



Publication of decisions policy

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1. Purpose

- 1.1 This policy for the publication of Tribunal decisions¹ sets out:
- (a) types of decisions we publish and how they are selected for publication;
 - (b) when a decision or certain information in a decision may not be published; and
 - (c) when published decisions may be recalled from publication or amended.
- 1.2 Decisions are published on the Australasian Legal Information Institute website (www.austlii.edu.au) and may also be available from other legal publishers.
- 1.3 This policy will commence on 1 November 2024. It applies to Tribunal decisions made before and after that date.

2. Why we publish decisions

- 2.1 The Tribunal is authorised to publish its decisions.² However, we must not publish information if its disclosure is prohibited or restricted by legislation or by member non-publication / non-disclosure orders.³ (See paragraphs 4 and 5.)
- 2.2 Publishing decisions helps us achieve our objective of providing a mechanism of review that improves the transparency and quality of government decision-making, and promotes public trust and confidence in the Tribunal.⁴

3. Selection of decisions for publication

- 3.1 Subject to paragraphs 4 and 5, the Tribunal selects decisions for publication as follows:
- (a) Publish all decisions in the following categories:
 - (i) Guidance and Appeals Panel – Tribunal guidance decisions;⁵
 - (ii) Guidance and Appeals Panel – any other decisions to affirm, vary or set aside the decision under review;
 - (iii) Significant decisions regarding conclusions of law or implications for Commonwealth policy or administration as identified by the President;⁶
 - (iv) Decisions made following a court remittal where the original Tribunal decision was previously published.

¹ 'Tribunal decisions' refer to written statements of decisions and reasons for decisions of the Administrative Review Tribunal and the previous Administrative Appeals Tribunal (the latter which may still be recalled and republished), including written statements of reasons prepared on request or otherwise after the Tribunal has given reasons for decision orally.

² Section 113(1) *Administrative Review Tribunal Act 2024* (ART Act). Decisions and reasons for decision may also be made available in accordance with a request made under the *Freedom of Information Act 1982*.

³ Section 113(4) and Note of the ART Act. The rest of this Policy will refer to 'non-publication order'.

⁴ Section 9(d) and (e) of the ART Act.

⁵ Sections 109 and 110 of the ART Act.

⁶ Section 113(2)(a) of the ART Act.

(b) Publish decisions from the eight Jurisdictional Areas below, that satisfy one or more of the Public Interest Criteria outlined in paragraph 3.2, as selected and approved by the Jurisdictional Area Leader or List Leader of the List in which a decision was made:⁷

- (i) General
- (ii) Intelligence and Security
- (iii) Migration
- (iv) National Disability Insurance Scheme
- (v) Protection
- (vi) Social Security
- (vii) Taxation and Business
- (viii) Veterans' and Workers' Compensation.

3.2 In order to satisfy the Public Interest Criteria, decisions should meet one or more of the following criteria:

- (a) provide insight into, and/or are representative of, the conduct of reviews for the Jurisdictional Areas;
- (b) show how the Tribunal interprets and applies the law and policy;
- (c) involve novel fact situations or issues of law;
- (d) reflect a range of outcomes and members;
- (e) its contents (e.g. includes a summary of legal principles) may assist members in dealing with similar cases.

4. Restrictions on publication of decisions

4.1 A written decision is not published if:

- (a) any legislative provision prohibits the publication of the decision;
- (b) a Tribunal member makes a direction under section 70 of the ART Act or section 378 or section 440 of the *Migration Act 1958* to the effect that the decision not be published; or
- (c) the extent of the editing required to comply with non-disclosure requirements renders the written decision unintelligible.

4.2 Generally, a Tribunal member may make a direction under section 70 of the ART Act or under section 378 or section 440 of the *Migration Act 1958* that a decision not be published if satisfied in the circumstances of the case that the harm arising from the publication of the decision outweighs the public interest in publishing the decision.

⁷ Legal Teams and the Decisions Publication Team may also, on an ad hoc basis, select cases for publication according to Public Interest Criteria, as appropriate.

5. Restrictions on including identifying or personal information in decisions⁸

5.1 Certain identifying or personal information must not be included in decisions due to:

- (a) Various Acts which prohibit or restrict the disclosure of such information to protect the privacy of the applicant or other related parties. These include:
 - (i) *Child Support (Registration and Collection) Act 1988*⁹ – the Tribunal must not identify a party, witness or other person related to, or associated with, the matter to which the review relates;
 - (ii) *Migration Act 1958*¹⁰ – the Tribunal must not identify the applicant or any relative or other dependant of an applicant if the review is about a decision to refuse to grant, or to cancel, a protection visa or a protection-related bridging visa;
 - (iii) *Social Security (Administration) Act 1999*¹¹ – the Tribunal must not identify a party, person or witness related to the review;
 - (iv) *Taxation Administration Act 1953*¹² – the Tribunal must not identify the applicant in taxation cases if the hearing was held in private.
- (b) The need to minimise the risk of identity theft, of vulnerable persons being identified, and any other misuse of such information. Therefore, Tribunal members:
 - (i) must only include information about a party, witness or other person in decision reasons if that information is relevant to the findings or necessary for the cogency of the reasons; and
 - (ii) must not, in general, set out in full, unique personal identifiers such as dates of birth, dates of anniversaries, current or past residential addresses, telephone numbers, email addresses or other unique numbers, including bank account or credit card numbers, motor vehicle registration or driver’s licence details, or Centrelink, child support, Medicare, passport or tax file numbers.

5.2 A Tribunal member may make a non-publication order under section 70 of the ART Act or under section 378 or section 440 of the *Migration Act 1958* in an individual case, prohibiting or restricting the publication of particular information, including:

- (a) the name or other information tending to reveal the identity of a party, witness or other person related to or associated with any party or witness; and
- (b) information relating to evidence or other information given to the Tribunal.

5.3 Similar to paragraph 4.2, a Tribunal member may generally make such a direction if satisfied in the circumstances of the case that the harm arising from the publication of the information outweighs the public interest in publishing the information.

⁸ Section 113(4) and section 70 of the ART Act. For members and staff, see internal Guideline on Disclosure and Non-Disclosure of Personal Information in ART Decisions.

⁹ Section 16(2AB) of the *Child Support (Registration and Collection) Act 1988*.

¹⁰ Sections 431 and 501K of the *Migration Act 1958*.

¹¹ Section 201(1A) of the *Social Security (Administration) Act 1999*, once the *Administrative Review Tribunal (Consequential and Transitional Provisions (No 1) Act 2024* commences.

¹² Section 14ZZJ of the *Taxation Administration Act 1953*.

- 5.4 Written decisions that are published must comply with relevant legislative requirements and/or member non-publication orders:
- (a) decisions made in the Migration, Protection, and Social Security Jurisdictional Areas, the Child Support List and any other Lists as required, are redacted before publication by Tribunal staff to meet these requirements;
 - (b) where required, decisions made in other Lists will have the applicants' names anonymised.

6. Recalling and amending a published decision

- 6.1 When a written decision has been published, the Tribunal may recall the decision if:
- (a) the Tribunal member makes a non-publication order under the ART Act or the *Migration Act 1958* prohibiting the publication of the decision (including in the interim, pending determination of an application from a party, witness or other person for a non-publication order regarding the decision); or
 - (b) the decision contains information the disclosure of which is prohibited or restricted by legislation or an existing non-publication order.
- 6.2 Unless a Tribunal member makes a non-publication order under the ART Act or the *Migration Act 1958* that the decision is not to be republished, the decision must be republished (in original or amended form) as soon as practicable, after the Tribunal member has determined any application for a non-publication order, and/or any redaction has been made as described in paragraph 6.3(a).
- 6.3 The Tribunal may replace a published decision with an amended version of the decision if:
- (a) the published decision has been redacted to remove information, the disclosure of which is prohibited or restricted by legislation or a non-publication order;
 - (b) a Tribunal member is satisfied there is an obvious error¹³ in the text of the published decision and has directed that the decision text be altered; or
 - (c) the published decision contains typographical errors made by staff when redacting a Migration, Protection, Social Security or Child Support decision for publication as set out in paragraph 5.4.

Date: 1 November 2024

The Hon Justice Emiliios Kyrou AO

¹³ See section 114 of the ART Act. Examples of obvious errors are an obvious clerical or typographical error, or an inconsistency between the decision and the statement of reasons. The amended version of the decision should indicate that changes have been made.