the AAT's operations and clarify aspects of the AAT's procedures. The key changes aimed at harmonising aspects of the AAT procedures were:
 - enabling the Social Services & Child Support Division to hold conferences during a review which will be of particular value in the AAT's child support jurisdiction
 - standardising with other divisions the powers the Social Services & Child Support Division uses to require parties to lodge documents or information or to summon a person to give evidence or produce documents for the purposes of a review.
13. This Act was a welcome 'first step' on the pathway to further procedural harmonisation for the AAT but it did not address the improvement and harmonisation of procedures within the Migration & Refugee Division. Given the challenges faced by the large backlog of cases, the AAT considers legislative change relating to this Division to be an area requiring priority attention. For example, unlike the AAT's other divisions, the Migration & Refugee Division and the applicant do not receive from the Department of Home Affairs an ordered and paginated set of the documents that are relevant to the review. Nor is the Division able to give directions requiring parties to lodge information and submissions, nor to take action to address non-compliance with such directions. Additional information on the impact of this constraint is outlined in paragraph 72 of this submission.

Performance reporting issues

14. In the Interim Report, the Committee noted the concerns that have been expressed about the quality of information made available by the AAT about the performance of members in response to earlier parliamentary questions as well as information provided by the AAT about how we seek to improve that information.⁶

⁴ Interim Report, paras 1.37–1.40. The Callinan Report refers to recommendations made in the 2017 report of a review of options to harmonise AAT procedures conducted by Andrew Metcalfe AO.

⁵ AAT Submission, p.18.

⁶ Interim Report, paras 3.45–3.48.

15. The AAT has faced a number of challenges in collating and presenting performance information about member work activity, including the variability in how members work on cases across and within divisions, the maturity of the systems developed for measuring member workload which vary between divisions, with more comprehensive information available in the Migration & Refugee Division, and the Tribunal's continuing reliance on inherited and ageing legacy electronic case management systems and related systems that are now many years past their end of life and no longer supported by vendors. As the AAT has previously noted⁷, interoperability between the systems is extremely limited and their scope differs resulting in challenges to extracting and comparing data.
16. The AAT has prioritised the development of a suite of digital channels and systems that support more accessible and efficient services for internal and external users and better capture of data and information. Critical to this is progressing the multi-year program to deliver a new single case management solution (CMS).
17. We anticipate a single CMS will deliver a number of benefits including improved interactions for external users, enhanced AAT productivity, and provision of better data for the monitoring and improvement of performance based on further work to be undertaken in relation to measuring member workload.
18. The AAT has been unable to secure program funding for this initiative and has, to date, absorbed all costs related to the program. Presently, work is focussed on completing a proof of concept and commencing a pilot while continuing to seek longer-term funding.
19. Within the constraints of our systems, the AAT has provided the Committee with detailed information, including contextual information, about the work activity of the members in the context of this inquiry. The AAT has collated detailed information about remuneration and work activity for each member disaggregated by year and Division.⁸ The AAT notes that this endeavour proved resource intensive for both members and staff to review, validate and manually adjust data drawn from multiple sources. Securing the CMS for the AAT would greatly enhance our capability to prepare and provide statistical information for future reporting purposes.

Access to the AAT

20. The Interim Report refers to a number of submissions which raised concerns about the ability of parties to obtain representation, as well as funding for and provision of legal services for parties in the AAT.⁹
21. Parties to a review may deal with the AAT directly or have another person represent them and act on their behalf. Depending on the type of case, representatives who appear before the AAT include lawyers, accountants, disability advocates, migration agents, tax agents, veterans' advocates and welfare advocates. Parties may also be

⁷ AAT Submission, p.17.

⁸ [Answers to written questions placed on notice by Senator the Hon Kim Carr to the Administrative Appeals Tribunal, 1 December 2021 and received 14 January and 11 February 2022.](#)

⁹ Interim Report, paras 3.49, 3.52-3.57.

assisted by a family member or, in divisions other than the Migration & Refugee Division, by a friend. The levels and types of representation vary for different types of cases. Statistics about the representation of parties across all Divisions are published on our website.¹⁰

22. In relation to the hearing in a review, a party appearing before the AAT is entitled to be represented in most divisions.¹¹ Certain limitations apply to representation and assistance at hearings in the Migration & Refugee Division and the Social Services & Child Support Division.
23. In reviews in the Migration & Refugee Division under Part 5 of the *Migration Act 1958* an applicant may have another person present at a hearing to assist them. The assistance is limited and does not include presenting arguments on behalf of the applicant or addressing the Tribunal, unless the Tribunal is satisfied that due to exceptional circumstances the assistant should be allowed to do so.¹² For proceedings under Part 7 of the Migration Act, while the Act specifies that a person appearing before the Tribunal to give evidence, including the applicant, is not entitled to be represented¹³, the applicant's representative will generally be allowed to be present and take some part in the hearing to ensure the Tribunal meets its obligation to provide a fair hearing.
24. In the Social Services & Child Support Division, applicants and other non-agency parties may be represented at a hearing with the Tribunal's permission.¹⁴
25. The AAT actively engages with the bar, legal aid commissions, community legal centres, professional bodies, universities and other organisations to facilitate opportunities for parties to access legal advice, representation and/or other assistance. The AAT:
 - refers parties to legal aid commissions, community legal centres, other professional bodies and universities who provide legal advice and other services in relation to particular types of cases, and
 - provides information about how parties can find a private lawyer, migration agent, tax agent or other person who may be able to provide advice, representation or support.
26. The Tribunal and the parties are assisted by representatives who provide capable representation. However, the AAT's processes are also intended to be informal and encourage meaningful participation regardless of whether or not parties are represented.¹⁵ To support parties who are self-represented, the AAT provides:
 - information on the AAT's website presented in plain English about services and processes, including information videos and information translated into key languages

¹⁰ [Additional AAT caseload statistics 2020–21.](#)

¹¹ Section 32(1) of the AAT Act.

¹² Section 366A of the *Migration Act 1958*.

¹³ Section 427(6)(a) of the Migration Act.

¹⁴ Section 32(2) of the AAT Act.

¹⁵ Subsection 33(1)(b) of the AAT Act.

- outreach in certain types of cases where staff contact applicants to explain the review process
 - conferencing processes in many types of cases in which the AAT and the parties are able to discuss the decision under review, define the issues in dispute and identify any further evidence that will be gathered.
27. Information about the kinds of assistance made available to fast track applicants in the Immigration Assessment Authority (IAA) is set out in paragraphs 89 to 91 of this submission.
28. The Interim Report noted the submission from Legal Aid NSW which raised concern about circumstances where an applicant before the AAT may lack capacity to understand the nature of the proceedings or issue competent instructions about how to proceed and urging consideration of a power for the AAT power to appoint a litigation guardian.¹⁶
29. The AAT does not have any specific power in the AAT Act or any other Act to appoint a litigation guardian or separate representative for an applicant or other party in these circumstances. The Federal Court has recognised that where applicants do not have capacity to participate fully in proceedings, this may amount to a denial of procedural fairness.¹⁷
30. The lack of power to appoint a separate representative or litigation guardian differs from arrangements that exist in other courts and tribunals. For example:
- The Federal Circuit and Family Court of Australia rules provide for appointment of a litigation guardian: an adult with no interest in the proceeding adverse to the interest of the person needing the guardian.¹⁸ The Court may appoint a guardian at the request of a party, or of its own motion. Where an appropriate person cannot be identified, the Court may request that the Attorney-General appoint a manager of the affairs of a party who becomes the litigation guardian.
 - The *Civil and Administrative Tribunal Act 2013* (NSW) confers on the NSW Civil and Administrative Tribunal power to appoint a person to act as a guardian ad litem (GAL) for a party, including a child if the proceedings directly or significantly affect a child.¹⁹ If the Tribunal does not identify an appropriate person to appoint, the appointment will be made from a panel of eligible GALs administered by the NSW Department of Communities and Justice for participating courts and tribunals in NSW.²⁰
31. The AAT supports exploring options for changes that will enhance the accessibility, fairness and justice of the merits review process for all users, consistent with our objectives. The AAT will engage further with government about legislative reform in this area.

¹⁶ Interim Report, paras 3.50–3.51.

¹⁷ *Karan v Minister for Home Affairs* [2019] FCA 478 at [28].

¹⁸ *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*, Division 11.2.

¹⁹ *Civil and Administrative Tribunal Act 2013* (NSW), ss 45(4)(a) and (4A)(a).

²⁰ More information about the guardian ad litem scheme in NSW can be found on the NSW Department of Communities and Justice [website](#) (accessed 17 June 2022).

Impact of COVID-19

32. In the Interim Report, the Committee noted the impact of COVID-19 and concerns raised in submissions about the AAT's approach to delivering services and ensuring ongoing productivity and access for users.²¹
33. In the early stages of the pandemic, the AAT limited the provision of in-person services from AAT premises to protect the health and safety of Tribunal users, members and staff, others involved in review processes and the wider public. The AAT's plans for moving to a more modern operating environment were accelerated to support home-based work. The AAT supplemented our capability to conduct alternative dispute resolution processes and hearings by telephone and web-based videoconferencing.
34. The AAT also took steps to enhance our electronic systems supporting all parts of the review process. The secure online document upload service was modified to allow for the lodgement of all types of documents, including documents relevant to a review that agencies and other decision-makers must lodge with the Tribunal, as well as documents required to be produced under summons. The AAT's new unified online services portal went live in 2020–21, extending the functionality offered to users to include the ability to create an account and review the details of applications they have made and documents they have lodged at any time.
35. To support the implementation of new procedures in response to COVID-19, the then President issued 5 special measures practice directions. While the practice directions facilitated the move to conducting reviews electronically as far as possible, the AAT also engaged with parties and representatives about how cases could progress, particularly those requiring urgent determination or involving vulnerable parties, and provided information and support for the conduct of case events remotely. Where the option for hearing by telephone or video was not suitable, cases were deferred until an in-person hearing could occur.
36. Despite the challenges presented by the pandemic, the AAT was able to continue delivering services and responded to the circumstances.
37. For example, from 1 April 2020, every application for review of an NDIS decision was centrally reviewed within 2 working days of receipt to ensure all urgent matters were identified, including those in which the applicant was vulnerable due to the impact of COVID-19. The triage process included detailed outreach, earlier than usual directions hearings and urgent conferences to facilitate discussions and evidence gathering. If it appeared necessary from the application and any accompanying documentation or as a result of outreach, an applicant would be provided with a directions hearing or case conference within a week of making the application thus enabling urgent matters to be brought to the attention of the National Disability Insurance Agency and dealt with very quickly. This process has been refined since its inception and continues to be critical in responding to the NDIS Division caseload.

²¹ Interim Report, paras 3.58-3.60.

38. The AAT pivoted to new arrangements and, particularly by virtue of triaging practices across divisions, finalised a higher volume of cases in 2019–20 than in 2018–19. For example, the Migration & Refugee Division which had generally relied on in-person hearings and hard copy files rapidly changed its practices in the first half of 2020. The Division digitised its files, trained and facilitated members and staff to work remotely and carefully triaged cases that could be expedited and progressed in the changed circumstances.
39. The Division has actively triaged cases to identify those cases that could be finalised favourably without a hearing or were able to proceed with a remote hearing. Cases relating to bridging visas, business and skilled visas, student visas and visitor visas have primarily been able to proceed in this way. More cases have been finalised in the business/work and student caseloads in 2020–21 and 2021–22 than in any previous financial year.
40. Cases in the partner/family and protection caseload were more significantly impacted by the pandemic as a significant proportion of these cases were not suitable for remote hearings. To address this, the Division actively triaged and case managed cases to identify those cases that could be finalised favourably without a hearing or were otherwise able to proceed remotely. As restrictions eased, the Division implemented strategies to increase the number of in-person hearings in these and other caseloads.

Issues relating to members

Conduct and conflicts of interest

41. The Interim Report refers to information provided by the AAT about further steps being taken to raise and reinforce members' awareness and understanding of their professional obligations and to improve the identification of potential conflicts of interest.²²
42. As flagged by the AAT in its initial submission²³, the Attorney-General's Department has initiated processes to facilitate providing the AAT with notice of any interests declared by a member as part of the appointment process with the consent of the member. The AAT began receiving the Private Interests Declarations in relation to appointments commencing in 2022.
43. The Private Interests Declaration includes questions relating to:
 - whether the member or their immediate family have any financial interest in any company or business, or are employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which they may be appointed
 - whether the member is a lobbyist registered on the Australian Government Register of Lobbyists or the register of a state or territory.

²² Interim Report, paras 4.63–4.66.

²³ AAT Submission, p.21.

44. The information in the Declaration and the member's curriculum vitae offer the opportunity for the AAT to raise any potential areas of concern with the member.
45. The AAT also noted in its initial submission that it would introduce its own declaration process for new members and an annual declaration process for existing members.²⁴ Through these processes, members will be reminded of their obligations, including when to seek approval for outside employment and to disclose information about potential conflicts of interest in individual cases, and asked to declare they have met their obligations under the AAT Act. As at the date of this submission, a guideline and declaration forms to support the policy have been prepared and are awaiting final approval prior to implementation, and it will be managed within the President's office.

Complaints process

46. The Interim Report refers to submissions²⁵ which raised concerns about how the AAT handles complaints relating to members, particularly members assigned to the Migration & Refugee Division, including that complaint responses 'invariably do not address the substance of the complaints or deal meaningfully with complaints to create change', that the AAT 'is a consequence-free environment for members' and that 'members are seldom removed from cases if a complaint has been made'.
47. The AAT treats all complaints made to it about member conduct seriously. They are assessed and investigated unless they do not raise an issue of substance warranting investigation, noting also that if a complaint is about a substantive decision made by a member, the appropriate course is to appeal the decision to a court.²⁶ Responses to complaints will generally outline how the complaint was investigated, what was found, including whether the complaint was found to be substantiated in whole or in part, and, if appropriate, what action the AAT is taking in response. Where it is considered that the complaint has raised justified concerns about a member's conduct or a member could otherwise have acted more appropriately, the matter is discussed with the member. Members may be counselled or provided with particular professional development. If the issue is of broader application, training on the matter may be incorporated into member professional development programs.
48. The AAT must take particular care when handling a complaint about a member dealing with a case yet to be finalised so as not to interfere with the member's independence. An assessment is made as to whether a complaint should be brought to the member's attention or the investigation deferred until the case is finalised.
49. In general, if a party has concerns about actual or apprehended bias on the part of the member, the appropriate course is to make a request to the member to recuse themselves. If the member declines, it is open to the party to make a request to the President seeking that the case be reconstituted to a different member.

²⁴ AAT Submission, p.21.

²⁵ Interm Report, paras 3.61–3.67.

²⁶ For example, complaints concerning substantive decision outcomes comprised 20% of all complaints in 2018–19 and 2019–20 and 27% of all complaints in 2020–21.

50. While the AAT Act²⁷ allows the President or the President's delegate to reconstitute a case to a different member at any time before the hearing of a proceeding commences, for the reason noted above such a decision must be carefully considered. Where a hearing has already commenced, the circumstances in which the President may reconstitute a case to a different member are significantly constrained to where:
- the original member stops being a member, is for any reason unavailable, or is directed by the President not to take part in the proceeding, or
 - the President considers reconstituting the proceeding to another member is in the interests of achieving the expeditious and efficient conduct of the proceeding.²⁸
51. In short, a member cannot simply be removed from a case if a complaint has been made. As former AAT President, the Hon Justice Duncan Kerr, observed, 'Member's independence is a core pillar in the architecture of the AAT' and a 'restrained approach' to the power to reconstitute the Tribunal after a hearing has commenced is required.²⁹
52. The AAT Act³⁰ does not currently confer on the President any specific powers to deal with issues relating to the conduct and performance of members, including setting appropriate standards or handling complaints. The AAT's Conduct Guide for AAT Members does not have any legislative basis nor does the AAT Act provide that the President may take any particular actions in relation to an AAT member. Subsection 13(1) of the AAT Act sets out limited grounds for the termination of a member, including for 'proved misbehaviour', if an address praying for the termination is presented to the Governor-General by each House of the Parliament in the same session.
53. This can be contrasted with the governing legislation for other tribunals which provide a clearer framework for the President to deal with matters of this kind.
54. For example, the *Fair Work Act 2009* (Cth) confers the following powers on the President of the Fair Work Commission:
- to deal with complaints about members
 - to take any measures that the President believes are reasonably necessary to maintain public confidence in the Commission, including temporarily restricting the duties of a member
 - to determine a code of conduct for members
 - to give a direction of a general nature, or that relates to a particular matter (other than a decision), to a member or members and with which a member is required to comply.³¹

²⁷ Subsection 19D(1) of the AAT Act.

²⁸ Subsection 19D(2) of the AAT Act.

²⁹ *1419015* (Practice and Procedure) [2016] AATA 3075 at [32] and [36].

³⁰ Subsection 18B(1) of the AAT Act.

³¹ Sections 581A, 581B and 582 of the *Fair Work Act 2009* (Cth).

55. The *Civil and Administrative Tribunal Act 2013* (NSW) provides that one of the functions of the President is to manage members, including by developing codes of conduct for members and undertaking performance management for members (whether by means of agreement with members, reviews or otherwise).³²
56. The AAT believes there would be value in strengthening the legislative framework to set out clearer powers in relation to the conduct and performance of members and the handling of complaints about members.

Legal qualifications of members

57. In the Interim Report, the Committee noted the observations of the Callinan Report and the varying views expressed in submissions to the inquiry in relation to whether AAT members should be required to hold legal qualifications.³³
58. The AAT believes it is critical to have suitably experienced legally qualified members within its cohort of members, particularly to deal with the more complex areas of work. However, the AAT does not consider it is essential that all members have legal qualifications. Non-legal members have demonstrated over time the capacity to conduct high-quality merits review. The AAT and its users have benefitted from having a range of expertise available in the membership, particularly among part-time members. Given the Tribunal's diverse jurisdiction, one of the AAT's strengths over time has been the ability to constitute Tribunals that include members with relevant specialist expertise such as accounting, disability, engineering, medical, military, public administration, science and social work.
59. The President's Direction for [Constituting the Tribunal](#) outlines the many relevant considerations to be taken into account when constituting the Tribunal for the purposes of a proceeding, including for proceedings that have been remitted to the Tribunal from a court.³⁴ Considerations taken into account include factors relating to the complexity and significance of the proceeding as well as the need for specialist knowledge, expertise or experience.

Migration & Refugee Division³⁵

Workload, funding and member resourcing

60. In Chapter 5 of the Interim Report, the Committee refers to evidence from the AAT and other submitters about the increase in the Migration & Refugee Division's caseload, rates of case finalisation and resourcing needs to manage its workload.³⁶
61. In the period between 1 July 2015 and 30 April 2022, the Migration & Refugee Division received 183,385 applications for review and finalised 140,531 applications. It had 56,860 active cases on hand at 30 April 2022.

³² Subparagraphs 20(1)(d)(i) and (iii) of the *Civil and Administrative Tribunal Act 2013* (NSW).

³³ Interim Report, paras 4.72–4.90.

³⁴ President's Direction, *Constituting the Tribunal*, dated 14 July 2015, pp. 5–7.

³⁵ The AAT has been assisted by Deputy President Jan Redfern PSM, Division Head of the Migration & Refugee Division, in the preparation of this section.

³⁶ See also AAT Submission, pp.12 and 18–19.

62. The volume of applications lodged is dependent on the decisions made by the Department of Home Affairs. While the former Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT) experienced a steady increase in applications between 2010 and 2014, applications for review appeared to stabilise by the end of 2014–15 when the MRT and RRT received 18,534 applications for review. The following table sets out key caseload figures for the Division since the MRT and RRT amalgamated with the AAT on 1 July 2015 until 30 April 2022 as well as information about the level of base funding and the number of full-time member equivalent (FTE) members available to undertake work in the Division.

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22*	Total*
Lodgements	18,929	26,604	37,933	36,172	29,981	15,972	17,794	183,385
Base funding	18,000	18,000	18,000	18,000	18,000	18,000	16,667**	n/a
Difference	929	8,604	19,933	18,172	11,981	- 2,028	1,127	58,718
Finalisations	16,111	18,908	17,960	20,892	26,402	23,246	17,012	140,531
Active cases	16,764	24,462	44,436	59,718	63,305	56,036	56,860	n/a
Member FTE	80	91	75	87	109	102	91	n/a

* as at 30 April 2022

** this figure is pro rata based on a funding figure of 20,000 finalisations over the full 21-22 FY

63. Lodgements doubled in the period between 1 July 2017 to 30 June 2019. While there was a significant reduction in lodgements in 2020–21 due to the pandemic and border closures, applications for review appear to have increased on a pro-rata basis in 2021–22 and it is anticipated this will continue in 2022–23. The table reflects that finalisations have not kept pace with the volume of applications lodged in the period since amalgamation resulting in the Division's significant backlog.
64. The model for funding cases in the Migration & Refugee Division is based on the number of finalised cases, with base funding for the finalisation of 18,000 applications allocated at the time of the Budget. The model provides for additional or reduced funding which accrues in the following year depending on the actual number of cases finalised at the end of each financial year.
65. For the current and next 3 financial years, the AAT is receiving increased funding at the time of the Budget based on 20,000 case finalisations occurring in the Migration & Refugee Division. The AAT has been allocated \$18.8m, across a 4-year period from 2021–22, which was calculated by increasing baseline funding by 2,000 additional cases per year, effectively taking upfront funding from 18,000 finalisations to 20,000 finalisations. Based on an expectation that the Migration & Refugee Division would continue to finalise in excess of 20,000 cases regardless, the change to the appropriation reflects a timing difference as to when the AAT is appropriated the funds, rather than additional resourcing.
66. The Member FTE figures illustrate that the number of members available to undertake work in the Migration & Refugee Division has been largely aligned with existing base funding rather than the actual workload of the AAT's largest division. The table shows that the current backlog is roughly equivalent to the difference between actual lodgements and the number of finalisations associated with the base funding and that finalisations have been significantly impacted by member resources. Appointments have not kept pace with the volume of applications lodged since amalgamation.

67. While a review of the AAT's funding arrangements may assist the Migration & Refugee Division to better align funding with changes in the volume of cases, the capacity to increase the rate of case finalisations to deal with the backlog and the ongoing workload is primarily dependent on the appointment of additional members who are able to undertake a diverse range of merits review cases. Most cases in the Migration & Refugee Division can only be resolved with member involvement and there is limited scope for further substantial increases in productivity within the current procedural settings.

Delays in case completion, case management and productivity

68. The Interim Report refers to the long delays in finalising applications in the Migration & Refugee Division that have resulted from the growing backlog and their negative effects.³⁷ Delays cause anxiety and uncertainty for applicants and have adverse impacts for other Australian citizens, permanent residents and business. They also add to the complexity and cost of the review process and have the potential to create an incentive for unmeritorious applications to be lodged, including to appeal courts, if it is perceived there is a benefit in a prolonged review process. There is a suggestion that the framework for considering cases in the Division and case management processes are not effective.³⁸
69. For many years, the Division and its predecessor tribunals have monitored performance against annual targets or benchmarks which provide information to assist with planning, resource allocation and assessment of individual member productivity. The Migration & Refugee Division monitors and collects detailed information about its caseload and case finalisations, and has developed sophisticated reporting systems and procedures, including to implement and report on case management strategies.
70. The Division has developed a caseload strategy each year to determine a coherent and considered approach to dealing with the backlog and the incoming workload, based on the available resources, identified priorities and the need to take a balanced approach across caseloads. The caseload strategy articulates the strategies that have been identified by the divisional leadership over time for the improved management of cases, such as case profiling and triaging, outreach, targeted requests for information, duty member rosters and multi-applicant hearing lists. The strategy adopts an integrated approach between the various caseloads and resources.
71. This has largely been successful, with the Division exceeding benchmarks based on its base funding for 5 of the past 7 years since amalgamation. The average number of cases finalised for 2020–21 was 228 for each full-time equivalent member, of which 174 were finalised through a substantive decision. The Migration & Refugee Division finalised more applications relating to business/work, partner, protection and student visas in the past 6 years than in the 6 years prior to amalgamation.³⁹ Given the complexity and age of much of the caseload, this is an indication of the overall

³⁷ Interim Report, paras 5.20–5.29.

³⁸ Interim Report, paras 5.23 and 7.15.

³⁹ See also AAT Submission, p.12.

productivity of the Migration & Refugee Division. While the number of members working in the Division has increased since 2018–19, the increase is modest. The Division has also lost a number of experienced members. The lack of members is the key reason for the growing backlog, which has resulted in low clearance rates and delay.

72. Another factor is that the ability of the Division to undertake effective case management has been constrained by the legislative framework. Unlike the AAT's other divisions, members in the Migration & Refugee Division are not empowered to hold directions hearings or make enforceable directions, including to require all relevant information from the parties to be provided in advance of hearing. Members are often provided with evidence and submissions shortly before a hearing that is incomplete or has not been collated, indexed, appropriately translated or explained. This can result in delays for hearing and finalisation of cases.
73. The Division's focus on enhancing case management has contributed to an increase in the number of applications that could be finalised with the available resources, particularly during the COVID-19 pandemic. In its submission, the United Nations High Commissioner for Refugees acknowledged the efforts by the AAT to provide high-quality merits review and continuing efforts to address the backlog of unresolved refugee cases⁴⁰. The Division has tailored case management resources, case allocations and professional development to assist members to finalise cases.⁴¹ The AAT accepts, however, that improvements in case management and the development of innovative practices is an ongoing and dynamic process that must take into account changes in circumstances. Continued engagement is required with representatives in relation to their development and implementation.
74. The Interim Report refers to submissions⁴² which raised concerns about variability between members in the Migration & Refugee Division in relation to their productivity and timeliness. The assessment of member productivity appeared to be based on the number of finalised cases recorded for members.
75. **A comparison of the productivity of members cannot be based solely on the number of cases finalised.** Data about the number of cases finalised, if considered in isolation, may be a misleading indicator of productivity and performance. Other factors must be taken into account, particularly the level of complexity of cases and a member's availability over the period in question.⁴³ Benchmarks provide a more useful measure of productivity as they are applied across the membership and take into account the range of factors relevant to work effort.

⁴⁰ United Nations High Commissioner for Refugees, Submission 17, p.1.

⁴¹ For example, focus groups and training on particular caseloads and issues, enhanced triage and country information, and mentoring and other professional development directed to tribunal craft.

⁴² Interim Report, paras 5.48-5.52.

⁴³ More information about the range of relevant factors is set out in the [Answers to written questions placed on notice by Senator the Hon Kim Carr to the Administrative Appeals Tribunal, 1 December 2021 and received on 14 January and 11 February 2022, pp. 6–8.](#)

76. Under the Migration & Refugee Division's model, members who predominantly do more complex cases can meet their benchmark by finalising significantly fewer cases than other members who have been allocated less complex cases. More complex cases are attributed a higher case weighting. Cases which require minimal work or consideration such as those where the application is withdrawn or the Tribunal finds it does not have jurisdiction, are generally not given an individual case weighting and are referred to a roster for finalisation. Members receive a benchmark discount for the number of days presiding on the roster.
77. It is noted in the Interim Report that, 'depending on the weighting and the time allocated for cases, the benchmarks for members will vary'.⁴⁴ This is not the case. Benchmarks are calculated consistently across the membership and do not vary depending on weighting and time allocated for cases but rather on the number of case days a member is available or has been approved to undertake.
78. The Interim Report also noted concerns raised about the benchmarking model being 'fundamentally flawed'.⁴⁵ Benchmarks, previously known as targets, have a long history in the Migration & Refugee Division and its predecessor tribunals.⁴⁶ Member performance targets were the subject of review as part of an audit by the Australian National Audit Office in 2007.⁴⁷ The Division has continued to refine its benchmarks and the case days weighting model as a tool for helping to manage the work of the Division. The system is regularly reviewed by the divisional leadership team. The Division Head of the Migration & Refugee Division is satisfied they form a sound basis for caseload planning purposes as well as one of the indicators of member performance.
79. The performance of members in the Migration & Refugee Division is also assessed by reference to a range of other matters, including:
- complexity and diversity of the member's caseload
 - timeliness of reviews
 - quality of decision-making
 - number and outcome of appeals and judicial review applications, and
 - the contribution the member makes towards the management of the Division, projects and professional development.
80. Additional information about benchmarks, case allocation and case weighting in the Migration & Refugee Division is provided in **Annexure B**.

⁴⁴ Interim Report, para 3.40.

⁴⁵ Interim Report, para 3.46.

⁴⁶ There are references to finalisation targets in annual reports for the Migration Review Tribunal in 1997–98 and Refugee Review Tribunal in 1998–99.

⁴⁷ In 2007, the Australian National Audit Office undertook a review of the performance of the former MRT and RRT, including member performance targets, which operate on similar principles to the current benchmarks. The report was published on 17 June 2007: [Management of Tribunal Operations-Migration Review Tribunal and Refugee Review Tribunal \(accessed 29 June 2022\)](#).

Consistency in decision-making

81. The Interim Report refers to submissions to the inquiry which raise concerns about consistency of decision-making within the Migration & Refugee Division.⁴⁸ There is reference to data showing differences between members in relation to the outcomes of refugee cases.
82. Comparisons of outcome patterns for different members must be approached with caution given the complexity of the variables which inform the outcome of reviews. Some caseloads have a higher affirm or set aside rate because of factors relevant to the caseload, including for example the circumstances in a particular country of origin in refugee cases, or the law relating to the caseload. There can also be variations in the types of cases in a particular caseload allocated to different members and, ultimately, each application must be considered on its individual circumstances based on the material that has been provided to the Tribunal in that case. Careful and detailed analysis is required to account for the variables.
83. Analysis of applications finalised over the past 5 years shows that the outcomes of reviews in the Migration & Refugee Division have remained consistent overall. The proportion of cases in which the decision was affirmed has remained constant, averaging approximately 45%. The set-aside rate has also remained constant at an average of 27%. Other caseload outcomes such as withdrawals or a finding there is no jurisdiction average at 28%.
84. The rates at which applicants appeal decisions of the Migration & Refugee Division to the courts are higher than in other divisions. From 2015–16 to 2020–21, the percentage of decisions appealed where the Migration & Refugee Division has affirmed the decision under review has been between 44% and 63% in relation to refugee cases and 30% and 42% in relation to migration cases. The Minister rarely appeals decisions where the decision under review has been set aside. The remittal rate, where decisions of the Migration & Refugee Division have been overturned by the federal courts, has consistently been within the AAT's overall target that the Tribunal's decision should be set aside in fewer than 5% of all decisions made that could be appealed. In 2021–22 it was 1.9%.

Volume of decisions published

85. A submission to the inquiry focusing on the Migration & Refugee Division suggested that the AAT now publishes very few decisions.⁴⁹ In our submission, the AAT provided the Committee with information about our Publication of Decisions Policy and referred to publication of decisions as a performance measure the AAT reports on annually.⁵⁰ Subject to confidentiality requirements, the AAT publishes all written decisions in several case categories for the Migration & Refugee Division and a randomly selected proportion of decisions in higher volume categories of cases. The Division also identifies for publication other written decisions that may be of particular interest.

⁴⁸ Interim Report, paras 5.53–5.55.

⁴⁹ Heather Marr, Submission 22, p.2.

⁵⁰ AAT Submission, p.9 and p.14.

86. The AAT is one of the highest volume publishers of decisions among Australian courts and tribunals, and routinely exceeds its target for the number of decisions published each year. As reflected in the table below, decisions of the Migration & Refugee Division have consistently reflected a significant proportion of the total number of AAT decisions published.

Number of Migration & Refugee Division decisions and total number of AAT decisions published, 2018–19 to 2020–21

2018–19		2019–20		2020–21	
MRD	AAT	MRD	AAT	MRD	AAT
4,367	5,905	4,482	6,113	4,021	5,745

Immigration Assessment Authority⁵¹

87. The Interim Report refers to a number of submissions to the inquiry which express concerns about the procedural framework of the IAA and, in particular, the lack of a right to an oral hearing and restrictions on the consideration of new information.⁵²
88. The IAA is an independent authority within the Migration & Refugee Division of the AAT and undertakes a de novo review of the merits of fast track reviewable decisions refusing a protection visa on the basis of the material before it. The IAA is required to conduct reviews in accordance with the provisions of Part 7AA of the *Migration Act 1958*. Applicants may submit further evidence or submissions to the IAA and the IAA has the power to get, request and accept new information, including by way of interview. However, the IAA can only consider any new information if it meets the statutory requirements, including that there are exceptional circumstances to justify considering the information. As at 30 April 2022, new information and submissions were received from applicants in 73% of all IAA cases determined. In 47% of finalised cases, new information obtained or received (either from the applicants or otherwise independently by the IAA) was considered in deciding the review.
89. The submission from the Law Council of Australia states that the experience of practitioners who engage with the IAA is that the fast track process is difficult to navigate for unrepresented applicants.⁵³
90. The IAA takes steps to ensure applicants understand the review process. It provides information on its website at www.iaa.gov.au about the steps in a review and how to communicate with the IAA which is provided in English and in relevant community languages. Applicants are provided with information about the review process shortly after referral of a matter to the IAA. A fact sheet describing the process is sent to each applicant and, in almost all cases, is accompanied by a translation of the fact sheet in the applicant's nominated language. All applicants are offered the services of an interpreter if they telephone the IAA directly or participate in an interview conducted by the IAA.

⁵¹ The AAT has been assisted by Senior Reviewer Sobet Haddad in the preparation of this section.

⁵² Interim Report, paras 5.65–5.86.

⁵³ Interim Report, para 5.76.

91. The IAA website provides information on organisations who can assist applicants to find a migration agent or lawyer.
92. The Interim Report refers to submissions raising concerns about the independence of the reviewers as they are engaged as public servants and are not required to have legal qualifications.⁵⁴
93. As required by Part 7AA of the *Migration Act 1958*, reviewers are engaged under and in accordance with the requirements of the *Public Service Act 1999*. This follows a publicly advertised merit selection process in which candidates are assessed against specified selection criteria. No specific academic qualifications are required for the role, but relevant tertiary qualifications are specified as highly regarded. The selection criteria for an IAA reviewer include, amongst others:
- a sound understanding, or an ability to acquire in a short period a sound understanding, of the principles of administrative law concerning refugee decision-making
 - a strong sense of fairness and an ability to exercise impartial judgement, and
 - an ability to make lawful, high quality protection visa decisions in a timely manner.
94. As public servants, IAA reviewers are bound by the Australian Public Service (APS) Code of Conduct and are at all times required to uphold the APS Values, including being apolitical, objective and professional. In addition to the requirements of the *Public Service Act 1999*, section 473FA of the *Migration Act 1958* requires that the IAA must conduct reviews that are free of bias.
95. The Interim Report refers to submissions that suggest the IAA fast track process has resulted in a significant increase in applications for judicial review to the courts.⁵⁵ The Interim Report also refers to a figure that 37% of appeals have succeeded.⁵⁶
96. These statements do not appear to be consistent with records held by the IAA and the AAT. While the overall number of applications for judicial review of refugee decision-making may have increased because of increased levels of decision-making, the rate of unsuccessful applicants who are unauthorised maritime arrivals seeking judicial review has been marginally lower for the IAA than for the Migration & Refugee Division of the AAT. For the period 1 July 2015 to 30 April 2022:
- 88.9% of unfavourable IAA decisions were appealed
 - 95.0% of unfavourable Migration & Refugee Division decisions relating to unauthorised maritime arrivals were appealed.
97. For the period 1 July 2015 to 30 April 2022, 881 cases (representing 8.7% of IAA decisions) were remitted to the IAA by the courts, for reconsideration of the decision made. A further 242 IAA decisions were set aside by the courts (but not remitted for reconsideration) following the Federal Court decision in *DBB16 v Minister for Immigration and Border Protection* [2018] FCAFC 178, which held that certain

⁵⁴ Interim report, para 5.77.

⁵⁵ Interim Report, paras 5.69 and 5.78.

⁵⁶ Interim Report, paras 5.70 and 5.76.

persons were not unauthorised maritime arrivals, and therefore not subject to the fast track process. The decisions were reviewable by the AAT.

98. The Interim Report refers to a claim by the Law Council of Australia that the IAA does not have a formalised complaints process.⁵⁷
99. Information about how feedback may be given to the IAA is included on the [IAA website](#) and provided to applicants in the fact sheet about the fast track review process.
100. The IAA encourages staff to address any issues or concerns raised by applicants or their representatives at the time of interaction where possible. In circumstances where an issue cannot be readily resolved, the person is advised that they may make a written complaint.
101. A complaint received by the IAA is subject to an investigation. At the conclusion of an investigation, a written response is provided to the complainant detailing how the investigation was carried out, its findings and whether the complaint was found to be substantiated with reasons for the conclusion reached. If appropriate, the response to the complainant may also include any remedial action that is being taken.
102. Information about IAA complaints are included as part of the AAT's reporting in its annual report.

⁵⁷ Interim Report, para 3.64.

Annexure A – AAT Caseload Report (1 July 2021 to 30 April 2022)

Division/Caseload	Lodgements	Finalisations	On hand at period end	Proportion of applications finalised within 12 months of lodgement	Median time to finalise (weeks)	Proportion of applications in relation to which decision under review changed
Freedom of Information	54	61	103	46%	61	23%
General	3,117	3,868	2,819	72%	27	30%
Australian citizenship	377	570	394	68%	34	28%
Centrelink (2nd review)	949	1,381	660	80%	24	26%
Visa-related decisions relating to character	280	305	103	90%	11	38%
Workers' Compensation	977	1,081	1,283	53%	49	35%
Other	534	531	379	84%	14	24%
Migration & Refugee	17,794	17,012	56,860	22%	109	31%
Migration	8,793	12,139	20,634	22%	107	40%
Refugee	9,001	4,873	36,226	25%	117	6%
National Disability Insurance Scheme	5,101	2,479	4,247	89%	21	55%
Security	17	7	37	71%	51	0%
Small Business Taxation	250	261	438	83%	29	46%
Social Services & Child Support	10,039	9,763	2,475	>99%	8	21%
Centrelink (1st review)	8,020	7,761	1,751	>99%	8	18%
Child Support	1,874	1,863	692	>99%	12	34%
Paid Parental Leave	145	139	32	100%	7	9%
Taxation & Commercial	554	611	1,104	62%	37	40%
Taxation	475	493	995	61%	40	41%
Other	79	118	109	65%	30	34%
Veterans' Appeals	126	171	176	56%	47	30%
AAT	37,052	34,233	68,259	56%	31	30%

¹Median time to finalise is measured in weeks from lodgement to finalisation.

² These figures relate to applications for review of decision and do not include other types of applications that may be made under the AAT Act or related legislation. The decision under review is treated as having been changed if the Tribunal varies or sets aside the decision or remits the matter to the decision-maker for reconsideration by way of a decision under section 43 of the *Administrative Appeals Tribunal Act 1975* (AAT Act) or section 349 or 415 of the *Migration Act 1958* or by way of a decision made in accordance with terms of agreement reached by the parties under section 34D or 42C of the AAT Act.

³The [Portfolio Budget Statement](#) for the AAT sets out a performance criterion target of 75% of applications finalised within 12 months of lodgement.

Annexure B – Migration & Refugee Division benchmarks and case day weightings

The Migration & Refugee Division has developed a system that assigns weightings to different categories of cases expressed in terms of the average number of days required to finalise a case of a given type. This system supports an assessment of member capacity/workload/output based on 'case days' completed rather than the number of cases completed.

Benchmarks

Members are set an annual benchmark which is based on the member's work days. After taking into account annual leave of 20 days and 10 days of public holidays, there are 230 case days available for a full-time member to work during the calendar year, adjusted for the timing of when a member's term of appointment began or ended. This assumes members only work on weekdays. The benchmark for a part-time member is calculated on a similar basis based on the number of days they are approved to work by the Division Head. Part-time members balancing other roles may work on weekends and outside usual business hours.

Benchmarks are discounted if a member has executive or leadership responsibilities, if they undertake reviews in another division of the AAT, if the member takes additional leave (e.g. defence, long service, personal/sick leave or extended unpaid leave), or if they participate in projects to assist the Migration & Refugee Division. New members are given a 25% discount to benchmarks for the first year and all members are given discounts to participate in mandated professional development.

Benchmarks are calculated consistently across the membership referable to each member's approved case days.

Case day weightings

Each case allocated to a member carries a case day weighting ranging from 0.5 for the least complex to 4 days for the most complex.

Case days are counted towards a member's benchmark when a case is finalised. The case day value for a case is determined by the weighting assigned to that category of case. Each caseload has a range of weightings depending on the characteristics of particular cohorts within that caseload.⁵⁸ Weightings are based on an assessment of what is considered a reasonable amount of time that a particular case type should take to finalise having regard to those common characteristics. For instance, partner visa reviews have different case weightings depending on the relevant issue that requires determination. In refugee cases, weightings are generally determined by reference to the country in respect of which the applicant is seeking protection rather than the particular issues that may arise. Visa cancellation cases and cases that have been remitted from the courts are given greater

⁵⁸ The case weightings used in the Migration & Refugee Division as at December 2021 are set out in the [Answers to written questions placed on notice by Senator the Hon Kim Carr to the Administrative Appeals Tribunal, 1 December 2021 and received on 23 December 2021, pp. 6–7.](#)

weightings, as are cases that involve allegations of criminal conduct and the exercise of discretion. There are 6 categories of weightings based on the usual characteristics of those cases. There are also a significant proportion of cases that attract no individual case weighting as they can be finalised efficiently through a duty member roster where the member is allocated case days for the time spent working on the roster. Cases which have no weighting include those where there is no jurisdiction to review or those where the applicant withdraws before the case has been allocated to a member.

Case weightings reflect there is a mix of both more difficult and easier cases within a caseload and across caseloads. Recommendations for case allocations are intended to give members the benefit of a variable workload.

Case re-weighting requests

If a member considers that a case has been unusually complicated or difficult and warrants a different weighting, that member can request that the case be re-weighted on recommendation of their Executive Member, or if they are a Senior Member, directly to the Division Head for approval. Requests are generally considered and approved quickly and take into account fairness across the membership.

Purpose of benchmarks and weightings

Benchmarks and weightings serve a number of purposes in the management of the work of the Migration & Refugee Division.

Firstly, they are used for the allocation of resources each year after detailed analysis of the caseload on foot, the number of available members, the backlog and complexity of the cases on hand.

Before each financial year, part-time members are asked to indicate their availability (being case days) for the Division Head to consider approving the case day allocation. All members provide their preference of caseload but members are asked to nominate particular caseloads that have been identified in the caseload strategy as a priority.

Analysis is then undertaken in relation to the caseload strategy for the following year, which is based on available resources, the priorities and the need to take a balanced approach to the finalisation of cases. Benchmarks are allocated to each member by reference to their case day availability and to particular caseloads. Allocations of cases are then undertaken consistent with the caseload strategy.

Occasionally the caseload strategy needs to adapt to take into account factors not anticipated at the beginning of the year. For instance, in 2021–22 the caseload strategy changed to allocate cases which could be heard remotely due to difficulties with holding in-person hearings in Melbourne and Sydney for extended periods.

Secondly, the benchmarks are used to monitor the work contribution of members at the end of each year through using a balanced scorecard approach. **However, whether a member has met or exceeded their benchmark is not the only criteria used to assess the effectiveness of a member's contribution.**

Thirdly, the benchmarks are used by members to monitor their own progress and how they are tracking during the course of the year.

They are also reviewed by an Executive Member who is tasked with the responsibility of overseeing a team of members, assisting with allocations, identifying any issues that may arise, and providing assistance or guidance to members in discharging statutory responsibilities, including of a pastoral nature.

Practice Leaders may also review this data to see how the caseload strategy is progressing or to identify issues that may be emerging that require further guidance or training for members undertaking particular caseloads.