



Administrative Appeals Tribunal

Principal Registry

29 June 2017

Ms Toni Matulick
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
CANBERRA ACT 2600

Dear Ms Matulick

Clarifications to Hansard

I write to you concerning evidence provided by officers from the Administrative Appeals Tribunal to the Senate Legal and Constitutional Affairs Legislation Committee during the Budget Estimates hearing on 25 May 2017.

Officers from the Tribunal who provided evidence to the Committee have identified the following clarifications.

Evidence of Ms Sian Leathem, Registrar, Administrative Appeals Tribunal and Mr Chris Matthies, Executive Director, Strategy and Policy, Administrative Appeals Tribunal

On page 78 of the transcript, in responding to a question from Senator O'Sullivan about the publication of decisions, Ms Leathem stated:

Ms Leathem: ... It is important to understand that the tribunal went through a major amalgamation almost two years ago, in July 2015. Prior to that time, there were effectively separate tribunals. There was the former Administrative Appeals Tribunal. It has been the practice of that tribunal for a very long time to publish all its decisions except for those that might be subject to what we call a section 35 order, where a member decides that there are reasons that certain material should not be published and is subject to a confidentiality order.

On page 99 of the transcript, in responding to a question from Senator McDonald about the publication of decisions, Ms Leathem stated:

Ms Leathem: ... We do publish all the reasons in the General Division, which does the character deport matters. They are published as a matter of course, except if there has been a specific order made under section 35, prohibiting publication.

On page 107 of the transcript, in responding to questions from Senator Hanson about the publication of decisions, the following exchange occurred between Ms Leathem and Senator Hanson:

Ms Leathem: The people who are character deportations—the cancellation on character grounds—they are all published as a matter of course.

Senator HANSON: But you said under section 35 and, correct me if I am wrong—

Ms Leathem: You can make a confidentiality order.

Senator HANSON: That is right. You said you do not publish that on their character?

Ms Leathem: No, only if there is a specific order made under section 35 would we not be publishing, but that is very specific occurrence. The routine is to publish those decisions.

On page 113 of the transcript, in responding to questions from Senator O’Sullivan about the publication of decisions, the following exchange occurred between Mr Matthies and Senator O’Sullivan:

Mr Matthies: In all of the divisions other than the Migration & Refugee Division and the Social Services & Child Support Division, decisions are generally published.

Senator O’SULLIVAN: Are generally published?

Mr Matthies: Yes. So the only exception would be if an order is made, as Ms Leathem indicated previously.

Senator O’SULLIVAN: I appreciate that. so, with the exception of the Migration & Refugee Division?

Mr Matthies: Yes. The Migration & Refugee Division has particular practices, and that is where a selection of decisions is published. And, in the Social Services & Child Support Division, only a very small selection of child support decisions are published. In all of the tribunal’s other divisions, decisions are published as a matter of routine.

The Administrative Appeals Tribunal wishes to clarify that, in the Tribunal’s divisions other than the Migration and Refugee Division and the Social Services and Child Support Division, decisions are published only if a written statement of reasons for the decision is prepared. In cases in which the Tribunal gives its reasons for the decision orally, a written statement of the reasons is prepared and then generally published if a party makes a request for the reasons in writing under subsection 43(2A) of the *Administrative Appeals Tribunal Act 1975* or the Tribunal otherwise reduces the reasons to writing.

Evidence of Ms Sian Leathem, Registrar, Administrative Appeals Tribunal

On page 80 of the transcript, in responding to a question from Senator O’Sullivan about the removal of a published decision, Ms Leathem stated:

Ms Leathem: It is a rare occurrence that a decision would be removed from publication. It would usually be on the request of one of the parties, possibly because there were some concerns about a threat to somebody’s safety or some disclosure of unnecessarily private information. That would then need to be considered. Depending on which division it was, there may be a need for an actual hearing. Generally speaking, it would be considered by the member to determine whether it was appropriate to remove that decision.

The Administrative Appeals Tribunal wishes to clarify that a request from a party or other person that a decision be removed from publication would generally be considered by a member in relation to decisions made in the Tribunal's divisions other than the Migration and Refugee Division or the Social Services and Child Support Division. In relation to decisions made in the Migration and Refugee Division, the procedures that applied from 1 July 2015 but are now under review provide that a request from an applicant or other person that a decision be removed from publication would generally be considered by staff in the Tribunal's Decisions Publication Team rather than by a member.

On page 80 of the transcript, in responding to a question from Senator O'Sullivan about what Dr Irene O'Connell, Deputy Division Head of the Migration and Refugee Division, did with an email that was sent to her, Ms Leathem stated:

Ms Leathem: I understand that she forwarded it to an executive officer for advice about the procedure.

The Administrative Appeals Tribunal wishes to clarify that Dr O'Connell did not forward the email to the Executive Officer. Dr O'Connell was on leave on the day in question. The Executive Officer, who was also a recipient of the email, forwarded it to the Decisions Publication Team mailbox.

On page 107 of the transcript, in responding to a question from Senator Hanson about the number of appeals to the courts in the 2015–16 financial year, Ms Leathem stated:

Ms Leathem: There were 1,629 appeals were lodged.

The Administrative Appeals Tribunal wishes to clarify that this is the number of appeals that were lodged in relation to decisions about protection (refugee) visas made under Part 7 of the *Migration Act 1958*. As reported in the Tribunal's *Annual Report 2015–16*, the total number of appeals lodged in 2015–16 in relation to all decisions of the Migration and Refugee Division was 3,269.

On page 111 of the transcript, in responding to a question from Senator O'Sullivan about the number of decisions that are published, Ms Leathem stated:

Ms Leathem: In the Migration and Refugee Division in 2015–16, there were 2,009 decisions that were published, which is 12½ per cent of all their written decisions.

The Administrative Appeals Tribunal wishes to clarify that the number of decisions that were published represents 12½ per cent of all cases that were finalised by the Migration and Refugee Division in 2015–16, not 12½ per cent of all written decisions. Ten per cent of the cases finalised in the Migration and Refugee Division in 2015–16 were withdrawn by the applicant and did not require a decision.

On page 122 of the transcript, in responding to questions from Senator O'Sullivan about the number of members assigned to the Tribunal's divisions, the following exchange occurred between Ms Leathem and Senator O'Sullivan:

Ms Leathem: There are 52 plus 13, so 65, full-time members in the MRD and there are 65 part-timers.

Senator O'SULLIVAN: Yes, which gives us the 151. What about in the Social Services and Child Support Division?

Ms Leathem: They have got 16 full-timers and 95 part-timers.

Senator O'SULLIVAN: And in the General Division?

Ms Leathem: They have got 21 full-timers and 64 part-timers.

The Administrative Appeals Tribunal wishes to clarify that these figures are the number of Senior Members and Members who have been assigned to each of these divisions. They do not include the President or Deputy Presidents, including the Division Heads, who can exercise powers in any division without the need for an assignment.

On page 123 of the transcript, in responding to a question from Senator O'Sullivan about where applications in the Migration and Refugee Division relating to a resident of the Northern Territory are channelled, Ms Leathem stated:

Ms Leathem: I believe the Northern Territory applicants are managed out of the Victorian office, if I am not mistaken.

The Administrative Appeals Tribunal wishes to clarify that, since 1 July 2015, most applications in the Migration and Refugee Division involving residents of the Northern Territory have been managed by the New South Wales office. A small number of applications have been managed by the Victorian and Queensland offices.

Yours sincerely

Sian Leathem
Registrar