



Administrative  
Appeals Tribunal

## **Senate Legal and Constitutional Affairs References Committee**

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

#### **Submission by the Administrative Appeals Tribunal**

24 November 2021

# Contents

|   |           |
|---|-----------|
| <b>Overview.....</b>  | <b>3</b>  |
| <b>The AAT .....</b>  | <b>4</b>  |
| Governance and division of responsibilities .....                                 | 6         |
| <b>Performance and transparency .....</b>   | <b>8</b>  |
| Commonwealth performance framework .....  | 9         |
| Divisional achievements .....   | 12        |
| Other mechanisms contributing to transparency.....                                | 14        |
| User feedback and mechanisms for continuous improvement .....                     | 15        |
| Legacy and other arrangements affecting performance .....                         | 17        |
| <b>Integrity.....</b>   | <b>19</b> |
| <b>Selection process for members .....</b>  | <b>22</b> |
| <b>Importance of transparency and parliamentary accountability .....</b>          | <b>24</b> |
| <b>Role of the Administrative Review Council.....</b>                             | <b>25</b> |
| <b>Annexure 1: Results against measures for 2018–19, 2019–20 and 2020–21.....</b> | <b>26</b> |
| <b>Annexure 2: AAT caseload statistics for 2018–19, 2019–20 and 2020–21 .....</b> | <b>27</b> |
| <b>Annexure 3: Member competencies in advertisement for EOI register .....</b>    | <b>30</b> |

## Overview

The Administrative Appeals Tribunal (AAT) has provided individuals and organisations with an opportunity to challenge government decisions affecting their interests since 1976. The former Migration Review Tribunal, Refugee Review Tribunal and Social Security Appeals Tribunal, that also provided for the review of decisions over decades, were amalgamated with the AAT on 1 July 2015. In recent years, the AAT has finalised more than 40,000 applications each year.

The AAT can review a variety of decisions that have a direct impact on a diverse range of people and businesses. For example, it can review decisions about payments available to help families, whether a visa should be granted to a person claiming they are fleeing persecution in their country of origin, and access to entitlements for people with disability and veterans. It also reviews taxation decisions – from those involving a large corporation and millions of dollars to those relating to whether a small business was eligible for JobKeeper.

Some decisions reviewed by the AAT also have a wider significance for ordinary Australians such as decisions about whether a pharmaceutical product can be supplied in Australia, the registration of a training provider or activities that are permitted on the Great Barrier Reef. These are some of the many types of issues considered and determined by the AAT. A selection of case summaries is available on the AAT website at [aat.gov.au](http://aat.gov.au).

The AAT and the former tribunals that amalgamated with the AAT have been a key part of the Australian administrative review system for many years. Comprising internal review undertaken within departments and agencies, independent merits review by external bodies and judicial review by the federal courts, the administrative review system is part of the wider administrative law framework which also includes the Commonwealth Ombudsman and the *Freedom of Information Act 1982*. Merits review by tribunals can offer a relatively quick, economical and informal way to take a fresh look at government decisions.

The workload of the AAT has grown substantially since amalgamation in 2015, particularly the volume of applications for review of migration and refugee decisions. While this has presented challenges in finalising our entire caseload in a timely manner, the Tribunal has demonstrated the quality of its review processes – from lodgement through early case management and pre-hearing processes to hearing and decision-making – consistently achieving high levels of user satisfaction along with low rates of appeals upheld in the courts. The publication of a high volume of decisions contributes to the promotion of public trust and confidence in the AAT's decision-making.

The AAT has also continued to deliver a high level of service throughout the COVID-19 pandemic, with the maintenance of effective merits review processes despite the impact of extended lockdowns arising from outbreaks in Canberra, Melbourne and Sydney. Since 1 March 2020, the AAT has finalised more than 70,000 cases.

How the AAT performs its role is influenced by the legislative and resourcing environment within which it operates as well as a range of other external factors. The AAT's budget and the appointment of the members who undertake the reviews of government decisions are ultimately a matter for Government.

Within this context, the AAT strives to continually improve how it delivers effective and efficient review services and to promote public trust and confidence in its decisions. For example, the AAT reviews and adjusts its case management strategies to ensure they are efficient and appropriate to each caseload and its users. The Tribunal supports members to discharge their statutory responsibilities through the provision of administrative, research and case management assistance as well as a comprehensive professional development program.

The AAT is involved in improving the effective operation of the wider administrative review system. It does so through membership of and participation in activities coordinated by the Council of Australasian Tribunals as well as the Australian Institute of Administrative Law and the Australasian Institute of Judicial Administration.

The AAT engages with stakeholders, including those representing applicants and agencies whose decisions are reviewed by the Tribunal, to share information, receive feedback on our processes and discuss opportunities to improve our services. The AAT also engages with the Government about the Tribunal's operations, including resourcing needs and potential legislative reforms.

The AAT acknowledges the importance of this inquiry into the performance and integrity of the administrative review system. It remains committed to the principles of transparency and accountability to promote public trust and confidence in government decision-making, and to providing a mechanism of review that is fair, just, economical, informal, quick and proportionate to the importance and complexity of the case.

## The AAT

The AAT can review decisions made under more than 400 Commonwealth Acts and legislative instruments which confer jurisdiction on the Tribunal. The types of decisions the AAT most commonly reviews relate to:

- Australian citizenship
- child support
- family assistance and social security entitlements
- migration visas, including business, family, skilled, partner, student and visitor visas, and protection (refugee) visas
- the National Disability Insurance Scheme (NDIS)
- taxation
- veterans' entitlements, and
- workers compensation under Commonwealth law.

The AAT also reviews a wide range of other decisions, including decisions about aged care, bankruptcy, child care services, civil aviation, corporations and financial services regulation, customs, tertiary and vocational education regulation, freedom of information, marriage celebrants, mutual recognition of occupations, paid parental leave, passports, professional regulation, security assessment by the Australian Security Intelligence Organisation and unpaid employee entitlements.

The AAT's role is to review a decision on the merits. This involves considering afresh the facts, law and policy relating to that decision, including taking into account additional information that may not have been before the original decision-maker. The AAT must make the legally correct decision or, where there can be more than one correct decision, the preferable decision based on the evidence before it. In doing so, the AAT has the power to affirm a decision that is under review, vary the decision, set it aside and substitute a new decision or remit a decision for reconsideration by the original decision-maker.

The AAT consists of the President, Deputy Presidents (who may also be Judges of the Federal Court or Federal Circuit and Family Court), Senior Members and Members. Their primary role is to undertake reviews, principally conducting hearings and making decisions.

The President must be a Judge of the Federal Court.<sup>1</sup> The non-judicial members come from a diverse range of backgrounds with expertise in areas such as accountancy, disability, law, medicine, migration, military affairs, public administration, science and taxation. As at 24 November 2021, there were 313 members appointed to the Tribunal, including judicial members.

The AAT must pursue the objective of providing a mechanism of review that:

- is accessible
- is fair, just, economical, informal and quick
- is proportionate to the importance and complexity of the matter, and
- promotes public trust and confidence in the decision-making of the Tribunal.<sup>2</sup>

To assist it to meet its objective, work in the AAT is organised in the following divisions:

- Freedom of Information Division
- General Division
- Migration & Refugee Division
- National Disability Insurance Scheme (NDIS) Division
- Security Division
- Small Business Taxation Division
- Social Services & Child Support Division
- Taxation & Commercial Division, and
- Veterans' Appeals Division.<sup>3</sup>

The Immigration Assessment Authority (IAA), a separate office established within the Migration & Refugee Division, conducts fast track reviews of decisions to refuse to grant certain persons a protection visa. It must pursue the objective of providing a mechanism of review that is efficient, quick and free of bias.<sup>4</sup>

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<sup>1</sup> Subsection 7(1) of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

<sup>2</sup> Section 2A of the AAT Act.

<sup>3</sup> Section 17A of the AAT Act and sections 8 and 8A of the *Administrative Appeals Tribunal Regulation 2015*.

<sup>4</sup> Section 473FA(1) of the *Migration Act 1958*.

## Governance and division of responsibilities

The *Administrative Appeals Tribunal Act 1975* (AAT Act) provides a high-level governance framework for the amalgamated AAT based on the divisional structure, setting out the respective roles of the President, heads of Division, deputy heads of Division and the Registrar in relation to managing cases and the Tribunal's administrative affairs.

The President is responsible for ensuring the expeditious and efficient discharge of the business of the Tribunal and that the Tribunal pursues the objective in s2A of the AAT Act as well as managing the administrative affairs of the Tribunal.<sup>5</sup>

The head of a Division assists the President by directing the business of the Tribunal in the Division. They may be assisted by a deputy head of a Division.<sup>6</sup> Heads of Division have been assigned for the General Division, Migration & Refugee Division, NDIS Division, Small Business Taxation and Taxation & Commercial Divisions, and the Social Services & Child Support Division.

In general, the President directs the allocation of applications for review to Divisions.<sup>7</sup> While the President and Deputy Presidents can exercise powers in any Division, Senior Members and Members may only exercise powers in the Division(s) to which they have been assigned.<sup>8</sup>

The divisional structure plays an essential role as the central organising principle in the Act. It assists appropriate organisation and management of the caseload, including aligning tailored review procedures for different types of cases and the assignment of members to areas of work they are most suited to undertake. The diversity of the AAT's caseload is also reflected in the way case management occurs across Divisions and within practice areas. Arrangements may vary to reflect caseload volume and characteristics or to respond to any specifically identified needs within a particular group of users.

### *Leadership within Divisions*

A further set of executive leadership arrangements exist to support the head of Division to direct business in the Division and to provide support, guidance, and development for members.

Heads of Division may be supported by deputy heads of Division, Executive Members and Practice Leaders who undertake executive leadership functions and may oversee member teams, assist with the allocation of cases to members, make recommendations about professional development and generally provide assistance or guidance to members in discharging their statutory responsibilities.

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<sup>5</sup> Section 18A and subsection 24A(1) of the AAT Act.

<sup>6</sup> Subsections 17K(6) and 17L(6) of the AAT Act.

<sup>7</sup> Section 17B of the AAT Act; Allocation of business to divisions of the AAT, President's Direction dated 1 March 2019.

<sup>8</sup> Section 17C of the AAT Act.

As the largest Division in the Tribunal with more lodgements and finalisations than the other divisions combined, the head of the Migration & Refugee Division is supported by both national Practice Leaders and Executive Members in most states and the ACT. The head of Division is also supported by members to assist on specific projects such as professional development initiatives.

In the second largest Division, the Social Services & Child Support Division, the head of Division is supported by 2 senior members with national responsibilities in relation to caseload strategy and case allocation as well as ensuring members are supported. There are also 4 members who undertake leadership roles to support members locally and to provide expertise in particular practice areas.

The head of the General Division<sup>9</sup> is supported by national Practice Leaders for specific areas of work who oversee stakeholder engagement, the development of processes to promote national consistency and the sharing of relevant knowledge. They are also supported by an Executive Member located within each registry who directs the caseload and provides pastoral support and professional leadership to local members.

With the increase in the volume of the caseload in the NDIS Division, particularly the growth experienced since March 2021, the head of Division has been developing a leadership structure for the Division which will provide support for the head of Division with respect to member development and collegiality, stakeholder liaison and the development of jurisprudence with respect to NDIS cases. Action is underway to implement this structure.

The Small Business Taxation Division and Taxation & Commercial Division are led by the same head of Division. While the volume of applications lodged is relatively low, the cases tend to be more complex. The head of Division works directly with the staff and members in consultation with the Executive Members of the General Division in managing the caseload.

### *The role of the Registrar*

The Registrar of the AAT is a statutory office holder appointed by the Governor-General on the nomination of the President who assists the President in managing the AAT's administrative affairs.<sup>10</sup> The Registrar is the accountable authority of the AAT for the purposes of the *Public Governance, Performance and Accountability Act 2013* and the Agency Head for the purposes of the *Public Service Act 1999*.<sup>11</sup>

The Registrar has the power to do all things necessary or convenient to be done for the purpose of assisting the President, particularly in relation to the administrative affairs of the Tribunal. The President may give the Registrar directions about the exercise of the Registrar's powers other than in relation to the *Public Governance, Performance and Accountability Act 2013* and the *Public Service Act 1999*.<sup>12</sup> However, the Registrar must consult with the President in relation to the performance of functions or exercise of powers under those Acts.<sup>13</sup>

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<sup>9</sup> The head of the General Division also manages the work in the Freedom of Information, Security and Veterans' Appeals Divisions.

<sup>10</sup> Sections 24B and 24C of the AAT Act.

<sup>11</sup> Section 24BA of the AAT Act.

<sup>12</sup> Subsection 24A(3) and section 24D of the AAT Act.

<sup>13</sup> Subsection 24A(4) of the AAT Act.

## *The Immigration Assessment Authority*

The IAA consists of:

- the President of the AAT
- the head of the Migration & Refugee Division
- the Senior Reviewer, and
- Reviewers.

The President and the head of the Division are responsible for the overall operation and administration of the IAA.<sup>14</sup> The Senior Reviewer is responsible for managing the IAA, subject to the directions of, and in accordance with policies determined by, the President and the head of the Division of the Migration & Refugee Division.<sup>15</sup>

The Senior Reviewer must be a Senior Executive Service employee and Reviewers of the IAA must also be engaged under the *Public Service Act, 1999*.<sup>16</sup> The Registrar must make officers of the AAT available to assist the IAA in the performance of its administrative functions.<sup>17</sup>

## *Staff of the AAT*

Staff are employed as ongoing, non-ongoing or intermittent employees under the Public Service Act and as labour hire.

Staff of the AAT perform various functions, predominantly to support the conduct of reviews. They process applications and referrals, liaise with parties and representatives about their cases, registrars undertake alternative dispute resolution (ADR) and other early case assessment activities, and provide support to the members. Other staff within the AAT perform a range of corporate and enabling support services.

## **Performance and transparency**

As an Australian Government agency, the AAT must comply with the requirements of the *Public Governance, Performance and Accountability Act 2013*, including in relation to planning, budgeting and reporting. The AAT's operations are also subject to scrutiny by government oversight frameworks and bodies, including requests made under the *Freedom of Information Act 1982* and complaints to the Commonwealth Ombudsman, as well as through external audits, reviews and parliamentary scrutiny.

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<sup>14</sup> Subsection 473JB(1) of the *Migration Act 1958*.

<sup>15</sup> Subsection 473JB(2) of the *Migration Act 1958*.

<sup>16</sup> Subsection 473JE(1) of the *Migration Act 1958*.

<sup>17</sup> Subsection 473JE(2) of the *Migration Act 1958*.



In addition to the general public sector accountability framework, the AAT also has specific accountability and transparency arrangements that arise from being a tribunal, including the requirement to hold many hearings in public and to give reasons for its decisions, the practice of publishing its decisions and oversight provided by the courts.

### Commonwealth performance framework

The key requirements for performance and transparency for the AAT are found in the Commonwealth Performance Framework. As a non-corporate Commonwealth entity, the AAT must set out how it will measure performance taking into account its key activities and the results it expects to achieve and then report on its performance.

Each year, the AAT must publish a Corporate Plan which sets out its purpose, the activities it will undertake to achieve its purpose and the results it expects to achieve. The AAT also contributes to annual Portfolio Budget Statements which provide Senators and Members of the Parliament with high-level performance information for the AAT's activities, including a forecast of performance for the current year.

The AAT, including the IAA, is a single-outcome and single-program entity.<sup>18</sup> Its outcome is to:

*provide correct or preferable decisions through a mechanism of independent review of administrative decisions that is accessible, fair, just, economical, informal, quick and proportionate.*

The AAT and IAA provide administrative justice in individual cases and also contribute to improving the quality of government decision-making by reviewing administrative decisions in accordance with the AAT Act and the *Migration Act 1958*. Former President of the AAT, the Hon Justice Downes, has referred to the importance of this normative role, stating that “providing individual justice is a critical task for the Tribunal but influencing the quality of decision-making generally may be just as important”.<sup>19</sup>

The performance measures for the AAT, which have been developed over time and against which its reports are outlined in its Corporate Plan and in the Portfolio Budget Statements, include:

- the number of AAT applications and IAA referrals finalised
- the clearance ratio: the ratio of AAT applications and IAA referrals finalised to applications and referrals received
- the proportion of AAT applications and IAA referrals finalised within 12 months of lodgement
- the number of AAT and IAA decisions published
- AAT user experience rating derived from the results of an annual user feedback survey, and
- the proportion of appeals against AAT and IAA decisions allowed by the courts.

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<sup>18</sup> See the Portfolio Budget Statements 2021–22, Attorney-General's Portfolio, p.58.

<sup>19</sup> The Hon Justice Garry Downes AM, 'The State of Administrative Justice in Australia', (2007) 20 (3) *Canadian Journal of Administrative Law & Practice* 241.

They provide indicators of the extent to which the AAT and IAA are meeting aspects of their statutory objectives.

The AAT prepares an Annual Performance Statement, published as part of its annual report and tabled in the Parliament, which presents actual performance results for the year against the targets set out in the AAT's Corporate Plan and Portfolio Budget Statements.

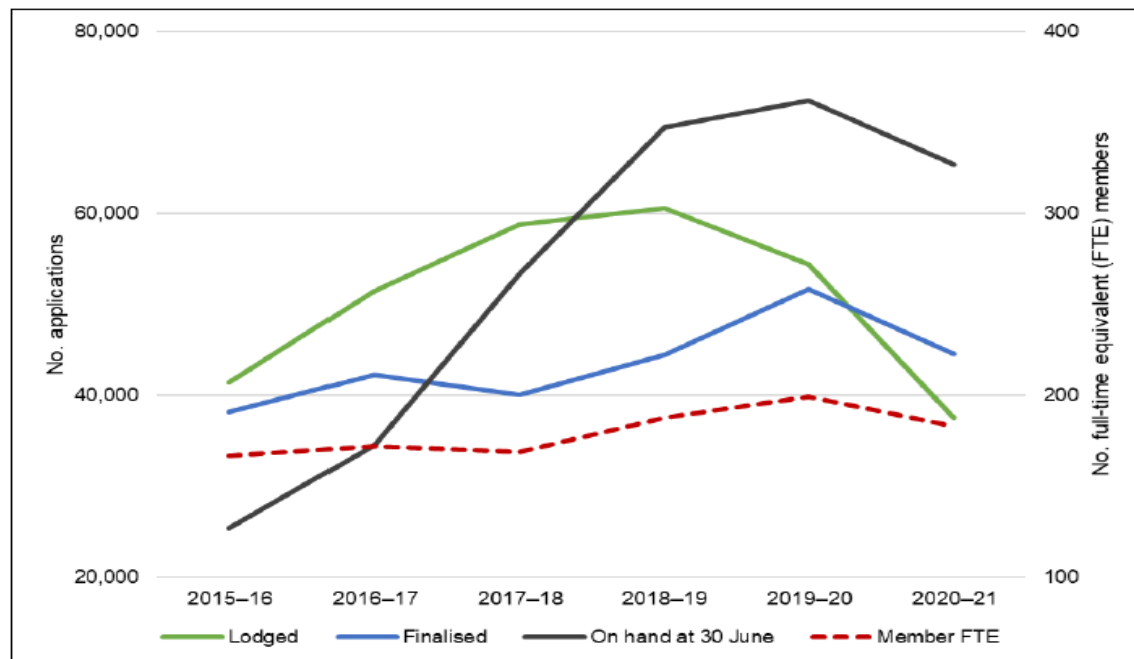
The annual report also contains a wide range of other information about the operations and performance of the AAT, including members and staffing, the operation of its Divisions and case management, services for users, financial performance, and corporate governance and management.

The AAT's [Corporate Plan](#) and its 2020–21 [Annual Report](#) are available on the AAT's website. The AAT's results against the performance measures for the years 2018–19, 2019–20 and 2020–21 are set out in **Annexure 1**.

In the period from 1 July 2015 to 30 June 2021, the AAT received more than 300,000 applications and finalised more than 260,000 applications. The IAA received and finalised more than 9,000 referrals. While there have been challenges in being able to meet all of the performance measures each year, the AAT has performed well against a majority of them over time.

The AAT is a demand-led organisation and its workload increased significantly in the period from 2015–16 to 2019–20, particularly in the Migration & Refugee Division. Lodgements in that Division in each of 2017–18 and 2018–19 exceeded 36,000 applications, approximately double the number lodged in 2015–16. As shown in the following chart, the number of members and staff available to deal with cases did not keep pace with the higher volume of lodgements, resulting in a growing on-hand caseload over time.

**Chart 1 AAT workload and membership, 2015–16 to 2020–21**



The AAT reached its finalisation target in 2019–20 but did not meet the projected number of finalisations in other years due to various factors. These included lower than anticipated numbers of applications and referrals in some areas of work and lower membership levels.

In 2020–21, a decrease in lodgements which occurred largely as a result of the COVID-19 pandemic enabled the Tribunal to finalise more applications than were lodged in that year. The target of a clearance ratio of at least 100% was achieved in 2020–21 for the first time since the amalgamated AAT was established, resulting in a decrease in the on-hand caseload.

The AAT met its overall timeliness target until 2018–19 and has generally continued to finalise more than 75% of cases within 12 months in the General, NDIS, Small Business Taxation and Social Services & Child Support Divisions and in the IAA each year. The overall result for timeliness has been impacted since that year by the growing and ageing on-hand caseload in the Migration & Refugee Division.

The AAT has consistently met the targets for its 3 other performance measures which go to the number of decisions published, user experience ratings and the number of appeals allowed by the courts as a proportion of decisions made.

The number of written statements of reasons for decision published by the AAT and IAA has exceeded the target since this measure was introduced in 2017–18. Initially set as a target of at least 4,000 decisions, this was increased to at least 5,000 decisions from 2018–19. More than 5,860 decisions made in 2020–21 have been published.<sup>20</sup> The AAT is one of the highest volume publishers of decisions amongst all Australian courts and tribunals.

The AAT conducts an annual user feedback survey which asks parties and representatives to rate their experience of different aspects of the review processes such as the process of applying for a review, our website and written communications, dealings with staff, registrars and members, conferences and hearings as well as perceptions of the review process overall, including its fairness. The AAT has exceeded the target of a user experience rating of 70% since the measure was introduced in 2018–19. In 2021, the AAT achieved a user experience rating of 77%.<sup>21</sup>

A principal form of scrutiny of the decisions of the AAT and IAA and how they conduct reviews is by way of review in the courts. The number of appeals allowed by the courts in a year should be less than 5% of all AAT and IAA decisions that could have been appealed. This target has been met each year. For 2020–21, 2,751 court appeals were finalised with the number of appeals allowed representing 2.3% of all decisions made by the AAT and the IAA in the previous year that could have been appealed: this becomes 1.8% when decisions from the IAA are excluded.<sup>22</sup>

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<sup>20</sup> AAT, *Annual Report 2020–21*, p.32.

<sup>21</sup> *Ibid*, p.33.

<sup>22</sup> *Ibid*, pp.35 and 72.

The AAT carefully considers court judgments and orders made in relation to its decisions, particularly where the appeal is allowed, to identify the issues arising in each case as well as any issues that may be relevant to other cases or the manner in which reviews are conducted.

## **Divisional achievements**

Each Division monitors the allocation of resources, the constitution of cases and performance using different caseload management strategies. There are 3 primary reasons for this. First, the volume and characteristics of the cases across the Divisions varies widely. Secondly, the relevant legislation that governs reviews also varies. Thirdly, at the time of amalgamation the AAT inherited 3 different electronic case management systems that provide different levels and types of information. When the Parliament was considering the amalgamation of the AAT, it was clearly envisaged that specialised expertise would be developed within Divisions to take into account a large and varied caseload.<sup>23</sup>

The AAT's Divisions have demonstrated a number of achievements since amalgamation, including the development of innovative caseload management strategies which are tailored to the needs of the case and users. Examples of key divisional achievements are set out below.

### *Migration & Refugee Division*

The Migration & Refugee Division has increased its finalisations significantly since amalgamation with the available members. As noted in successive annual reports, the Division has developed and implemented a new senior management structure and innovative case management practices which have facilitated these improvements across all caseloads.

For instance, in the 6 years since amalgamation the Division has finalised close to 29,000 applications relating to protection visas compared to just under 20,000 in the 6 years prior to the amalgamation. This represents an increase of nearly 50%. In this same period there has been an increase of 33% in finalisations in the family and partner caseload.

In the last 3 years, the Division has finalised over 18,000 applications relating to business/work visas which is more than the combined total of finalisations for these cases in the 9 years prior to amalgamation. There have been similar successes in the student caseload over the last 3 years, where the Division focussed surge resourcing to meet record-high lodgements, with around 18,000 student visa refusal reviews finalised. This is similar to the number finalised in the 9 years prior to amalgamation. Despite the COVID-19 pandemic, over the last 2 years the Division has been able to reduce the backlog of cancellation cases, which are priority cases and generally more complex, by 65%.

### *Social Services & Child Support Division*

The Social Services & Child Support Division has continued to deliver an accessible and effective mechanism of first review of Centrelink decisions since 2015–16 with a median finalisation time of between 8 and 13 weeks.

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<sup>23</sup> Tribunals Amalgamation Bil 2014, Revised Explanatory Memorandum, p.4.

In 2007, Australia moved disputes relating to child support payments from the courts to the Social Security Appeals Tribunal, allowing for expeditious external review in a more informal and less adversarial forum. The AAT has developed an early case assessment system to fast track matters which could be finalised without a hearing and provide parties with a faster review.

In 2020–21 27% of cases were resolved without the need for a hearing, significantly reducing the pressure and anxiety for parents. Overall, the Division finalised 2,349 child support applications in an average time of 11 weeks which is the most efficient timeframe since 2015–16.

### *National Disability Insurance Scheme Division*

Jurisdiction in relation to the NDIS was conferred on the AAT in 2013. While lodgements have grown steadily over time, they have increased more rapidly since March 2021. The NDIS Division now has a significant volume of work both by reference to lodgements and cases on hand.

A caseload strategy has been developed which includes innovative processes for the early identification of cases requiring urgent and priority action through the establishment of a dedicated caseload assessment and triage team, which assigns applications to a case management pathway best reflecting the individual needs of the case. Duty registrars and members are available to undertake urgent conferences and interlocutory hearings and cases may be referred to members for intensive case management where this has been identified as beneficial. A high proportion of cases are finalised without proceeding to a final hearing, including through the use of ADR.

There is an ongoing focus on accessibility which includes tribunal-wide training in disability confidence and specialist professional development for staff, registrars and members working in the NDIS Division.

### *General Division*

Since amalgamation in July 2015, the General Division has finalised between 73% and 84% of cases within 12 months of the application being lodged. The number of cases on hand has remained stable during that period. In 2020–21, there was a clearance ratio of 109% which reflects that the Division finalised more cases than were received.

A significant majority of cases are resolved without the need for a final hearing, including through the use of ADR. For example, in the last financial year, 93% of workers' compensation cases were resolved without proceeding to a hearing resulting in the saving of time and money for the parties.

### *Small Business Taxation Division and Taxation & Commercial Division*

The Small Business Taxation Division was established in 2019. The Division features flexible approaches to case management designed to promote early engagement and more innovative use of ADR processes including the use of co-conferences involving specialist accountants. In 2020–21, the Division was able to resolve over 90% of the applications without the need for a final hearing.

The Division experienced a significant increase in applications in 2020–21 arising out of the Coronavirus Economic Response Package. The new processes in the Division were stress-tested by the need to deal quickly with cases given the importance of delivering assistance to small businesses coping with the pandemic.

The use of test cases to resolve common issues was an important tool in this endeavour.<sup>24</sup> The Tribunal's decisions in these cases informed the Commissioner of Taxation's primary decision-making. The approaches in the Small Business Taxation Division were pioneered in the Taxation & Commercial Division which reviews decisions made by regulators, including the Australian Securities and Investments Commission, Industry and Science Australia, and the Tax Practitioners Board.

### Other mechanisms contributing to transparency

Hearings conducted by the AAT are open to the public unless the law requires they be held in private (e.g. refugee cases in the Migration & Refugee Division and all cases in the Social Services & Child Support Division) or the Tribunal decides that all or part of the hearing is to be in private.<sup>25</sup> Members of the public can attend any hearing that is held in public. In response to the COVID-19 shift requiring hearings to be held by telephone or video, the AAT introduced a mechanism for members of the public to continue to attend hearings virtually.

The AAT publishes a large number of written statements of reasons for its decisions to promote the transparency of our operations and contribute to accessibility as well as public trust and confidence in the Tribunal's decision-making. They inform parties, representatives and the public about our work, including our role and jurisdiction, how we interpret law and policy when reviewing decisions and why we have made the decision in individual cases. The AAT's [Publication of Decisions Policy](#) identifies what decisions are published and how decisions are selected for publication.

In relation to workload, the AAT and IAA publish caseload statistics in the annual report and on their websites which provide a wide range of information on their activity, including the number of applications and referrals received, finalised and on hand, case events held, timeliness of the review process and outcomes of reviews. Information for the current year is updated each month and is cumulative for the year to date. More detailed information is available in relation to the work of the Migration & Refugee Division. Work is in progress to further expand the type of reporting and level of detail conveyed through the monthly reports for other Divisions.

To illustrate, the standard caseload statistics reports for the whole of the AAT for 2018–19, 2019–20 and 2020–21 are included at **Annexure 2**.

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<sup>24</sup> The cases included *Apted and Commissioner of Taxation* [2020] AATA 5139 (on appeal to the Full Federal Court in *Commissioner of Taxation v Apted* [2021] FCAFC 45) which dealt with the entitlement to claim Jobkeeper, and *Slatter Building Group Pty Ltd and Commissioner of Taxation* [2021] AATA 455 which dealt with entitlement to the Cash Flow Boost.

<sup>25</sup> Section 35 of the AAT Act, sections 365 and 429 of the *Migration Act 1958*, and social services legislation, including section 95K of the *Child Support (Registration and Collection) Act 1988* and section 168 of the *Social Security (Administration) Act 1999*.



Caseload statistics are used by the AAT to monitor trends and performance and identify resourcing needs and opportunities for process improvement.

### **User feedback and mechanisms for continuous improvement**

As with all organisations, there is always more to do to improve performance and adjust to changing circumstances and expectations. As part of its culture of continuous learning and innovation, the AAT seeks feedback and opportunities to better deliver on its objective.

The AAT's [Service Charter](#) sets out the standards of service that people can expect when dealing with the Tribunal. Information on the extent of our compliance with those standards during 2020–21 (where information is available) is included as part of the Annual Report.<sup>26</sup>

Users of the AAT are also encouraged to provide feedback about their experience of the Tribunal. The AAT's Service Charter includes information about how to provide feedback including how to make a complaint about the AAT. It also sets out our standards for responding to complaints.

The number of complaints received each year, as a proportion of all applications finalised, is relatively low. During 2020–21, the Tribunal finalised 233 complaints. Some complaints involved a finding that the Tribunal could have handled matters differently. They related to issues such as administrative error, how members and staff communicated with users, privacy, procedural issues and timeliness. Where the Tribunal formed a view it could have acted more appropriately, an apology was offered and steps taken to address the issue with the relevant areas and personnel.

Another feedback channel is an annual user feedback survey undertaken by an independent researcher. In 2021, responses were received from 1,259 parties and 398 legal and other representatives. The following results show the average proportion of 'strongly agree' and 'agree' or 'always' and 'usually' ratings given in response to questions about aspects of the AAT's review processes:

- accessibility of information – the usefulness, sufficiency and clarity of the information we provided about the review process: 75% for parties and 88% for representatives (72% and 85% in 2019–20)
- accessibility for users with diverse needs – the extent to which we met the needs of people with disability and the quality of interpreters engaged to assist people from culturally and linguistically diverse backgrounds: 68% for parties and 84% for representatives (65% and 69% in 2019–20)
- fairness – the courtesy and respect shown by members and registrars, the opportunity given to parties to present their case and overall perceptions of the fairness of the review and independence of the AAT: 76% for parties and 88% for representatives (71% and 83% in 2019–20)

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<sup>26</sup> AAT, *Annual Report 2020–21*, pp.78–9.

- informality – how easy it was to apply for review, the appropriateness of the level of formality of conferences and hearings and how straightforward the review process was overall: 75% for parties and 91% for representatives (70% and 90% in 2019–20)
- timeliness – how quick we were to complete the review overall and to provide a decision after a hearing: 62% for parties and 65% for representatives (61% and 56% in 2019–20).<sup>27</sup>

Information about the quantity and nature of complaints received by the AAT as well as the results of the annual user feedback survey and other surveys and feedback mechanisms are collated and reviewed, including to identify any systemic issues that should be addressed or other opportunities for process or systems improvements. They can also inform areas for focus in future learning and development workplans.

### *Audit and risk management*

The AAT's approach to identifying and managing strategic and operational risks is set out in its risk management framework which describes mechanisms to identify, assess, treat and monitor risks. Strategic and operational risks are contained in a register which is reviewed annually by the Audit and Risk Committee. In addition to external audit requirements, the AAT conducts a rolling internal audit program to:

- provide assurance in relation to the control environment and other aspects of AAT operations, and
- identify opportunities for improvement.

The following internal risk reviews were undertaken during 2020–21:

- application databases
- finance health check
- labour hire management
- records management, and
- training and development.

During this period new internal risk reviews also commenced for:

- fraud risk assessment
- registry training and knowledge management, and
- information security review, including IT protections against cyber-attack.

Consistent with a culture of continuous improvement, the AAT responds to issues identified in internal and external audit activities and facilitates the implementation of audit recommendations. The AAT's risk review processes are themselves regularly reviewed for currency and effectiveness.

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<sup>27</sup> Ibid, p.34.



### *Member professional development*

For the AAT's membership, the AAT Members' Professional Development Program<sup>28</sup> identifies and focuses on the core competencies required by members to perform their functions well and offers a comprehensive program of support, evaluation and feedback to promote continuous improvement.

All newly appointed members take part in the AAT's Induction Program which generally consists of an orientation seminar, an induction course and practical training. Each newly appointed member is usually paired with an experienced member as part of a peer mentoring strategy to assist new members adjust to their new role quickly and effectively. The selection of mentors paired with new appointees is undertaken by the relevant head of Division.

The AAT introduced a Periodic Evaluation and Development program in 2021 which is designed to provide members with feedback early in their term of appointment and identify areas where they may benefit from further support and development.<sup>29</sup> It is based around a detailed curriculum that is aligned with core competencies and promotes opportunities for collaborative learning and professional development sessions.

The final component of the Program is member appraisal which is generally undertaken around 12 months prior to the end of the member's term of appointment and provides information the President may take into account in making recommendations relating to reappointment.

### **Legacy and other arrangements affecting performance**

#### *Existing case management systems and pathway to a single case management system*

The amalgamated AAT inherited a number of electronic case management systems and related systems which are used to support the review processes in the different Divisions. The systems are ageing and, due to the age of the design, have limitations in supporting increasing caseloads, enabling changed work practices or supporting effective modern service design and delivery.

A fundamental challenge with the ageing systems are the limitations on the AAT's ability to build and leverage data capabilities across the AAT. Interoperability between the case management systems is extremely limited resulting in inefficiencies and the need to review and adjust data drawn from multiple sources.

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<sup>28</sup> AAT Members' Professional Development Handbook, second edition 2021, p.5.

<sup>29</sup> Ibid.

The AAT is progressing the development of a suite of digital channels and more modern systems that support more accessible, advanced and efficient services for internal and external users and support better capture and use of data and information. Critical to this is progressing a multi-year program through to 2025 to deliver a new case management solution across all Divisions of the AAT. The new case management solution will be implemented in stages over a number of years. This reflects the complexity of moving from a number of systems to a single solution that addresses the needs of a broad, complex user base. A change of this nature is a substantial investment of time, expertise and funds and requires resourcing over a long-term period.

A single solution will enable enhanced interactions with external users online, significantly enhance the AAT's productivity and allow the AAT to better leverage data from a single source of truth to monitor and improve performance.

### *Legislative harmonisation*

In general, the procedures that applied to the conduct of reviews in the AAT, Migration Review Tribunal, Refugee Review Tribunal and Social Security Appeals Tribunal were preserved in the amalgamated AAT, embedded in the legislation that governs the operations of the AAT's Divisions.

While the AAT has implemented strategies to improve the review process within the existing framework, some of the procedural differences set out in legislation limit the potential for the Tribunal to manage cases in the most efficient, effective and proportionate manner. For example, members in the Migration & Refugee Division have more limited flexibility in how they can conduct reviews due to some of the codified procedural requirements set out in the *Migration Act 1958*. The lack of powers under that Act for members to conduct directions hearings, to give enforceable directions, and to dismiss applications for failure to comply with a direction which hampers the ability to efficiently manage cases in that Division.

The Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Bill 2021, currently before the Parliament, includes a number of harmonisation proposals relating to reviews in the Social Services & Child Support Division. The AAT continues to work with the Attorney-General's Department and other relevant agencies to explore options for further legislative harmonisation as well as other measures to support the Tribunal's operations such as a statutory framework for handling complaints about members.

### *Funding and availability of member resources*

The funding arrangements for the AAT and IAA comprise a single, annual appropriation with an adjustable component which responds to variations in the number of cases finalised in the Migration & Refugee Division. The IAA is funded through a funding agreement that is based on the projected number of referrals from the Department of Home Affairs.

The arrangements for the AAT are largely based on funding models that were in place in the AAT, Migration Review Tribunal and Refugee Review Tribunal, and Social Security Appeals Tribunal prior to their amalgamation on 1 July 2015. The funding model for cases in the Migration & Refugee Division is a significant component of the AAT's funding arrangements.

As noted above, a challenge linked directly to performance is the number of members who are available to conduct reviews. Decisions relating to appointments, including the number, level and location, are ultimately a matter for the Government and impact on the AAT's ability to deliver services and meet case finalisation targets. To illustrate, since amalgamation of the AAT in 2015 the Migration & Refugee Division has received over 172,000 lodgments which is well over the 18,000 lodgments per year envisioned in its base funding. While its workload has increased dramatically over this period, its membership has fluctuated from a high of 151 members in 2016–17 to a low of 125 members in 2017–18. As at 31 October 2021, there were 151 active members working in the Migration & Refugee Division.

The increasing backlog of cases in the Migration & Refugee Division has led to a decrease in timeliness and increasing processing times for applicants. The percentage of cases finalised within 12 months has declined steadily from 66% in 2016–17 to 20% in 2020–21. Similarly, the median processing time from lodgement to decision for cases finalised in 2016–17 was 40 weeks; by 2020–21 the median had more than doubled to 99 weeks. For protection visa cases, the median time for cases finalised in 2020–21 was 104 weeks.

The AAT will continue to engage with the Government to seek to ensure the AAT and IAA have the people and financial resources to respond to caseload demands and meet statutory objectives while also identifying and implementing changes to our operations that improve efficiency.

## Integrity

Integrity is a multi-dimensional concept when considered in the context of the AAT. In addition to the usual integrity requirements which apply across the public sector, particular expectations relate specifically to the AAT's role as an independent tribunal.

Tribunal independence is considered critically important as the degree of independence will influence public perception about the extent of the impartiality of the decision-making within the tribunal.<sup>30</sup> This is relevant to the AAT's relationship with ministers and government departments and other agencies. Integrity also brings into play other aspects of the Tribunal's operations, including procedures for managing perception of bias and conflict of interest in individual cases.

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<sup>30</sup> Council of Australasian Tribunals, *Australia and New Zealand Tribunal Excellence Framework*, second edition, 2017, p.11.

### *AAT's institutional autonomy*

The AAT enjoys a number of institutional features embedded in legislation which contribute to its autonomy and the public's perception of its independence from government:

- the President is a Judge of the Federal Court
- the AAT is a self-administering agency with its own budget<sup>31</sup>
- members have security of tenure for the term of their appointment (appointment can only be terminated by the Governor-General on address presented by each House of the Parliament in the same session on grounds of proved misbehaviour or incapacity or on other specified grounds),<sup>32</sup> and
- remuneration and allowances for members are set independently by the Remuneration Tribunal.<sup>33</sup>

### *Engaging with government departments and agencies*

The AAT regularly consults with the Attorney-General and the Attorney-General's Department about operational requirements but not in relation to the conduct of individual cases. Specific areas of consultation that occur between the President of the AAT and the Attorney-General about operational needs and member resourcing are discussed in more detail in this submission under 'Selection Process for Members'.

The AAT engages with a broad range of external stakeholders in relation to general operational issues. The AAT regularly meets with departments and agencies whose administrative decisions the Tribunal reviews, as well as with peak bodies. Engagement also takes the form of stakeholder forums about issues impacting practice areas. AAT members and senior staff regularly present at conferences and other events where aspects of the Tribunal's caseload and operations may be canvassed.

Senior staff of the AAT work closely with the Attorney-General's Department on matters such as membership, jurisdiction, legislation and budget.

### *Conduct Guide for AAT Members / APS Values and Code of Conduct*

The AAT promotes and encourages high standards of personal integrity and ethical behaviour by members and staff. Rules and standards relevant to conduct are incorporated into the Tribunal's policies, guidelines and procedures.

The [Conduct Guide for AAT Members](#) provides guidance for members on appropriate conduct and behaviour in relation to their professional duties and in their private conduct as it affects those duties. All members are provided with information on appropriate member conduct as part of their induction and onboarding program. Professional development regarding 'The role of a member' is also available to members through an online learning module, which explores a range of scenarios and ethical challenges members may encounter.

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<sup>31</sup> Section 24BA of the AAT Act.

<sup>32</sup> Section 13 of the AAT Act.

<sup>33</sup> Section 9 of the AAT Act.

The AAT enterprise agreement includes a commitment by management and APS staff to work in accordance with the APS Values, APS Code of Conduct and Employment Principles. Information relating to the APS ethics framework forms part of the induction process for new starters and ongoing awareness raising activities are undertaken in relation to the framework and its application in different areas of activity.

### *Managing perceptions of bias and conflicts of interest*

Members have a responsibility to understand and adhere to their professional obligations, including:

- the need to be independent and impartial
- provisions in the AAT Act prohibiting a full-time member from engaging in outside paid employment without the President's approval and a part-time member from engaging in any paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of their duties<sup>34</sup>, and
- the need to behave with honesty, integrity, courage and professionalism in all aspects of their duties as a member.<sup>35</sup>

In the context of individual cases, the requirement for a member to disclose a conflict of interest is provided for under the AAT Act.<sup>36</sup> Section 14 provides for the member to disclose any pecuniary or other interest that could conflict with the proper performance of the member's function in relation to a particular proceeding and refrain from taking part in the proceeding or exercising any powers unless the parties and the President consent. If the President becomes aware that a member has a conflict of interest, the President has additional power under this section to direct them to not take part in the proceeding or ensure the member discloses the matters giving rise to a conflict to the parties.

In addition to ensuring information is made available to members about their obligations, further steps are being taken to raise and reinforce awareness of them. The Attorney-General's Department has recently initiated processes to facilitate providing the AAT with notice of any personal interests declared by a member as part of the appointment process, offering the opportunity for the AAT to raise any potential areas of concern with the member. To facilitate ongoing consideration by members across all Divisions of these matters, the AAT will introduce a declaration process for new members and an annual declaration process for existing members relating to these and other relevant obligations. This will supplement the process already undertaken where new members assigned to the Migration & Refugee Division are asked to complete a potential conflict of interest declaration, which is kept on an internal register to assist with appropriate case allocation.

AAT staff are also required to identify circumstances where a conflict of interest could potentially arise, such as in procurement and recruitment processes or when seeking to undertake outside employment. Steps are taken by staff, in consultation with their manager, about how to manage their work arrangements so that potential conflicts of interest may be avoided.

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<sup>34</sup> Section 11 of the AAT Act.

<sup>35</sup> AAT Members' Professional Development Handbook, second edition 2021, p.7.

<sup>36</sup> Section 14 of the AAT Act.

## Selection process for members

### *Legislative framework*

Members are appointed by the Governor-General on a full-time or part-time basis for a term of up to 7 years.<sup>37</sup> The AAT Act outlines the qualification requirements for appointment. The President must be a Judge of the Federal Court and other Judges of the Federal Court or Judges of the Federal Circuit and Family Court (Division 1) may be appointed as Deputy Presidents.<sup>38</sup> A person may otherwise be appointed as a Deputy President or as a Senior Member or Member if they have been enrolled as a legal practitioner for at least 5 years or, in the opinion of the Governor-General, have special knowledge or skills relevant to the duties of a Deputy President, Senior Member or Member.<sup>39</sup>

### *The process*

A revised protocol relating to appointments to the AAT was agreed between the former Attorney-General, the Hon Christian Porter MP, and the President of the AAT in 2019.

The protocol provides for seeking expressions of interest in appointment to the AAT by way of public advertisement. The Attorney-General's Department undertakes the advertising and maintains the register of expressions of interest. The AAT has identified the capabilities required for the member roles role at different levels which have been provided as part of the materials for people considering making an expression of interest. These are included in **Annexure 3**.

Heads of Divisions regularly communicate information about the operational needs of the AAT to the President which informs the President's advice to the Government. Heads of Division also provide information about operational requirements within their division which may have a bearing on future membership requirements.

Consistent with the protocol, the President makes recommendations regarding new appointments and reappointments, noting that appointments are ultimately a decision for the Government. Recommendations for new appointments are made by reference to the register of expressions of interest, with candidates assessed against the published member competencies.

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<sup>37</sup> Sections 6 and 8 of the AAT Act.

<sup>38</sup> Subsection 7(1) and paragraph 7(2)(a) of the AAT Act.

<sup>39</sup> Paragraphs 7(2)(b) and (c) and 7(3)(a) and (b) of the AAT Act.

The President's recommendations for reappointments are informed by the member appraisal process. It currently involves an external reviewer preparing a report based on a range of information which may include a self-assessment by the member, observation of a hearing or listening to a hearing recording, review of written decisions and statistical information and a meeting with the member. The reviewer assesses a member's performance against the member competencies. If any issues are raised, the member is invited to an interview before an independent panel, which usually comprises current and former judges and tribunal members and a representative of the Attorney-General's Department. The independent panel makes recommendations to the President about suitability for reappointment.

In future, member appraisal may be led by AAT heads of Division and those within the Division who hold executive leadership responsibilities rather than an external reviewer. It is intended that the Panel will be comprised of the heads of Division along with independent panel members.<sup>40</sup>

### *Assignment of members to Divisions and oath or affirmation of office*

The AAT Act provides for the Attorney-General to assign Senior Members and Members to one or more Divisions following consultation with the President about the proposed assignment.<sup>41</sup> Assignment to a particular Division may also require the Attorney-General to be satisfied the member has relevant training, knowledge or experience with the subject matter or that consultation has occurred with another Minister about the proposed assignment. For example, before assigning a member to the Migration & Refugee Division, the Attorney-General must consult with the Minister administering the *Migration Act 1958* about the proposed assignment.<sup>42</sup>

The power to assign members to Divisions has previously been delegated by the Attorney-General to the President<sup>43</sup> with the President undertaking the required consultation with Ministers prior to finalising the assignment of members. Currently, these powers remain with the Attorney-General.

A person who is appointed or re-appointed as a member is required to take an oath or affirmation of office before the Governor-General, a Justice of the High Court or a Judge of another federal court or of the Supreme Court of a State or Territory, before proceeding to discharge the duties of their office.<sup>44</sup>

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<sup>40</sup> AAT Members' Professional Development Handbook, second edition, 2021, p.24.

<sup>41</sup> Section 17C of the AAT Act.

<sup>42</sup> Section 17D of the AAT Act.

<sup>43</sup> Subsection 10A(1) of the AAT Act.

<sup>44</sup> Section 10B of the AAT Act.



## **Importance of transparency and parliamentary accountability**

The AAT acknowledges the importance of transparency and accountability to the public through the Parliament.

The AAT has recently received feedback from officer holders of the Parliament and Senators of the Senate Standing Committee on Legal and Constitutional Affairs for the way it has managed the provision of responses to questions on notice. The AAT has taken the opportunity to reflect on this experience, to recognise the impact of the shift in the nature and volume of requests for information, and to explore the steps it needs to take to meet expectations of transparency and parliamentary accountability in future. Recognising the concerns raised by the Committee and the challenge of increasing complexity in requests for information, the AAT is looking at ways to adapt its processes and systems, and to build future capability in this area.

As referred to earlier, legacy case management systems have impacted on the AAT's ability to optimise its performance. This impact has extended to difficulties experienced when responding to questions on notice. Preparing responses to the questions has required multiple steps to access, collate and refine data from several different systems, which each capture and define data in different ways.

A single case management system would be of profound benefit to the way the AAT prepares and provides information – not only will the number of data sources reduce, but the collation, definition and formatting of data will also be aligned. Development of a single case management system is a priority project for the Tribunal which is already underway. The AAT is using its experience in responding to questions on notice and other parliamentary activity to inform the design of the single case management system.

The AAT recognises that the increase in the volume and complexity of information requests is no longer able to be simply absorbed within its existing structure and procedures.

Immediate efforts to adapt existing processes and systems have included modifying systems and processes to capture, monitor and internally report on the progress of large volumes of questions on notice. Work to further streamline ways of operating, is ongoing.

In response to increased interest in the AAT's caseload statistics, new reports with more detailed caseload information for all Divisions, are under development with the intention to publish on the AAT's website in future.

There may also be opportunities to engage more proactively with the Secretariat supporting the Senate Standing Committee on Legal and Constitutional Affairs about any difficulties responding to requests for information.

The AAT welcomes any insight this Inquiry may reveal about how agencies can best meet their parliamentary obligations within their operational capacity.



## **Role of the Administrative Review Council**

Provision for the establishment, composition, functions and powers of the Administrative Review Council (ARC) are contained within Part V of the AAT Act. Oversight of the review processes, identification of gaps, training and recommendations to the Attorney-General about system improvements feature in the Council's functions.

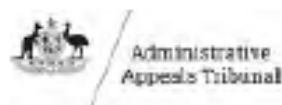
The AAT has benefitted from reports and guidance produced by the ARC relating to standards and areas of tribunal operation. For example, the Conduct Guide for AAT Members (referred to earlier in this submission) was drawn from the approach recommended in the ARC's [Guide to Standards of Conduct for Tribunal Members](#).

Ultimately, any decision about the future operation and activity of the Council is a matter for the Government.

## Annexure 1: Results against measures for 2018–19, 2019–20 and 2020–21

| Results against performance measures in AAT Corporate Plan for 2018–19, 2019–20 and 2020–21                                  |                |                |              |                |                |              |                |                |              |
|--|----------------|----------------|--------------|----------------|----------------|--------------|----------------|----------------|--------------|
| Performance measure  | Target 2018–19 | Result 2018–19 | Met/ Not met | Target 2019–20 | Result 2019–20 | Met/ Not met | Target 2020–21 | Result 2020–21 | Met/ Not met |
| 1. Number of AAT applications and IAA referrals finalised (including IAA results for 2019–20 and 2020–21)                    | 45,600         | 44,413         | Not met      | 48,756         | 53,336         | Met          | 52,040         | 45,353         | Not met      |
| 2. Clearance ratio of AAT and IAA finalisations (included as a performance measure in 2020–21)                               | N/A            | N/A            | N/A          | N/A            | N/A            | N/A          | 100%           | 118%           | Met          |
| 3. Proportion of AAT applications and IAA referrals finalised within a time standard   | 75%            | 66%            | Not met      | 75%            | 60%            | Not met      | 75%            | 54%            | Not met      |
| 4. Number of AAT and IAA decisions published (including IAA results for 2019–20 and 2020–21)                                 | At least 5,000 | 5,905          | Met          | At least 5,000 | 6,265          | Met          | At least 5,000 | 5,860          | Met          |
| 5. AAT user experience rating  | At least 70%   | 73%            | Met          | At least 70%   | 72%            | Met          | At least 70%   | 77%            | Met          |
| 6. Proportion of appeals against AAT and IAA decisions allowed by the courts (including IAA results for 2019–20 and 2020–21) | Less than 5%   | 2.3%           | Met          | Less than 5%   | 4.4%           | Met          | Less than 5%   | 2.3%           | Met          |

## Annexure 2: AAT caseload statistics for 2018–19, 2019–20 and 2020–21



### AAT Caseload Report For the period 1 July 2018 to 30 June 2019

| Division/<br>Area of work                    | Lodgements    | Finalisations | On hand at<br>period end | Proportion of applications<br>finalised within<br>12 months of lodgement | Median time to<br>finalise (weeks)* | Proportion of applications in<br>relation to which the AAT has<br>changed the decision<br>under review <sup>2</sup> |
|--|---------------|---------------|--------------------------|--|-------------------------------------|---|
| <b>Freedom of Information</b>                | 40            | 32            | 69                       | 66%  | 33                                  | 16%   |
| <b>General</b>                               | 5,342         | 5,217         | 3,931                    | 75%  | 25                                  | 26%   |
| Australian citizenship                       | 708           | 575           | 464                      | 87%  | 22                                  | 24%   |
| Centrelink (2nd review)                      | 1,882         | 1,708         | 1,091                    | 87%  | 20                                  | 19%   |
| Visa-related decisions relating to character | 308           | 340           | 71                       | 95%  | 11                                  | 26%   |
| Workers' Compensation                        | 1,368         | 1,633         | 1,601                    | 48%  | 54                                  | 33%   |
| Other  | 1,076         | 961           | 704                      | 84%  | 16                                  | 23%   |
| <b>Migration &amp; Refugee</b>               | 36,172        | 20,892        | 59,718                   | 36%  | 68                                  | 26%   |
| Migration                                    | 25,809        | 16,771        | 39,029                   | 36%  | 68                                  | 30%   |
| Refugee                                      | 10,363        | 4,121         | 20,689                   | 37%  | 72                                  | 9%  |
| <b>National Disability Insurance Scheme</b>  | 1,206         | 1,052         | 668                      | 89%  | 23                                  | 59%   |
| <b>Security</b>                              | 14            | 13            | 9                        | 85%  | 28                                  | 0%  |
| <b>Small Business Taxation</b>               | 123           | 5             | 118                      | 100%   | 5                                   | 50%   |
| <b>Social Services &amp; Child Support</b>   | 16,637        | 16,097        | 3,256                    | >99%   | 10                                  | 21%   |
| Centrelink (1st review)                      | 14,091        | 13,491        | 2,519                    | >99%   | 9                                   | 19%   |
| Child Support                                | 2,279         | 2,356         | 703                      | 98%  | 12                                  | 36%   |
| Paid Parental Leave                          | 267           | 250           | 34                       | 100%   | 8                                   | 8%  |
| <b>Taxation &amp; Commercial</b>             | 800           | 738           | 1,405                    | 69%  | 34                                  | 44%   |
| Taxation                                     | 670           | 642           | 1,285                    | 68%  | 35                                  | 48%   |
| Other  | 130           | 96            | 120                      | 73%  | 31                                  | 16%   |
| <b>Veterans' Appeals</b>                     | 261           | 367           | 314                      | 53%  | 46                                  | 43%   |
| <b>AAT</b>                                   | <b>60,595</b> | <b>44,413</b> | <b>69,488</b>            | <b>66%<sup>3</sup></b>   | <b>21</b>                           | <b>25%</b>  |

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

<sup>2</sup>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.

<sup>3</sup>The Portfolio Budget Statement for the AAT sets out a performance criterion target of 75% of applications finalised within 12 months of lodgement.

Note: This report has been produced for publication on the Administrative Appeals Tribunal (AAT) website. For re-publication or other use, please contact the [Report.RequestsMailbox@aat.gov.au](mailto:Report.RequestsMailbox@aat.gov.au) to discuss intended use and ensure the accurate representation and communication of these figures. Figures may vary slightly between reports due to data changes that may occur between when reports are run.



Administrative  
Appeals Tribunal

## AAT Caseload Report

For the period 1 July 2019 to 30 June 2020

| Division/Caseload                            | Lodgements    | Finalisations | On hand at period end | Proportion of applications finalised within 12 months of lodgement | Median time to finalise (weeks) <sup>1</sup> | Proportion of applications in relation to which decision under review changed <sup>2</sup> |
|--|---------------|---------------|-----------------------|--|--|--|
| Freedom of Information                       | 55            | 62            | 62                    | 34%  | 119  | 10%  |
| General                                      | 5,584         | 5,594         | 3,956                 | 78%  | 24   | 29%  |
| Australian citizenship                       | 815           | 706           | 575                   | 82%  | 23   | 27%  |
| Centrelink (2nd review)                      | 2,167         | 2,081         | 1,173                 | 89%  | 20   | 21%  |
| Visa-related decisions relating to character | 339           | 309           | 145                   | 90%  | 11   | 36%  |
| Workers' Compensation                        | 1,242         | 1,345         | 1,503                 | 52%  | 51   | 36%  |
| Other  | 1,021         | 1,153         | 560                   | 84%  | 18   | 35%  |
| Migration & Refugee                          | 29,976        | 26,402        | 63,305                | 28%  | 82   | 26%  |
| Migration                                    | 18,690        | 21,517        | 36,205                | 28%  | 79   | 30%  |
| Refugee                                      | 11,286        | 4,885         | 27,100                | 25%  | 109  | 7%   |
| National Disability Insurance Scheme         | 1,780         | 1,527         | 922                   | 90%  | 18   | 65%  |
| Security                                     | 5             | 5             | 8                     | 40%  | 66   | 0%   |
| Small Business Taxation                      | 274           | 75            | 318                   | 100%   | 13   | 40%  |
| Social Services & Child Support              | 15,713        | 16,749        | 2,239                 | >99%   | 9  | 22%  |
| Centrelink (1st review)                      | 13,040        | 13,937        | 1,628                 | >99%   | 8  | 19%  |
| Child Support                                | 2,432         | 2,569         | 578                   | >99%   | 13   | 36%  |
| Paid Parental Leave                          | 241           | 243           | 33                    | 100%   | 7  | 4%   |
| Taxation & Commercial                        | 797           | 904           | 1,320                 | 62%  | 36   | 42%  |
| Taxation                                     | 577           | 719           | 1,142                 | 56%  | 41   | 45%  |
| Other  | 220           | 185           | 178                   | 75%  | 27   | 30%  |
| Veterans' Appeals                            | 194           | 287           | 230                   | 52%  | 49   | 32%  |
| <b>AAT</b>                                   | <b>54,378</b> | <b>51,605</b> | <b>72,360</b>         | <b>59%<sup>3</sup></b>   | <b>31</b>                                    | <b>26%</b>   |

<sup>1</sup>Median time to finalise is measured in weeks from lodgement to finalisation.

<sup>2</sup>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.

<sup>3</sup>The Portfolio Budget Statement for the AAT sets out a performance criterion target of 75% of applications finalised within 12 months of lodgement.

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Administrative  
Appeals Tribunal

## AAT Caseload Report

For the period 1 July 2020 to 30 June 2021

| Division/Caseload                            | Lodgements    | Finalisations | On hand at period end | Proportion of applications finalised within 12 months of lodgement | Median time to finalise (weeks) <sup>1</sup> | Proportion of applications in relation to which decision under review changed <sup>2</sup> |
|--|---------------|---------------|-----------------------|--|--|--|
| <b>Freedom of Information</b>                | <b>78</b>     | <b>47</b>     | <b>110</b>            | <b>60%</b>   | <b>43</b>                                    | <b>21%</b>   |
| <b>General</b>                               | <b>4,775</b>  | <b>5,208</b>  | <b>3,558</b>          | <b>73%</b>   | <b>27</b>                                    | <b>28%</b>   |
| Australian citizenship                       | 716           | 707           | 588                   | 74%  | 30   | 28%  |
| Centrelink (2nd review)                      | 1,826         | 1,919         | 1,097                 | 83%  | 22   | 21%  |
| Visa-related decisions relating to character | 380           | 454           | 99                    | 89%  | 11   | 33%  |
| Workers' Compensation                        | 1,147         | 1,265         | 1,388                 | 49%  | 53   | 37%  |
| Other  | 706           | 863           | 386                   | 77%  | 22   | 29%  |
| <b>Migration &amp; Refugee</b>               | <b>15,969</b> | <b>23,246</b> | <b>56,036</b>         | <b>20%</b>   | <b>99</b>                                    | <b>31%</b>   |
| Migration                                    | 5,448         | 17,688        | 23,972                | 15%  | 98   | 39%  |
| Refugee                                      | 10,521        | 5,558         | 32,064                | 34%  | 104  | 6%   |
| <b>National Disability Insurance Scheme</b>  | <b>2,160</b>  | <b>1,448</b>  | <b>1,631</b>          | <b>85%</b>   | <b>23</b>                                    | <b>59%</b>   |
| <b>Security</b>                              | <b>21</b>     | <b>3</b>      | <b>27</b>             | <b>33%</b>   | <b>95</b>                                    | <b>33%</b>   |
| <b>Small Business Taxation</b>               | <b>552</b>    | <b>418</b>    | <b>453</b>            | <b>90%</b>   | <b>9</b>                                     | <b>31%</b>   |
| <b>Social Services &amp; Child Support</b>   | <b>13,013</b> | <b>13,088</b> | <b>2,186</b>          | <b>&gt;99%</b>   | <b>9</b>                                     | <b>22%</b>   |
| Centrelink (1st review)                      | 10,377        | 10,531        | 1,486                 | >99%   | 9  | 19%  |
| Child Support                                | 2,434         | 2,349         | 674                   | 98%  | 11   | 34%  |
| Paid Parental Leave                          | 202           | 208           | 26                    | >99%   | 9  | 5%   |
| <b>Taxation &amp; Commercial</b>             | <b>718</b>    | <b>897</b>    | <b>1,151</b>          | <b>53%</b>   | <b>45</b>                                    | <b>32%</b>   |
| Taxation                                     | 596           | 740           | 1,002                 | 49%  | 53   | 32%  |
| Other  | 122           | 157           | 149                   | 63%  | 40   | 32%  |
| <b>Veterans' Appeals</b>                     | <b>197</b>    | <b>210</b>    | <b>222</b>            | <b>57%</b>   | <b>41</b>                                    | <b>29%</b>   |
| <b>AAT</b>                                   | <b>37,483</b> | <b>44,565</b> | <b>65,374</b>         | <b>53%<sup>3</sup></b>   | <b>45</b>                                    | <b>29%</b>   |

<sup>1</sup>Median time to finalise is measured in weeks from lodgement to finalisation.

<sup>2</sup>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.

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## Annexure 3: Member competencies in advertisement for EOI register

### Competencies

The minimum requirements for appointment to the AAT are outlined in the *Administrative Appeals Tribunal Act 1975*, which provides that a person must be enrolled as a legal practitioner of the High Court or the Supreme Court of a State or Territory for at least five years, or, in the opinion of the Governor-General, possess special knowledge or skills relevant to the position.

Occupants of all roles at any member level at the AAT are required to demonstrate the following competencies:

- **Conducting hearings and other Tribunal proceedings**

An AAT member must be able to manage a hearing and other proceedings, demonstrating procedural fairness, knowledge of hearing processes, an ability to deal fairly and effectively with diverse parties, representatives, witnesses and interpreters, and an understanding of pre-hearing case management processes and alternative dispute resolution techniques.

- **Decision-making and reasoning**

An AAT member should be capable of making decisions that generally resolve a problem by identifying the correct or preferable answer to a question posed in a particular review. An AAT member should demonstrate forensic skills required to make findings of fact, the ability to analyse evidence, and apply legislation, policy and practice directions. An AAT member should also have the ability to formulate and deliver lawful, objective and well-reasoned decisions, and deliver decisions in a way that is fair, just, economical, informal, quick and promotes public trust and confidence in the AAT.

- **Writing and communication skills**

An AAT member should have strong verbal and written communication skills, with the ability to deliver clear, concise and persuasive written decisions, oral decisions and other communications. An AAT member should also be capable of communicating sensitively with self-represented parties, being mindful of cultural or language differences, literacy, disability and other factors. They should also be able to communicate effectively and professionally with other members, staff and stakeholders.



- **Independence, integrity and collegiality**

An AAT member is responsible for understanding and adhering to their professional obligations, including the need to be independent and objective, and the rules against bias and conflict of interest. An AAT member should also demonstrate collegiality, and commitment to ongoing professional development.

- **Productivity, diligence and resilience**

An AAT member must efficiently manage their allocated workload and discharge their responsibilities in a timely way without compromising quality. An AAT member should have capacity to manage a complex caseload which may be intellectually and emotionally challenging; engage with information technology effectively; work in partnership with staff; critically evaluate their own performance; and be available and reliable.

Occupants of the role of Deputy President and Senior Member must also demonstrate an additional competency:

- **Leadership**

A Deputy President or Senior Member should provide leadership and mentoring to other members, and may be responsible for managing an area of practice. A Deputy President or Senior Member should also hear and decide cases of greater complexity and make a significant contribution to the AAT's jurisprudence in a particular jurisdiction. They demonstrate leadership through the highest standards of decision-making, often dealing with cases remitted from the courts.

A Deputy President or Senior Member who is assigned as a Deputy Division Head supports the Division Head, understands and responds positively to change and contributes constructively to change initiatives.