

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Administrative Appeals Tribunal

Question No. BE17-141

Senator Carr asked the following question on 22 May 2017:

Provide the following for the previous financial years (2012/2013, 2013/2014, 2014/2015, 2015/2016, 2016/2017)

- Number of Department or Ministerial decisions relating to refugee claims overturned by the AAT
- Number of Department decisions relating to cases involving other migration matters overturned by the AAT
- Number of Department or Ministerial decisions relating to refugee claims upheld by the AAT
- Number of Department decisions relating to cases involving other migration matters upheld by the AAT.

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

The figures in this answer relate to applications for review of decisions relating to visas made by the Minister for Immigration and Border Protection or a delegate of the Minister under the *Migration Act 1958*.

Prior to 1 July 2015, applications for review of decisions relating to visas were made either to the Administrative Appeals Tribunal (AAT), the Migration Review Tribunal (MRT) or the Refugee Review Tribunal (RRT). Since 1 July 2015, applications for review of decisions relating to visas that were previously made to the AAT are now dealt with in the AAT's General Division and applications for review of decisions relating to visas previously made to the MRT-RRT are now dealt with in the AAT's Migration & Refugee Division (MRD).

The figures do not include referrals made to the Immigration Assessment Authority. The tables below set out the outcomes of applications finalised by the AAT, MRT or RRT in each of the stated years.

Outcomes of protection (refugee) cases finalised under Part 7 of the Migration Act 1958 in the RRT or AAT's Migration & Refugee Division

	2012–13	2013–14	2014–15	2015–16	2016–17 to 30 Apr 2017
By decision^a					
Decision affirmed/ Application dismissed by Tribunal ^b	2,205	2,591	2,721	2,582	2,829
Decision varied, remitted or set aside	1,372	779	790	587	444
<i>Subtotal</i>	<i>3,577</i>	<i>3,370</i>	<i>3,511</i>	<i>3,169</i>	<i>3,273</i>
Other					
Withdrawn by applicant	86	145	152	205	239
No jurisdiction ^c	94	70	122	226	304
<i>Subtotal</i>	<i>180</i>	<i>215</i>	<i>274</i>	<i>431</i>	<i>543</i>
TOTAL	3,757	3,585	4,983^d	3,600	3,816

^a Applications finalised by a decision of the RRT or AAT under section 415 or 426A of the Migration Act.

^b The Tribunal may dismiss an application under section 426A(1A) of the Migration Act if an applicant does not appear before the Tribunal at a hearing. The decision to dismiss the application may be confirmed under section 426A(1C)(b) or 426A(1E). Under section 426A(1F), a dismissal decision confirmed by the Tribunal is taken to be a decision to affirm the decision under review. The power to dismiss applications under section 426A of the Migration Act was introduced by the *Migration Amendment (Protection and Other Measures) Act 2015* and came into effect on 18 April 2015. The dismissal power applies to review applications made on or after 18 April 2015, as well as those made prior to that date where the hearing invitation is sent on or after 18 April 2015.

^c Applications finalised on the basis that the decision is not subject to review by the AAT, the applicant does not have standing to apply for a review, the application has not been made within a prescribed time limit or the application fee has not been paid.

^d The total figure for 2014–15 includes an additional 1,198 refugee cases, all of which were remitted to the Department of Immigration and Border Protection for reconsideration following the disallowance of clause 866.222 of Schedule 2 to the *Migration Regulations 1994*.

Outcomes of migration cases finalised under Part 5 of the Migration Act 1958 in the MRT or AAT's Migration & Refugee Division

	2012–13	2013–14	2014–15	2015–16	2016–17 to 30 Apr 2017
By decision^a					
Decision affirmed/ Application dismissed by Tribunal ^b	7,121	10,668	7,735	5,519	4,499
Decision varied, remitted or set aside	4,514	6,319	5,551	4,613	4,389
<i>Subtotal</i>	<i>11,635</i>	<i>16,987</i>	<i>13,286</i>	<i>10,132</i>	<i>8,888</i>
Other					
Withdrawn by applicant	2,661	3,206	1,996	1,447	1,671
No jurisdiction ^c	1,294	951	1,302	932	764
<i>Subtotal</i>	<i>3,955</i>	<i>4,157</i>	<i>3,298</i>	<i>2,379</i>	<i>2,435</i>
TOTAL	15,590	21,144	16,584	12,511	11,323

^a Applications finalised by a decision of the MRT or AAT under section 349 of the Migration Act.

^b The Tribunal may dismiss an application if an applicant does not appear before the Tribunal at a hearing under section 362B(1A) of the Migration Act. The decision to dismiss the application may be confirmed under section 362B(1C)(b) or 362B(1E). Under section 362B(1F), a dismissal decision confirmed by the Tribunal is taken to be a decision to affirm the decision under review. The power to dismiss applications under section 362B of the Migration Act was introduced by the *Migration Amendment (Protection and Other Measures) Act 2015* and came into effect

on 18 April 2015. The dismissal power applies to review applications made on or after 18 April 2015, as well as those made prior to that date where the hearing invitation is sent on or after 18 April 2015.

^c Applications finalised on the basis that the decision is not subject to review by the AAT, the applicant does not have standing to apply for a review, the application has not been made within a prescribed time limit or the application fee has not been paid.

Outcomes of migration cases^a finalised under the Administrative Appeals Tribunal Act 1975 in the AAT or AAT's General Division

	2012–13	2013–14	2014–15	2015–16	2016-17 to 30 April 2017
By decision^b					
Decision affirmed	55	22	0	9	57
Decision varied or set aside	22	12	4	5	26
<i>Subtotal</i>	<i>77</i>	<i>34</i>	<i>4</i>	<i>14</i>	<i>83</i>
By consent					
Decision affirmed ^c	0	0	0	0	0
Decision varied or set aside ^c	2	1	5	0	2
Dismissed by consent ^d	0	0	0	0	0
<i>Subtotal</i>	<i>2</i>	<i>1</i>	<i>5</i>	<i>0</i>	<i>2</i>
Other					
Withdrawn by applicant	12	4	0	5	20
Dismissed by Tribunal ^e	0	0	0	0	4
No jurisdiction to review ^f	7	5	2	8	13
<i>Subtotal</i>	<i>19</i>	<i>9</i>	<i>2</i>	<i>13</i>	<i>37</i>
TOTAL^g	98	44	11	27	122

^a This includes applications for review of business visa cancellation decision under section 134 of the Migration Act, decisions under section 501 and 501CA of the Migration Act and decisions to refuse or cancel a protection visa relying on articles 1F, 32 or 33 of the Refugees Convention or sections 5H(2), 36(1C) or 36(2C)(a) or (b) of the Migration Act.

^b Applications finalised by a decision of the AAT under section 43 of the Administrative Appeals Tribunal Act

^c Applications finalised by a decision of the AAT made in accordance with terms of agreement reached by the parties either in the course of an alternative dispute resolution process (section 34D) or at any stage of the review proceedings (section 42C).

^d Applications dismissed by the AAT by consent under section 42A(1).

^e Applications dismissed by the AAT under section 42A(2) (non-appearance at a case event), section 42A(5) (failure to proceed with an application or to comply with a direction of the AAT) and section 42B(1) (application is frivolous, vexatious, misconceived, lacking in substance, has no reasonable prospect of success or is an abuse of the process of the AAT)

^f Applications finalised on the basis that the decision is not subject to review by the AAT, the applicant does not have standing to apply for a review, the application has not been made within a prescribed time limit, the AAT has refused to extend the time for applying for a review or the application fee has not been paid.

^g Figures may differ slightly from previously published reports due to differing run dates.