



## Publication of decisions

### 1. About this policy

- 1.1 The AAT is authorised to publish our decisions and the reasons for them by section 66B of the *Administrative Appeals Tribunal Act 1975* (AAT Act). However, we must not publish information if its disclosure is prohibited or restricted by the AAT Act or by any other legislation that gives the AAT jurisdiction. In addition to requirements that apply generally to some categories of cases, a Tribunal member may make directions in an individual case under section 35 or 35AA of the AAT Act or section 378 or 440 of the *Migration Act 1958* (Migration Act) to prohibit the publication of information relating to the case (non-publication directions).<sup>1</sup>
- 1.2 In carrying out our functions, the AAT is required to pursue the objective of providing a mechanism of review that is accessible and promotes public trust and confidence in our decision-making.<sup>2</sup> Publishing statements of reasons for AAT decisions (written decisions) contributes to achieving this objective and promotes the transparency of our operations by informing parties, representatives and the general public about our work, including:
- (a) our role and jurisdiction;
  - (b) our procedures when conducting reviews;
  - (c) how we interpret and apply law and policy when reviewing decisions; and
  - (d) why we have made the decision in individual cases.
- 1.3 This document sets out the AAT's policy for the publication of our written decisions.<sup>3</sup> It identifies:
- (a) the categories of written decisions that the AAT publishes and, where relevant, how they are selected for publication;
  - (b) targets for the proportion of written decisions published for different categories of cases, including those in relation to which all written decisions are generally published;
  - (c) the circumstances in which a written decision, or particular information contained in a written decision, may not be published;

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<sup>1</sup> The Tribunal may make a direction on the application of a party, witness or other person or on the Tribunal's own motion.

<sup>2</sup> Sections 2A(a) and (d) of the AAT Act.

<sup>3</sup> This includes written statements of reasons prepared on request or otherwise after the Tribunal has given reasons for decision orally.

- (d) other considerations relating to the inclusion of personal information in decisions that may be published; and
- (e) when published decisions may be recalled from publication or amended.

1.4 Decisions are published on the Australasian Legal Information Institute website ([www.austlii.edu.au](http://www.austlii.edu.au)) and may also be available from other legal publishers.

## 2. Written decisions published under this policy

2.1 Subject to paragraph 2.2, the AAT publishes written decisions made in our nine divisions as follows:

- (a) Freedom of Information, General, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial, and Veterans' Appeals Divisions – the AAT generally publishes all written decisions;
- (b) Migration & Refugee Division – the AAT generally publishes all written decisions made in some categories of cases and a proportion of written decisions in other categories of cases;
- (c) Social Services & Child Support Division – the AAT publishes a proportion of written decisions made in child support cases.

A full description of the different categories of cases and their targets is set out in Attachment A to this policy.

2.2 A written decision is not published if:

- (a) any legislative provision prohibits the publication of the decision;
- (b) a Tribunal member makes a direction under section 35 or 35AA of the AAT Act or section 378 or 440 of the Migration Act to the effect that the decision not be published; or
- (c) the extent of the editing required to comply with non-disclosure requirements renders the written decision unintelligible.

2.3 In broad terms, a Tribunal member may make a direction under the AAT Act or the Migration Act that a decision not be published if satisfied in the circumstances of the case that the harm arising from the publication of the decision outweighs the public interest in publishing the decision.

2.4 For the categories of cases in relation to which not all written decisions are published in the Migration & Refugee Division and Social Services & Child Support Division, we:

- (a) publish a representative cross-section of decisions made in the different categories of cases; and
- (b) apply a random selection process to determine the decisions to be published.

Tribunal members play no role in determining which of their decisions may be published except to the extent that they may make a non-publication direction in accordance with the AAT Act or the Migration Act.

2.5 More information about the AAT's selection policy in the Migration & Refugee Division and Social Services & Child Support Division follows.

## **Migration and Refugee Division**

- 2.6 Subject to paragraph 2.2, written decisions in the Migration & Refugee Division are selected for publication according to the following criteria:
- (a) all decisions are published in the following categories of cases:
    - (i) reviews of decisions to cancel a visa, cancel a sponsor's approval, bar a sponsor or limit the approval of a sponsor;
    - (ii) reviews of decisions to refuse protection visas relating to stateless persons as well as decisions in other categories of cases with lower numbers of decisions;
    - (iii) cases in relation to which an application for judicial review has been heard by the Federal Circuit Court; and
    - (iv) reviews in relation to which a court has, by judgment, previously remitted the case to the AAT for redetermination;
  - (b) a proportion of decisions, randomly selected, are published in other categories of cases.
- 2.7 The Migration & Refugee Division may also identify for publication other written decisions that have not been randomly selected but are of particular interest (for example, cases dealing with novel or complex issues).

## **Social Services and Child Support Division**

- 2.8 The AAT is authorised by the *Child Support (Registration and Collection) Act 1988* to publish written decisions made in child support cases in the Social Services & Child Support Division as an exception to the secrecy provisions in that Act, subject to the strict non-disclosure requirements noted below.<sup>4</sup> Decisions made by the Division in family assistance, farm household support, paid parental leave, social security and student assistance cases are not published as such exceptions do not exist in the legislation giving the AAT jurisdiction to review these decisions.
- 2.9 Subject to paragraph 2.2, the AAT publishes a proportion of written decisions, randomly selected, in relation to the following categories of child support cases:
- (a) reviews of decisions about whether a child support assessment should be changed;
  - (b) reviews of decisions about a parent's or non-parent carer's percentage of care for a child; and
  - (c) reviews of other child support decisions.
- 2.10 The Social Services & Child Support Division may also identify for publication other written decisions that have not been randomly selected but are of particular interest (for example, cases dealing with novel or complex issues).

## **3. Restrictions on the inclusion of information in decisions to be published**

- 3.1 A number of Acts prohibit or restrict the disclosure of information and affect the extent to which specified information can be included in a published decision. Examples include:

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<sup>4</sup> Section 16(2AB) of the *Child Support (Registration and Collection) Act 1988*.

- (a) *Child Support (Registration and Collection) Act 1988*<sup>5</sup> – the AAT must not identify a party, witness or other person related to, or associated with, the matter to which the review relates;
- (b) *Migration Act*<sup>6</sup> – the AAT must not identify the applicant or any relative or other dependant of an applicant if the review is about a decision to refuse to grant, or to cancel, a protection visa or a protection-related bridging visa; and
- (c) *Taxation Administration Act 1953*<sup>7</sup> – the AAT must not identify the applicant in taxation cases if the hearing was held in private.

3.2 A Tribunal member may also make a direction under section 35 or 35AA of the AAT Act or section 378 or 440 of the Migration Act in an individual case, prohibiting or restricting the publication of particular information, including:

- (a) the name or other information tending to reveal the identity of a party, witness or other person related to or associated with any party or witness; and
- (b) information relating to evidence or other information given to the AAT.

In broad terms, a Tribunal member may make such a direction if satisfied in the circumstances of the case that the harm arising from the publication of the information outweighs the public interest in publishing the information.

3.3 Written decisions that are published must comply with any restrictions on the publication of information. Decisions made in the Migration & Refugee Division and Social Services & Child Support Division are edited for publication by AAT staff to meet these requirements.

## 4. Other considerations relating to the inclusion of personal information in decisions that may be published

4.1 The wide availability of published decisions gives rise to the potential for misuse of information contained in written decisions, including the risk of identity theft. When preparing reasons for decision, Tribunal members:

- (a) should only include information about a party, witness or other person in reasons for decision if it is relevant to the findings or otherwise necessary for the cogency of the reasons<sup>8</sup>; and
- (b) should not generally set out in full unique personal identifiers such as dates of birth, dates of anniversaries, current or past residential addresses, telephone numbers, email addresses or other unique numbers, including bank account or credit card numbers, motor vehicle registration or driver's licence details, or Centrelink, child support, Medicare, passport or tax file numbers.

## 5. Recall and amendment of a published decision

5.1 Once a written decision has been published, the AAT may recall the decision if:

<sup>5</sup> Section 16(2AB) of the *Child Support (Registration and Collection) Act 1988*.

<sup>6</sup> Sections 431 and 501K of the Migration Act.

<sup>7</sup> Section 14ZZJ of the *Taxation Administration Act 1953*.

<sup>8</sup> A written decision must include the Tribunal's findings on material questions of fact and a reference to the evidence or other material on which those findings were based: section 43(2B) of the AAT Act and sections 368, 368B, 430 and 430D of the Migration Act.

- (a) a Tribunal member makes a direction under the AAT Act or the Migration Act prohibiting the publication of the decision (including on an interim basis pending determination of an application from a party, witness or other person for a non-publication direction in relation to the decision); or
- (b) the decision contains information the disclosure of which is prohibited or restricted by legislation or an existing non-publication direction.

Unless a Tribunal member makes a direction under the AAT Act or the Migration Act to the effect that the decision not be republished, the decision must be republished, whether in its original form or an amended form, as soon as practicable after:

- (a) a Tribunal member has determined any application for a non-publication direction; and/or
- (b) any editing has been undertaken to ensure the decision no longer contains the information the disclosure of which is prohibited or restricted by legislation or a non-publication direction.

5.2 The AAT may replace a published decision with an amended version of the decision if:

- (a) the published decision has been edited in order to redact information the disclosure of which is prohibited or restricted;
- (b) a Tribunal member is satisfied there is an obvious error in the text of the published decision and has directed that the text of the decision be altered<sup>9</sup>; or
- (c) the published decision contains typographical errors made by staff when editing a Migration & Refugee Division or Social Services & Child Support Division decision for publication as set out in paragraph 3.3.

## 6. Monitoring and review

6.1 The AAT will monitor the operation of this policy, including the number of written decisions that are published and the extent to which there is a representative cross-section of decisions made in the Migration & Refugee Division and the Social Services & Child Support Division.

6.2 The AAT will review the policy annually, including the targets set out in Attachment A.

**Justice D G Thomas**

**President**

2 July 2019

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<sup>9</sup> See section 43AA of the AAT Act. Examples of obvious errors are an obvious clerical or typographical error, or an inconsistency between the decision and the statement of reasons. The amended version of the decision must identify the changes.

## TARGETS FOR CATEGORIES OF CASES

This attachment sets out the targets that apply from 1 July 2019 for the proportion of written decisions to be published for the AAT's divisions and particular categories of cases within divisions, subject to excluding written decisions that will not be published as described in paragraph 2.2 of the policy.

### ***Freedom of Information, General, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial, and Veterans' Appeals Divisions***

CATEGORY OF CASE	TARGET
All types of cases	100%

### ***Migration & Refugee Division***

A 'substantive review' is a case in which the AAT makes a written decision to affirm, vary or set aside the decision under review or to remit the matter to the decision-maker for reconsideration.

CATEGORY OF CASE	TARGET
<b>All classes of visa</b>	
Any substantive review of a decision to cancel a visa	100%
Any AAT case in relation to which an application for judicial review has been heard by the Federal Circuit Court	100%
Any review in relation to which a court has previously remitted the case to the AAT by judgment	100%
Any application finalised on the basis that the requirements for making a valid application to the AAT were not met or the Tribunal confirms the dismissal of the AAT application because the applicant failed to appear at a hearing	5%
<b>Bridging visas</b>	
Any substantive review of a decision to refuse to grant a visa	25%
<b>Business/skilled/work visas</b>	
Any substantive review of a decision to cancel a sponsor's approval or to bar a sponsor	100%
Any substantive review of a decision to refuse to grant a permanent business visa	50%
Any other substantive review, including of a decision to: <ul style="list-style-type: none"> <li>• refuse a nomination or sponsorship approval or variation, or</li> <li>• refuse to grant a skilled visa, temporary business or temporary work visa</li> </ul>	20% 25%

CATEGORY OF CASE	TARGET
<b>Family visas</b>	
Any substantive review of a decision to refuse to grant a visa	50%
<b>Partner visas</b>	
Any substantive review of a decision relating to a limitation on approval of a sponsorship	100%
Any substantive review of a decision to refuse to grant a visa relating to whether there are compelling reasons not to apply the criteria in Schedule 3 of the <i>Migration Regulations 1994</i>	20%
Any other substantive review of a decision to refuse to grant a visa	20%
<b>Protection visas</b>	
Any substantive review of a decision to refuse to grant a visa to: <ul style="list-style-type: none"> <li>• a national of a country not among the 25 most common countries of origin; or</li> <li>• a stateless person</li> </ul>	100%
Any substantive review of a decision to refuse to grant a visa to a national of a country among the 25 most common countries of origin (other than the People's Republic of China or Malaysia)	25%
Any substantive review of a decision to refuse to grant a visa to a national of the People's Republic of China	20%
Any substantive review of a decision to refuse to grant a visa to a national of Malaysia	5%
<b>Student visas</b>	
Any substantive review of a decision to refuse to grant a visa	10%
<b>Visitor visas</b>	
Any substantive review of a decision to refuse to grant a visa	20%
<b>Other visas</b>	
Any substantive review of a decision to refuse to grant a visa	100%

### ***Social Services & Child Support Division***

CATEGORY OF CASE	TARGET
Any review relating to a child support decision about a change of assessment	25%
Any review relating to a child support decision about determining the percentage of care for a child	25%
Any other review of a child support decision	25%