



## Publication of decisions policy

### Table of Contents

1. Purpose .....	1
2. Why we publish decisions .....	1
3. Selection of decisions for publication.....	1
4. Restrictions on publication of decisions .....	2
5. Restrictions on including identifying or personal information in decisions .....	3
6. Recalling and amending a published decision .....	4

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## 1. Purpose

- 1.1 This policy for the publication of Tribunal decisions<sup>1</sup> 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  - (b) when a decision or certain information in a decision may not be published; and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](http://www.austlii.edu.au)) and may also be available from other legal publishers.
- 1.3 This policy commences 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.<sup>2</sup> However, we must not publish information if its disclosure or publication is prohibited or restricted by legislation or by member non-publication / non-disclosure orders.<sup>3</sup> (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.<sup>4</sup>

## 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;<sup>5</sup>
    - (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;<sup>6</sup>
    - (iv) Decisions made following a court remittal where the original Tribunal decision was previously published.

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<sup>1</sup> '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.

<sup>2</sup> Section 113(1) *Administrative Review Tribunal Act 2024* (ART Act) authorises the Tribunal to publish its decisions and reasons, but does not authorise the Tribunal to publish information the disclosure of which is prohibited or restricted by or under the ART Act, another Act or an instrument made under an Act. Decisions and reasons for decision may also be made available in accordance with a request made under the *Freedom of Information Act 1982*.

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

<sup>4</sup> Section 9(d) and (e) of the ART Act.

<sup>5</sup> Sections 109 and 110 of the ART Act.

<sup>6</sup> 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:<sup>7</sup>

- (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 by order under section 70 of the ART Act to the effect that the decision, or part of 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 by order under section 70 of the ART Act that a decision is not to be published if satisfied, having regard to the considerations in section 71(2), that in the circumstances of the case the harm arising from the publication of the decision outweighs the public interest in publishing the decision.

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<sup>7</sup> Legal Teams and the Decisions Publication Team may also, on an ad hoc basis, select cases for publication according to Public Interest Criteria, or where the decision will be released in response to a request under the *Freedom of Information Act 1982*, as appropriate.

## 5. Restrictions on including identifying or personal information in decisions<sup>8</sup>

5.1 Certain identifying or personal information must not be included in published 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) *A New Tax System (Family Assistance) (Administration) Act 1999*<sup>9</sup> – the publication must not identify a party to the review (other than the decision-maker), a witness, a person who is related to, or associated with, a party or is in any way concerned in the matter to which the review relates;
  - (ii) *Child Support (Registration and Collection) Act 1988*<sup>10</sup> – the publication must not identify a party to the review (other than the decision-maker), a witness, a person who is related to, or associated with, a party or is in any way concerned in the matter to which the review relates;
  - (iii) *Migration Act 1958*<sup>11</sup> – 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;
  - (iv) *Paid Parental Leave Act 2010*<sup>12</sup> – the publication must not identify a party to the review (other than the decision-maker), a witness, a person who is related to, or associated with, a party or is in any way concerned in the matter to which the review relates;
  - (v) *Social Security (Administration) Act 1999*<sup>13</sup> – the publication must not identify a party to the review (other than the decision-maker) a witness, a person who is related to, or associated with, a party or is in any way concerned in the matter to which the review relates;
  - (vi) *Student Assistance Act 1973*<sup>14</sup> – the publication must not identify a party to the review (other than the decision-maker), a witness, a person who is related to, or associated with, a party or is in any way concerned in the matter to which the review relates;
  - (vii) *Taxation Administration Act 1953*<sup>15</sup> – the Tribunal must not identify the applicant in reviews of reviewable objection decisions, extension of time refusal decisions or in relation to a Tribunal extension application, 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:

<sup>8</sup> 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.

<sup>9</sup> Section 161(1B) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

<sup>10</sup> Section 16(2AB) of the *Child Support (Registration and Collection) Act 1988*.

<sup>11</sup> Sections 369 and 501K of the *Migration Act 1958*.

<sup>12</sup> Section 126(1A) of the *Paid Parental Leave Act 2010*.

<sup>13</sup> Section 201(1A) of the *Social Security (Administration) Act 1999*.

<sup>14</sup> Section 350(2) of the *Student Assistance Act 1973*.

<sup>15</sup> Section 14ZZJ of the *Taxation Administration Act 1953*.

- (i) must only include information about a party, witness or other person in their reasons for decision 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 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 an order if satisfied, having regard to the considerations in section 71(2), that in the circumstances of the case the harm arising from the publication of the information outweighs the public interest in publishing the information.
- The Practice Directions may also make provision for confidentiality orders.<sup>16</sup>
- 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 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 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).

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<sup>16</sup> Section 71(1) of the ART Act.

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 error<sup>17</sup> 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, Paid Parental Leave, Student Assistance, Family Assistance or Child Support decisions for publication as set out in paragraph 5.4.

Date: 11 December 2024

**The Hon Justice Emiliios Kyrou AO**

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<sup>17</sup> See section 114 of the ART Act. Examples of obvious errors are obvious clerical or typographical errors in the text, or an inconsistency between the decision and the statement of reasons. The amended version of the decision should indicate that changes have been made.