

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO**

Program: Administrative Appeals Tribunal

Question No. AE17/017

Senator Hinch asked the following question at the hearing on 28 February 2017:

Senator HINCH: I know that the AAT does not publish separate reviews of deportation decisions from other reviews, because they sometimes tie up with other cases, but I notice that in 2010 the number of cancellations and forced deportations was 132 and in 2015-16 it is up to 983. Can you give us any indication of what the changes were that have made this such a leap?

Ms Leatham: I think you are referring to the primary decision-making there rather than the reviews by the Administrative Appeals Tribunal.

Senator HINCH: So these are not your ones.

Ms Leatham: That would be a matter for the Department of Immigration and Border Protection.

Senator HINCH: Okay. You cannot break away how many you actually review? If the immigration minister says someone is deported, they then go to the AAT and I wonder what happens then. How many go out of that?

Ms Leatham: It is only if they are appealed that they come to the Administrative Appeals Tribunal. I will have to see if we have that detailed data.

Mr Matthies: There may be a number of decisions made by the immigration department to cancel a visa that might result ultimately, if that decision was upheld, in the person no longer having an entitlement to remain in Australia. I think we would need to take it on notice to consider, because there are various types of visas that can be cancelled and different powers.

Senator HINCH: I am happy for you to do that.

The answer to the honourable senator's question is as follows:

The Administrative Appeals Tribunal (AAT) has the power to review the following decisions made by a delegate of the Minister for Immigration and Border Protection under the *Migration Act 1958* (Migration Act):

- a decision under section 501(1) or (2) to refuse to grant, or to cancel, a visa on character grounds, and
- a decision under section 501CA(4) not to revoke a decision to cancel a visa under section 501(3A) (person serving sentence of imprisonment). Jurisdiction to review decisions made under section 501CA was conferred on the AAT when that provision entered into force on 11 December 2014.

The AAT does not record in its electronic case management system whether an application relating to a decision made under section 501(1) or (2) is for the review of a decision to refuse to grant a visa or to cancel a visa. The AAT records only whether the visa applicant or visa holder is or is not in Australia at the time of the application.

The following table sets out the number of applications lodged with the AAT in relation to decisions made under section 501(1) or (2) or 501CA of the Migration Act in each of the noted years.

	Lodgements – Review of decisions under sections 501 and 501CA						
	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17 to 28 Feb 2017
Decision to refuse to grant or cancel a visa under section 501 – visa applicant/visa holder in Australia	70	98	75	33	4	24	34
Decision to refuse to grant or cancel a visa under section 501 – visa applicant/visa holder not in Australia	1	0	1	0	1	10	13
Decision under section 501CA not to revoke a decision to cancel a visa under section 501(3A)	N/A	N/A	N/A	N/A	0	42	67
TOTAL	71	98	76	33	5	76	114

The following three tables set out the outcomes of applications finalised by the AAT in relation to decisions made under section 501(1) or (2) or 501CA in each of the noted years.

	Outcomes – Review of decisions under section 501 – visa applicant/visa holder in Australia						
	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17 to 28 Feb 2017
By decision^a							
Decision affirmed	32	41	49	22	0	7	19
Decision varied or set aside	32	23	22	12	2	4	11
<i>Subtotal</i>	<i>64</i>	<i>64</i>	<i>71</i>	<i>34</i>	<i>2</i>	<i>11</i>	<i>30</i>
By consent							
Decision affirmed ^b	0	0	0	0	0	0	0
Decision varied or set aside ^b	0	0	0	1	0	0	1
Dismissed by consent ^c	0	1	0	0	0	0	0
<i>Subtotal</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>1</i>
Other							
Withdrawn by applicant	6	4	11	4	0	2	2
Dismissed by Tribunal ^d	0	0	0	0	0	0	0
No jurisdiction to review ^e	2	13	6	5	2	3	2
<i>Subtotal</i>	<i>8</i>	<i>17</i>	<i>17</i>	<i>9</i>	<i>2</i>	<i>5</i>	<i>4</i>
TOTAL	72	82	88	44	4	16	35

	Outcomes – Review of decisions under section 501 – visa applicant/visa holder not in Australia						
	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016-17 to 28 Feb 2017
By decision^a							
Decision affirmed	0	0	2	0	0	0	1
Decision varied or set aside	1	0	0	0	0	0	2
<i>Subtotal</i>	<i>1</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>3</i>
By consent							
Decision affirmed ^b	0	0	0	0	0	0	0
Decision varied or set aside ^b	1	0	0	0	1	0	0
Dismissed by consent ^c	0	0	0	0	0	0	0
<i>Subtotal</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>0</i>
Other							
Withdrawn by applicant	0	0	0	0	0	0	2
Dismissed by Tribunal ^d	0	0	0	0	0	0	0
No jurisdiction to review ^e	1	0	0	0	0	1	5
<i>Subtotal</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>7</i>
TOTAL	3	0	2	0	1	1	10

	Outcomes – Review of decisions under section 501CA not to revoke a decision to cancel a visa under section 501(3A)						
	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016-17 to 28 Feb 2017
By decision^a							
Decision affirmed	N/A	N/A	N/A	N/A	0	2	24
Decision varied or set aside	N/A	N/A	N/A	N/A	0	1	9
<i>Subtotal</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>0</i>	<i>3</i>	<i>33</i>
By consent							
Decision affirmed ^b	N/A	N/A	N/A	N/A	0	0	0
Decision varied or set aside ^b	N/A	N/A	N/A	N/A	0	0	0
Dismissed by consent ^c	N/A	N/A	N/A	N/A	0	0	0
<i>Subtotal</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>0</i>	<i>0</i>	<i>0</i>
Other							
Withdrawn by applicant	N/A	N/A	N/A	N/A	0	1	13
Dismissed by Tribunal ^d	N/A	N/A	N/A	N/A	0	0	1
No jurisdiction to review ^e	N/A	N/A	N/A	N/A	0	4	7
<i>Subtotal</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>0</i>	<i>5</i>	<i>21</i>
TOTAL	N/A	N/A	N/A	N/A	0	8	54

^a Applications finalised by a decision of the AAT under section 43 of the *Administrative Appeals Tribunal Act 1975*

^b Applications finalised by a decision of the AAT made under section 34D or 42C in accordance with terms of agreement reached by the parties

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

^d 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)

^e 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