

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Administrative Appeals Tribunal

Question No. BE17-097

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

Senator O'SULLIVAN: Mr Matthies, I accept that it is a practice that has continued, and you can say no to my question. You are in charge of publications. Do you know the logic behind why they are not published?

Mr Matthies: Those matters are all heard in private, so I expect that that is part of the rationale, but obviously I was not part of that previous tribunal to understand the full rationale behind that.

Senator O'SULLIVAN: All right. I will ask you to take that on notice.

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

The AAT's Social Services and Child Support Division conducts a first review of decisions made by officers of the Department of Human Services in relation to child support, family assistance, farm household support, paid parental leave, social security and student assistance. These decisions were reviewed by the Social Security Appeals Tribunal (SSAT) prior to that tribunal being amalgamated with the AAT on 1 July 2015.

The laws conferring jurisdiction on the SSAT and now the Social Services and Child Support Division have always required that the hearing of a review is to be conducted in private, not in public.

Neither the child support legislation nor any of the other laws conferring jurisdiction on the SSAT provided for the SSAT to publish its decisions. From 2007 to 2012, the then Department of Families, Housing, Community Services and Indigenous Affairs arranged for a small selection of de-identified SSAT decisions to be published on the AustLII website. The *Child Support (Registration and Collection) Act 1988* included an exception to the secrecy requirements allowing the Secretary to publish the reasons for a decision of the SSAT in a child support review provided the publication did not identify:

- a party to the review concerned (other than the Child Support Registrar)
- a person (other than the Child Support Registrar) who is related to, or associated with, a party to the review concerned or is, or is alleged to be, in any other way concerned in the matter to which the review concerned relates, or
- a witness in the review concerned: see section 16(2AB).

Since 1 July 2015, the *Administrative Appeals Tribunal Act 1975* has provided that the AAT may publish its decisions and the reasons for them: see section 66B(1). However, the AAT is not

authorised to publish information the disclosure of which is prohibited or restricted by or under this Act or any other law conferring jurisdiction on the Tribunal: see section 66B(2).

On 1 July 2015, the exception to the secrecy requirements set out in the *Child Support (Registration and Collection) Act 1988* facilitating the publication of statements of reasons for decisions in child support reviews was amended to provide that the AAT may publish de-identified decisions. In accordance with this exception and the previous practice relating to publication of child support decisions of the SSAT, the AAT has since published a small selection of child support decisions to provide guidance on how the division interprets and applies the law and policy in child support cases.

The approach of selecting only certain decisions for publication reflects that, in many reviews, the Social Services and Child Support Division is applying established or settled principles to the facts of the individual case.

For all other types of decisions that are reviewed by the Social Services and Child Support Division, the combination of:

- the requirement that the hearing be in private
- the terms of the confidentiality provisions in the laws conferring jurisdiction which apply to information received by the AAT from the Department of Human Services, and
- the absence of any specific provision in those laws authorising the publication of decisions

indicate that the Division may not publish its reasons for decision in these matters, even if the decisions were to be de-identified.