



Administrative Appeals Tribunal

Registrar's Opening Statement

Senate Legal and Constitutional Affairs Legislation Committee

Budget Estimates Hearing
24 May 2018

Thank you, Chair.

I would like to make a short opening statement regarding the role and function of the Administrative Appeals Tribunal – or AAT. I will also address the Tribunal's role in reviewing decisions relating to the National Disability Insurance Scheme and visa cancellations and refusals based on character grounds.

The public should have confidence in executive decision making. The Tribunal was established more than four decades ago to provide independent merits reviews of Government decisions. In the 2016-17 financial year, the Tribunal received over 50,000 applications for review of decisions made under more than 400 pieces of legislation.

The Tribunal has the power to affirm (or agree with) 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 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. Tribunal members are required to consider additional information that may not have been before the original decision-maker. Evidence that has been submitted is tested in hearings. Members must provide reasons for their decisions.

The Tribunal reviews decisions that have a direct impact on the lives of individuals. These include the provision of income support to pensioners and veterans; the supports included in an NDIS plan; a tax assessment; or the opportunity to have a partner or family member reside in or visit in Australia.

Other decisions reviewed by the AAT can have a wider significance, with potential implications for thousands or millions of Australians, such as a decision relating to the approval of a medication under the *Therapeutic Goods Act 1989*; or a decision to disqualify an individual from providing financial services under the *Corporations Act 2001*.

The nature of the role of any court or tribunal means there will invariably be questions about particular decisions. In the case of the AAT, all decisions can be appealed to the Federal Circuit Court or Federal Court and be overturned if they are found to be affected by legal error.

The AAT is aware of ongoing interest in our role reviewing decisions made by the National Disability Insurance Agency. As the rollout of the scheme progresses, the Tribunal is receiving an increasing number of applications. In 2015–16, 33 cases were finalised. This figure increased to 89 in 2016–17. This financial year, to 31 March 2018, we have finalised

266 cases. We expect this upwards trend to continue. As a relatively new jurisdiction, the Tribunal is aware of the need to ensure that applicants experience an accessible and efficient review process.

I now come to the final matter I wish to address – the Tribunal’s specific role to review decisions made by delegates in the Department of Home Affairs to refuse or cancel a visa on character grounds:

The Tribunal welcomes the recently commenced inquiry by the Joint Standing Committee on Migration into *Review Processes Associated with Visa Cancellations Made on Criminal Grounds*. The AAT has provided a submission to the inquiry which can be tabled here should the Committee wish.

Like other courts and tribunals, the AAT is occasionally the subject of media reports about our operational processes as well as individual cases. In the case of the latter, the Tribunal’s published decisions with written reasons stand on their own merits. The AAT is one of the highest volume publishers of decisions amongst all courts and tribunals in Australia.

The review of decisions to refuse or cancel a visa on character grounds is a small component of the broad range of decisions about visas reviewed by the AAT, and an even smaller component of the overall caseload managed by the AAT.

To put these matters in context, in 2016–17, the Tribunal finalised 42,224 reviews, of which 168 decisions (or less than 0.4 per cent), related to visa cancellations and refusals on character grounds.

In considering and deciding these matters, Tribunal members are bound to apply Ministerial Direction No. 65 which sets out three primary considerations which must be taken into account. These include protection of the Australian community; the best interests of minor children in Australia; and expectations of the Australian Community. The Direction also sets out five ‘other considerations’ which must also be taken into account, including: international non-refoulement obligations; the strength, nature and duration of ties; impact on Australian business interests; impact on victims; and the extent of impediments if removed. These decisions are routinely published and contain an explanation of the Members’ evaluation of each of these considerations.

The AAT is dedicated to providing a review process that is accessible, fair, just, economical, informal and quick.

Thank you and I invite any questions from the Committee.