



Administrative
Appeals Tribunal

FOI ref: 2017/18 72

3 May 2018

[REDACTED]

Dear [REDACTED]

Notice of Decision for Freedom of Information Request no. 2017/18 72

[REDACTED]

Reasons

[REDACTED]



Additional information

Additionally, the AAT provides the following context to the information contained in the document.

About the data

The document was compiled from the AAT's Migration & Refugee Division (MRD), Social Services and Child Support Division (SSCSD), and the General & Other Divisions (G&OD) case management records. G&OD is comprised of six divisions: General, FOI, NDIS, Taxation and Commercial, Veterans' Appeals and Security. The data includes court appeals allowed by judgment and those allowed by consent of the parties.

Where an appeal is remitted by consent, there is no judicial scrutiny of the Tribunal's decision, other than to ensure the remittal is lawful.

The data does not precisely match other sources because it takes into account matters, the outcome of which the Tribunal was advised after the preparation of the 2016-17 AAT Annual Report.

In processing this request an error was detected in the table previously provided to you. It appears that in the course of ordering the entries for the Migration and Refugee Division by appeal status a grouping error was made that caused the court reference number and the AAT file number to be misaligned. That error has been rectified in the version of the table provided in response to your FOI request.

Frequency of appeal

In 2016-17, 3,759 appeals were lodged in respect of review decisions of the AAT. The frequency of appeals to the courts varies across the range of decision types made by the AAT. At the time of preparation of the 2016-17 Annual Report, 551 court appeals had been allowed in that year.

Generally, a court appeal is more likely where review decisions involve previously untested or complex law, complex factual assessments or where a particular outcome has significant import for one or more of the parties and judicial review is accessible to that party. The volume of appeals lodged affects the raw number of decisions remitted to the Tribunal.

The volume of decisions made and mix of case types handled by individual AAT members varies depending on a number of factors including the Division to which they are assigned, whether they are assigned to more than one Division, any practice group or area of particular expertise in which they work at any particular time, and the type of membership to which they have been appointed (Deputy President, Senior member, Member, full-time or part-time). The decisions of members handling higher numbers of those case types that are more likely to be appealed to the courts are more likely to appear in the list of decisions remitted by the courts.

The largest number of court appeals in 2016-17 (3,644) was in relation to migration and refugee decisions, followed by child support and worker's compensation decisions.

Migration cases

While some migration decisions (mostly concerning certain character issues) are handled in the General Division, most migration and refugee visa reviews are conducted in the MRD.

Court appeal trends in migration and refugee cases conducted in the MRD have been consistent in recent years.

The table below shows migration and refugee decisions appealed in a financial year as a proportion of all migration and refugee decisions (except applications withdrawn) made by the MRD in that year.

MRD Appeal rate

	2014-15	2015-16	2016-17
Refugee decisions	30.8%	48.0%	37.2%
Migration decisions	12.6%	14.8%	15.7%
TOTAL	17.1%	22.6%	22.0%

In addition to matters influencing appeals to the courts noted above, the number of appeals from decisions of the MRD reflects the overall volume of review decisions made by that Division in any particular year. (18,908 of the 38,146 applications finalised by the AAT in 2016-17 were MRD decisions).

All but 8 migration and refugee appeals were lodged by individual applicants, rather than the Minister or agency, in the 3 year period from 1 July 2014 to 30 June 2017. Given the import of the MRD's decisions for individual applicants, it follows that court appeal numbers are closely related to the number of original decisions made by the Minister's delegate that are affirmed by MRD members. Similarly, the number of remittals and appeals allowed follow this trend.

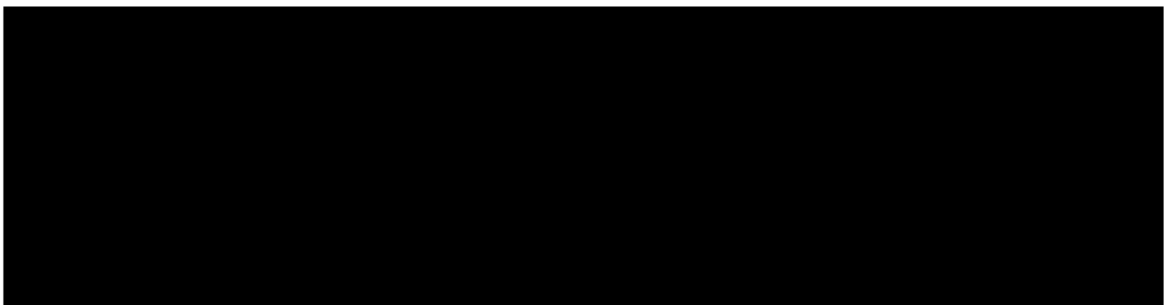
Frequency of remittals and appeals allowed

As indicated regarding the table previously provided to you, appeals remitted by consent as a result of the decisions of the Full Court in *Waensila v Minister for Immigration and Border Protection* [2016] FCAFC 32 and *Minister for Immigration and Border Protection v Singh* [2016] FCAFC 183 have been marked by asterisks. These cases changed previously accepted legal interpretations with the effect that AAT review decisions that were correctly made prior to these decisions subsequently required remittal.

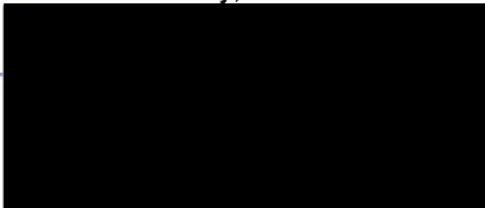
Rate of remittal by consent for MRD decisions

Approximately 80% of those MRD decisions appealed to, and then remitted by, the courts are remitted by consent. Correspondingly, approximately 20% of those MRD decisions appealed to, and remitted by, the courts are remitted following judicial scrutiny of the MRD decision. In 2016-17, these figures were 110 decisions remitted by judgment and 437 remitted by consent.

The annual data does not compare individual appeals lodged and finalised. However, an approximate rate can be calculated by assuming court appeals are decided in the year following the year in which the MRD decision was made and the appeal, due to time limits, is likely to have been lodged. For example: in 2015-16 the MRD finalised 16,111 applications, of which 14,459 were appealable decisions. That same year 3,269 court appeals were lodged in respect of migration and refugee decisions. It follows that, while approximately 16.7% of appeals were successful, the rate of overturn by the courts, taken as a proportion of all appealable MRD decisions, was approximately 3.7% and that the rate of overturn by judgment was less than 1%.



Yours sincerely,



Attachments

Document released under FOI Act
FOI 2 – Information about reviews and complaints under the Freedom of Information Act

Information about reviews and complaints under the Freedom of Information Act

What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

How do I apply for internal review to the AAT?

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

How do I apply for review to the Australian Information Commissioner?

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

What if I want to make a complaint about the handling of a Freedom of Information request?

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

Where can I find further information or contact details for the Office of the Australian Information Commissioner?

Further information is available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au and you can contact the office on 1300 363 992 or by email at enquiries@oaic.gov.au.