



Administrative Appeals Tribunal

Office of the Registrar
Michael Hawkins AM

15 May 2024

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

Dear Secretary

I write to clarify evidence provided at the public hearing of the Senate Legal and Constitutional Affairs Legislation Committee on 26 April 2024.

On page 24 of the Proof Committee Hansard, in response to a question from Senator Green relating to bullying, harassment and discrimination complaints made about members of the Administrative Appeals Tribunal (AAT), I said:

Mr Hawkins: First of all, I could update you on the status of complaints at the tribunal. There have been 36 complaints against 24 members about bullying, harassment and discrimination since 1 July to 9 February 2024. Of those, there are only two that remain open. All others have been resolved. Twenty-one were resolved by informal resolution, five were resolved by mediation or conciliation and five were resolved by formal investigation. All were unsubstantiated and two were discontinued. Since I've been registrar and certainly since your questions at my first estimates appearance, I have spent quite a bit of time developing new complaint processes for staff and members—

I wish to clarify my evidence to confirm that the 36 complaints to which I referred were complaints that had been made about members from 1 July 2016, and that the unsubstantiated outcomes relate to the five complaints that were formally investigated.

On page 26 of the Proof Committee Hansard, in response to questions from Senator Scarr about the number of matters the AAT expects to finalise in 2023-24, I said:

Mr Hawkins: We set an ambitious target of over 50,000 finalisations for this year because we anticipated, following the Attorney's announcement that we would receive an additional 75 FTE of decision-making membership, that we would, for those 75 FTE, probably achieve an additional 12,000 decisions. Unfortunately, there was some delay in the appointment of those

members. They weren't appointed on 1 July, as we might have hoped; they were appointed progressively from late September through to, I think, 4 February this year. So we aren't going to achieve those 12,000 finalisations for the backlog that they were appointed for. We will probably achieve a proportion of those. Otherwise, we're not that far behind our usual target of 42,000 decisions.

I would also comment that there has been some attrition of the membership since 1 July 2023. We've had 22 resignations as members and we've had 25 members not reappointed during that period.

I wish to clarify my evidence to confirm that, since 1 July 2023, the terms of 19 members have expired. Further, the two-year term members commenced their appointments with the AAT from 25 September 2023 to 26 February 2024.

On page 27 of the Proof Committee Hansard, in response to further questions from Senator Scarr about the number of matters the AAT expects to finalise in 2023-24, I said:

Mr Hawkins: As you know, Senator, we normally put our PBS in around February, which is where we make our estimation of finalisations for the next financial year. I can say that we projected about 42,000 decisions, which is consistent with previous years. To date, as at 31 March we had finalised about 30,600 matters, so we aren't that far behind, pro rata, our target. But I can particularise that further for you.

I wish to clarify my evidence to confirm the projection of around 42,000 decisions to which I referred excluded any projected number of decisions to be made by the additional 75 FTE appointed to deal with the current backlog.

On page 27 of the Proof Committee Hansard, in response to additional questions from Senator Shoebridge about the number of matters the AAT expects to finalise in 2023-24, I said:

Mr Hawkins: By and large. But I do refer to the previous comment that we have had some member attrition, and, as I sit here today, I believe that we're about 47 members behind where we were at 1 July. But, because that's been in the course of the 12 months, I can't specifically say what that might translate to in the number of finalisations.

I wish to clarify my evidence to confirm that since 1 July 2023, 41 members have either resigned (22) or their terms of have expired (19).

On page 28 of the Proof Committee Hansard, in response to questions from Senator Shoebridge about the current reappointment process for members, I said:

Mr Hawkins: At present, there is a merit based process in place, where members for reappointment and members seeking appointment to the tribunal have undertaken a merit based process of application—I think there has been advertisement application—and interview by panels.

I wish to clarify my evidence to confirm that the merit-based process I referred to in my evidence is the one set out in the *Guidelines for appointments to the Administrative Appeals Tribunal (AAT)*, which were published on 15 December 2022. These Guidelines apply to appointments and reappointments to the AAT as well as to appointments to the Administrative Review Tribunal (ART). They also contain some exclusions, including in relation to certain short-term extensions or reappointments to the AAT, where an alternative process applies.

On page 28 of the Proof Committee Hansard, in response to questions from Senator Shoebridge about the application process for AAT members applying to be appointed to the ART, I said:

Mr Hawkins: During the current process, the tribunal provided a proforma performance data report to the Attorney-General's Department. They varied slightly between divisions, because we have three different case-management systems in the data being recovered from them. For our process, we prepared those performance reports and provided them to the members first for comment. After that, the reports were then provided directly by the tribunal to the department. In addition, I recall the department providing to division heads, deputy presidents or senior members, depending on who the supervising member was, a proforma reference form that could be provided in relation to those internal members seeking reappointment.

...

Mr Hawkins: I can give you a sample, together with a memorandum that we provided for the benefit of panels to understand what the data performance reports represented.

I wish to clarify my evidence to confirm that my references to performance data reports and performance reports, should have been to workload data reports.

Your sincerely

Michael Hawkins AM
Registrar