

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**BUDGET ESTIMATES 2017**

**Administrative Appeals Tribunal**

**Question No. BE17-096**

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

Ms Leathem: I just wanted to clarify that many of those decisions are straightforward decisions—for example, remitting a matter back to the department because there may have been information gathered. There is a question, with the sheer volume of numbers, as to how helpful it would be to publish all of those decisions when there are so many each year.

Senator O'SULLIVAN: That is very useful, but my surgical, precise question to you is this. A case file is finished. Barry O'Sullivan is a member of the tribunal. I have completed my case file. It is now going to archives. Who makes the decision whether it goes over to our team leader—who, it could be argued, has a somewhat liberal view of this? Who makes the decision as to whether it goes to archives or it goes over to the team leader in publications?

Ms Leathem: I could not answer that. I would have to take that on notice.

Senator O'SULLIVAN: I beg your pardon, ma'am?

Mr Matthies: We would need to take that on notice, Senator, to give you those kinds of—

Ms Leathem: Accurate information about the micromanagement.

Mr Matthies: And the level of detail.

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

When a Tribunal member in the AAT's Migration & Refugee Division makes a decision on a review, the decision is uploaded into the division's case management system. The record in the system for each case includes a 'Publication Recommendation' field which, by default, is set to 'Publish'. The Tribunal member may select another option of one of the following kinds:

- Publish – Decision of Particular Interest
- Publish with Restrictions (in accordance with a direction made under section 378 or 440 of the Migration Act<sup>1</sup>)
- For decisions made on a review under Part 7 of the *Migration Act 1958* (protection decisions): No Recommendation
- For protection decisions: Do Not Publish.

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<sup>1</sup> Sections 378 and 440 of the Migration Act provide that, where the Tribunal is satisfied it is in the public interest that information should not be published or should not be published except in a particular manner and to particular persons, the Tribunal may give a written direction accordingly. Section 378 applies to reviews under Part 5 of the Migration Act and section 440 to reviews under Part 7.

- For decisions made on a review under Part 5 of the *Migration Act 1958* (migration decisions): Do Not Publish (in accordance with a direction under section 378 of the Migration Act)

The Tribunal member may enter a comment in a ‘Publication Comments’ field for any of the ‘Publish’ options.

Each week, the AAT’s Decisions Publication Team produces reports which set out the migration and protection decisions that officers within the Team may select for publication.

- For migration decisions, reports for the main types of visas and for cancellation decisions include all cases in relation to which the Publication Recommendation on the case record is Publish, Publish – Decision of Particular Interest or Publish with Restrictions.
- For protection decisions, a single report includes all cases in relation to which the Publication Recommendation is Publish, Publish – Decision of Particular Interest, Publish with Restrictions or No Recommendation.

The Decisions Publication Team selects decisions for publication relying on a guideline developed by the former Migration Review Tribunal and Refugee Review Tribunal which were required under the Migration Act to publish decisions considered to be of ‘particular interest’. The guideline sets out that decisions are selected as being of ‘particular interest’ based on an assessment of their value in providing information or insight into:

- the jurisdiction of the Migration & Refugee Division
- the procedures for the conduct of reviews
- how the Division interprets and applies the law and policy.

Designated officers within the Decisions Publication Team select decisions that may be published using information in the reports and by skimming decisions with the aim of achieving a representative sample of decisions involving different types of visas, issues, countries of reference and outcomes that have been made by a range of members. Decisions in relation to which the country of reference is Iran which the AAT has not been publishing as a result of advice from the Department of Foreign Affairs and Trade are excluded. Decisions relating to bridging visas are not generally selected on the basis they are likely to include sensitive information.

Migration decisions containing unique personal identifiers which could facilitate identity fraud or other sensitive personal information are not generally published unless a direction has been made under section 378 of the Migration Act. The decisions are edited by the Decisions Publication Team to comply with any section 378 direction prior to publication.

Section 431 of the Migration Act provides that the AAT must not publish a protection decision which may identify an applicant or any relative or other dependant of an applicant. The Decisions Publication Team edits protection decisions selected for publication to omit any identifying information and to comply with any additional requirements set out in a direction under section 440 of the Migration Act.

Once a decision is ready to be published, the AAT’s eServices Section prepares it for transfer to AustLII. The decision is transmitted to AustLII electronically for publication in the AAT decisions database.

The AAT is reviewing the procedures relating to the publication of its decisions.