

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

ATTORNEY-GENERAL'S PORTFOLIO

ADDITIONAL ESTIMATES 2020-21

PA-Administrative Appeals Tribunal

LCC-AE21-78 - Member benchmarks and performance

Senator Kim Carr asked the following question on 1 April 2021:

1. I refer to the following members of the AAT (“AAT Members”):

- a) Michael Cooke
- b) Denis Dragovic
- c) Ann Duffield
- d) James Lambie
- e) Justin Owen
- f) Rachel Westaway
- g) Antoinette Younes
- h) Hedley Chapman
- i) Ian Berry
- j) Simone Burford
- k) Helena Claringbold
- l) David Crawshay
- m) Brendan Darcy
- n) Phoebe Dunn
- o) Peter Emmerton
- p) Joseph Francis
- q) William Frost
- r) Steven Griffiths
- s) George Hallwood
- t) Keith Kendall
- u) Nora Lamont
- v) Russell Matheson
- w) David McCulloch
- x) Nicholas McGowan
- y) Karen McNamara
- z) Justin Meyer
- aa) Peter Vlahos
- bb) Jane Bell
- cc) Nathan Goetz
- dd) Meredith Jackson
- ee) De-Anne Kelly
- ff) Helen Kroger
- gg) Donna Petrovich
- hh) Susan Reece Jones

ii) Brian Warren Stooke

2. I note that:

- the Tribunal has previously provided me with the yearly benchmarks for 2018–19 and 2019–20 for the AAT Members (LCC-SBE19-197);
- it therefore cannot be said that providing me with that and similar information is an unreasonable diversion of the Tribunal’s resources;
- it would be extraordinary – and untenable – if the Tribunal was unable to provide the Committee with information about how each of the AAT Members had performed against their benchmarks; and
- in any event, there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament unless the Parliament has expressly provided otherwise.

3. Having regard to the above, please provide me with the following information in relation to each of the AAT Members:

- a) the Member’s yearly benchmark for 2018/19;
- b) how the Member performed against that benchmark;
- c) the Member’s yearly benchmark for 2019/20;
- d) how the Member performed against that benchmark;
- e) the Member’s yearly benchmark for 2020/21; and
- f) how the Member is performing against that benchmark.

4. Having regard to the above, and noting that the “benchmark” for these and other members who undertake work in the Migration and Refugee Division is expressed as a number of “case days”:

- a) What is a “case day”? Please provide a complete account of how a case day is calculated.
- b) Given, according to previous responses to Questions on Notice by the Tribunal, a “case day” is a “nominal number of days the member is available to hear and decide cases”, could a Member theoretically satisfy his or her “benchmark” without making a single decision? Note that I am not asking whether this happens – I am asking whether it is theoretically possible given that, theoretically, a Member could be available for 100 “case days” over the course of a year but not actually make a single decision.

5. In total, how many Members of the Administrative Appeals Tribunal (including but not limited to the AAT Members listed above) did not satisfy their benchmarks in each of 2018/19 and 2019/20?

- a) Please provide the names of the Members who did not satisfy their benchmarks, along with an explanation as to why the benchmarks were not satisfied.

The response to the honourable senator’s question is as follows:

Benchmarks in the Administrative Appeals Tribunal’s Migration and Refugee Division – Overview

Benchmarks are a tool used by the Division Head of the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT) to assist with managing the work of the Division. They are primarily a planning and resourcing tool but are also used to monitor the workload and output of members who undertake work in the Division.

Prior to the beginning of each financial year, the Division Head develops a detailed strategy for the work the Division will undertake in that year. The Division Head considers:

- the number and types of cases that make up the Division’s workload
- the members available to undertake work in the Division and the amount of time they are available
- how resources should be allocated to different types of cases.

Benchmarks are set for each caseload. These are the basis for the caseload strategy and allocation of cases to members during the financial year.

Member benchmarks are set for full-time members and part-time members, who are approved by the Division Head to work a certain number of days in a year. The benchmark is the number of case days the member is to finalise over the course of the year based on the number of days they are expected to work on cases in the Division. 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 case day weighting assigned to that category of case: these range from 0.5 days for the least complex cases to 4 days for the most complex cases.

The case day weightings are set by the Division Head and reflect an assessment of the time it is expected cases in a particular category should take to finalise based, in particular, on an analysis of historical caseload data. Therefore, members who work on cases for a similar number of days would be expected to complete the same number of case days but the numbers of cases finalised may be different. A member with a caseload comprising less complex cases may be expected to finalise up to 400 cases a year whereas a member with a more complex caseload may be expected to finalise less than 50.

The benchmarking system is designed on the basis that each member will manage the set of cases allocated to them with a view to achieving their benchmark by the end of the financial year. Each member decides what steps are required to progress the cases allocated to them.

From time to time, the Division Head reviews and adjusts the case weightings for particular categories of cases in light of the Division’s experience dealing with those cases. For example, following the introduction of the new benchmark and case weighting system in 2018–19, weightings have been increased for some categories of cases as it became evident that the nominal case day value was insufficient for those cases.

After the completion of the financial year, the extent to which a member was able to meet their benchmark is one of several indicia considered in relation to the member’s work. Other indicia include:

- the complexity and diversity of the member’s caseload
- timeliness of reviews
- the quality of decision-making
- the number and outcomes of judicial review applications, and
- the contribution that the member makes towards the management of the Division, projects and professional development.

These considerations help inform future caseload planning and the member’s professional development.

3.a), c) and e)

The table below sets out the annual benchmarks as at 8 April 2021 for 2018–19, 2019–20 and 2020–21 for the named members. The benchmark is set by the Division Head taking into account a range of factors, including:

- whether the member is full-time or part-time and, for part-time members, the number of days approved by the Division Head
- whether a full-time member is taking any extended leave
- whether the member is new and when during the year they commenced undertaking work in the Division
- whether the member is allocated to deal with bridging visa cases involving an applicant in immigration detention, no jurisdiction cases and withdrawn cases that are managed through the National Duty Member Roster outside the benchmarking system
- the extent to which the member undertakes reviews in other divisions
- whether a Senior Member has caseload or member management responsibilities or a member is requested to participate in Tribunal activities or projects, and
- time allowed for training and other professional development activities.

Individual member benchmarks may be adjusted to reflect changes to a member’s availability to hear and decide cases in a year. For example, a part-time member may work fewer days than have been approved or may be approved to work additional days. For this reason, the benchmarks set out in the table below differ for some members from the benchmarks that were included in the response to LCC-SBE19-197.

In relation to the 2019–20 year, the figures provided are the full-year benchmarks that applied before benchmarks were suspended from 20 March 2020 due to the impact of the COVID-19 pandemic.

Member	Benchmark (Case Days)		
	2018–19	2019–20 ^a	2020–21 as at 8 April 2021
Senior Member Michael Cooke	173	173	223
Senior Member Denis Dragovic	115	161	115
Senior Member Ann Duffield	169	137	0 ^b
Senior Member James Lambie	133	223	171
Senior Member Justin Owen	218	140	113
Senior Member Rachel Westaway	92	115	135
Senior Member Antoinette Younes	87	114	113
Senior Member Hedley Chapman	113	133	22
Member Ian Berry	223	223	218
Member Simone Burford	154	199	177
Member Helena Claringbold	199	190	198
Member David Crawshay	37	184	214
Member Brendan Darcy	218	213	190

Member	Benchmark (Case Days)		
	2018–19	2019–20 ^a	2020–21 as at 8 April 2021
Member Phoebe Dunn	41	165	204
Member Peter Emmerton	218	223	179
Member Joseph Francis	37	180	201
Member William Frost	6	15	15
Member Steven Griffiths	37	180	201
Member George Hallwood	24	100	109
Member Keith Kendall	41	185	Not applicable ^c
Member Nora Lamont	218	208	203
Member Russell Matheson	218	209	205
Member David McCulloch	216	208	204
Member Nicholas McGowan	163	218	214
Member Karen McNamara	164	228	223
Member Justin Meyer	218	218	204
Member Peter Vlahos	219	210	204
Member Jane Bell	22	96	84
Member Nathan Goetz	213	192	184
Member Meredith Jackson	139	157	133
Member De-Anne Kelly	24	177	202
Member Helen Kroger	166	144	171
Member Donna Petrovich	50	113	128
Member Susan Reece Jones	16	105	128
Member Brian Warren Stooke	153	172	173

^a Benchmarks for the 2019-20 year were suspended from 20 March 2020 due to the impact of the COVID-19 pandemic.

^b Senior Member Duffield resigned from the AAT with effect from 7 August 2020.

^c Member Kendall resigned from the AAT with effect from 2 May 2020.

3.b), d) and f)

These subquestions ask how the named members performed against the yearly benchmarks for 2018–19, 2019–20 and 2020–21. As noted above, whether a member has been able to meet their benchmark is considered after the end of a financial year. No relevant information is available for:

- 2019–20 as benchmarks were suspended from 20 March 2020 and they were not revised to take into account the impacts of the COVID-19 pandemic
- 2020–21 as the year is not yet complete.

While 2018–19 was a complete year, the AAT considers that to provide benchmark results for individual members for any year would not be reasonable because they do not give a complete or

accurate representation of the member's work. As explained above, the primary purpose of the benchmarks is to support planning and allocation of resources to deal with the Division's caseload. While a member's results against their individual benchmarks are considered as part of monitoring their work, this is only one of the indicia that are taken into account.

In addition, a broad range of factors as set out below can affect whether a member meets their benchmark, including some that may be beyond the control of the member. It would not be reasonable to publish information about a member's results against benchmarks, particularly for a member who did not meet their benchmark, without providing contextual information about relevant factors. For some members, this may result in the disclosure of sensitive personal information.

4.a)

Information about what a case day is and how case days are calculated is set out in the overview above.

4.b)

It is not possible for a member to satisfy their case day benchmark without making a single decision. Case days are counted towards a member's benchmark when a case is finalised. If a full-time member had a benchmark of 100 case days and did not finalise a single case during the course of the year, they would clearly not have satisfied their benchmark, i.e. they would be taken to have achieved 0% of their benchmark. If a part-time member requests 100 work days at the start of the year and this is approved by the Division Head, depending on any adjustments made for time spent on the Duty Member Roster or participation in professional development activities, they could be set a 100 case day benchmark. If they claimed 100 days worked over the year but failed to finalise a single case, they would clearly not have satisfied their benchmark, i.e. they would have achieved 0% of their benchmark. If that part-time member did not make themselves available and did not end up working any days in the Division, they would not have been paid, and their case day benchmark would be removed at the end of the financial year and could not be said to have been satisfied.

5.

In 2018–19, 137 full-time and part-time members undertaking work in the Migration and Refugee Division were given a benchmark: 73 members did not meet their benchmark and 64 met or exceeded their benchmark. Broadly speaking, the Division expects members to meet or be within 10% of their benchmark. In 2018–19, 56 members were outside this range: 18 of these members were first constituted cases in the last 6 months of the financial year and were not expected to be able to meet the benchmark as at 30 June 2019. A benchmark was set nonetheless to inform case allocations and carried over to the following year. When this is taken into account, 38 (or 28%) of the members did not fall within the expected range of their benchmarks.

In relation to 2019–20, as was noted above, member benchmarks were suspended in March 2020 and did not apply to the full financial year.

5.a.

For the reasons noted above in relation to 3.b), d) and f), the AAT considers that providing the names of individual members who did not meet their benchmark would not be reasonable.

A range of factors can contribute to a member not being able to meet their benchmark. These include:

- the date on which a member commenced undertaking work in the Division: the lead time involved in progressing cases can affect the number of cases they are able to finalise and therefore the number of case days they are able to accrue prior to the end of the financial year
- reductions in a member's availability during a year, including due to accident, illness or other adverse personal circumstances, which are not reflected in an adjustment to the benchmark
- the particular composition of a member's case allocations in a year, including the extent to which they include categories of cases the weightings for which may subsequently be adjusted
- a member's level of skill and experience, including the pace at which newer members develop their knowledge and skills in decision-making.

To provide a more comprehensive explanation as to why members did not meet their benchmarks in 2018–19 would require undertaking an analysis of each member's caseload and circumstances. Assuming 1 day's effort per member to extract, collate and validate this information, this task would engage one FTE staff member for some 15 weeks of work, which the AAT considers would involve an unreasonable diversion of resources.