

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Administrative Appeals Tribunal

Question No. BE17-088

Senator O'Sullivan asked the following question on 25 May 2017:

Senator O'SULLIVAN: Sandra Kerr. So can I ask you, sir, would this be the proper protocol if there had been a decision taken? Let us assume that the processes were followed. We know they have not been. But if it went to Ms Kerr, would that be the proper line for that to happen? It would not come via you to remove a decision?

Mr Matthies: No.

Senator O'SULLIVAN: But that is not what the protocols call for. So it would go to the section head? Correct?

Ms Leatham: Well, you have taken my only copy of the procedure manual.

Senator O'SULLIVAN: Well, we are going to get you a copy of it back at the same time that I get it. Mr Matthies, in the scope of your knowledge here today—I am going to ask you to take this question on notice notwithstanding—when you have team meetings and team workshops and team arrangements, has the subject of removing decisions off the site ever been discussed amongst your team with you present?

Mr Matthies: Not to my knowledge, no.

Senator O'SULLIVAN: I imagine it would follow that you could not tell me of any other requests or a trend on volume of requests for decisions to be removed from the site?

Mr Matthies: No. I would need to take that on notice.

Senator O'SULLIVAN: Could you do that for me specifically? Let us use, so it does not become too burdensome at this stage, the last 30 months as the time frame. There would be records kept of that, Mr Matthies, if your team were to remove it, because the procedures allow for that?

Mr Matthies: Yes.

The response to the honourable Senator's question is as follows:

On 1 July 2015, the AAT merged with the Migration Review Tribunal (MRT), Refugee Review Tribunal (RRT) and Social Security Appeals Tribunal (SSAT). Decisions that could be reviewed in the former MRT-RRT are reviewed in the AAT's Migration & Refugee Division. Decisions that could be reviewed in the former SSAT are reviewed in the AAT's Social Services & Child Support Division. The former AAT's areas of work are dealt with in one of six other Divisions: Freedom of Information, General, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions.

Records held by the Administrative Appeals Tribunal (AAT) disclose that, in the period from 1 December 2014 to 25 May 2017, a total of 35 decisions of the AAT, Migration

Review Tribunal (MRT) or Refugee Review Tribunal (RRT) published on the AustLII website were removed. A replacement decision was subsequently published in relation to 11 of those decisions.

Decisions made by the AAT prior to 1 July 2015 or made by one of the divisions dealing with the same areas of work from 1 July 2015

From 1 December 2014 to 25 May 2017, 16 decisions were removed. A replacement decision was later published in relation to six of the decisions.

Ten decisions were removed after a party or other person who had been identified in a decision raised with the AAT a concern about the publication of the decision or particular information included in the decision. Requests of this kind were either applications for a non-publication order under section 35 of the *Administrative Appeals Tribunal Act 1975* (section 35 order) or were treated as such.

- Five decisions were later republished after they had been edited to comply with a section 35 order directing that certain information not be published: for example, a name or other details that may identify a party or other persons.
- Five decisions were removed permanently. In relation to two decisions, a section 35 order was made prohibiting the publication of the decision. In relation to three decisions, the decisions were not published in light of the matters raised by the applicant. In relation to two of these decisions, a section 35 order was made prohibiting the publication of certain information.

Six decisions were removed after a Tribunal member or staff member raised a concern that the decision may have included information which should not or would not generally be published.

- One decision was republished after it had been edited to comply with a section 35 order directing that certain information not be published.
- Five decisions were removed permanently. In relation to four decisions, information included in the decision may have allowed the identification of a person whose name was prohibited from being published under a section 35 order or a person who had been involved in family law proceedings, child support proceedings or children's criminal proceedings. One decision was published contrary to the then policy of the former AAT that decisions made in applications dealt with in the Small Taxation Claims Tribunal would only be published at the request of the presiding member which had not occurred in relation to this decision.

Removal of decisions made by the MRT, RRT prior to 1 July 2015 or by the AAT's Migration & Refugee Division from 1 July 2015

From 1 December 2014 to 25 May 2017, 19 decisions were removed. A replacement decision was later published in relation to five of the decisions.

Six decisions were removed after a party or member of the public raised with the MRT-RRT or AAT a concern about the publication of the decision or particular information included in the decision, including that an applicant for a protection visa or a relative or dependant of the applicant may be able to be identified contrary to section 431 of the *Migration Act 1958*.

- Each of the decisions was removed permanently on the basis that continued publication may result in some degree of harm, distress or prejudice to the applicant or another person identified in the decision. In relation to three decisions, there was concern that information could potentially allow an applicant for a protection visa or a relative or dependant of the applicant to be identified. One decision contained sensitive personal information about a person's health. In relation to two decisions, the Tribunal otherwise accepted the concerns raised by the applicant for requesting the decision be removed.

Six decisions were removed after a Tribunal staff member raised a concern that the decision included information which should not or would not generally be published.

- One decision was republished after further editing had been undertaken to ensure an applicant for a protection visa or a relative or dependant of the applicant could not be identified.
- Five decisions were removed permanently. Three decisions included sensitive personal information relating to a person being a refugee, a person's health and a person's sexual orientation. One decision contained a person's full home address. In relation to one decision, there was concern that an applicant for a protection visa or a relative or dependant of the applicant could be identified following a media report.

Four decisions were removed after a Tribunal member or staff member identified that the decision included or may have included errors. Each of the decisions was subsequently republished.

- A Tribunal member requested that one decision be removed after incorrectly describing a statutory provision which had become the subject of adverse comment. The decision was subsequently republished with a corrigendum correcting the error.
- A staff member identified that one decision may have included drafting notes that should have been omitted prior to publication. The decision was republished with a corrigendum omitting the notes.
- In relation to one decision that had been edited so as not to identify an applicant for a protection visa or a relative or dependant of the applicant, a staff member became aware there were typographical errors in relation to the editing. The decision was republished with the errors corrected.
- A staff member removed one decision in error having become aware that it may have contained a legal error as a result of a later decision made in an unrelated judicial review application. The decision was republished.

Three decisions were removed permanently after the Tribunal subsequently decided to re-open the cases relying on the decision of the High Court of Australia in *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597. In relation to one of the cases, the Tribunal's subsequent decision was selected for publication.