The Critical Role of Preparing Timely Written Reasons in Decision-Making: Enhancing Rationality, Objectivity, and Legal Accuracy

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Abstract

This article examines the critical role of providing written reasons in administrative decision-making, focusing on how transparency, accountability, and fairness are upheld through this practice. It explores the implications of delayed written reasons, particularly in high-stakes cases such as migration and visa cancellations, where timely decisions are essential for justice.

Through an analysis of key cases, including Plaintiff M1/2021 and Verrill, the article underscores the necessity of thorough reasoning in both urgent and routine matters. It argues that while timeliness is vital, it must be balanced with intellectual rigour and detailed reasoning to avoid perceptions of injustice, safeguard public confidence, and ensure procedural fairness. The piece concludes by highlighting the need for administrative bodies to be supported with adequate resources to deliver well-reasoned decisions that are both timely and legally sound.

I Introduction

The provision of written reasons in administrative decision-making is a fundamental aspect of ensuring transparency, accountability and fairness within legal frameworks. When decision-makers articulate the reasoning behind their conclusions, they provide a safeguard against arbitrariness, compel a thorough examination of legal and factual issues and allow affected parties to understand and scrutinise the basis for the decision. This process not only benefits the individuals involved by enabling potential appeals and judicial or administrative reviews but also serves the broader legal system by contributing to the consistency and development of legal standards.

However, the timely delivery of written reasons is equally critical. Delays in providing reasons can lead to uncertainty, hinder the ability of affected parties to take appropriate legal action and erode public confidence in the decision-making process. While certain urgent cases may necessitate swift decisions without immediate written explanations, it is imperative that such decisions remain grounded in careful, documented reasoning to maintain intellectual rigour and accountability.

This article explores the vital role of written reasons in administrative law, the implications of delayed reasons and the balancing act between timeliness and thoroughness in decision-making. By examining relevant cases, such as *Plaintiff*

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M1/2021[1] and *Verrill*,[2] it highlights the need for timely, well-reasoned decisions to uphold the integrity of the justice system, especially in high-stakes contexts like visa cancellations and migration matters. Ultimately, the article argues that written reasons are not only a procedural necessity but a cornerstone of justice.

II THE IMPORTANCE OF WRITTEN REASONS IN DECISION-MAKING

The preparation of written reasons in decision-making serves as a crucial mechanism for ensuring that legal and factual issues are systematically identified and addressed.[3] This process compels decision-makers to thoroughly examine all pertinent matters, providing a foundation grounded in law and facts.[4] By articulating the reasoning behind a decision, decision-makers safeguard themselves against the omission of key issues that could influence the case's outcome, ensuring a comprehensive review of relevant details.[5]

In complex cases, legal and factual issues often require careful analysis and interpretation of statutes, regulations and case law.[6] Factual issues may also involve conflicting evidence, necessitating a detailed evaluation of credibility and relevance.[7] Written reasons allow decision-makers to reflect on these aspects, ensuring that decisions rest on a full understanding of the applicable legal framework and factual context.[8]

Transparency and accountability are promoted through written reasons which offer a clear explanation of how decisions are reached. Stakeholders, including involved parties and appellate bodies, can scrutinise the process to ensure fairness and adherence to justice principles. Moreover, written reasons contribute to the development of legal standards by serving as precedents for future cases, enhancing consistency in the law.

The evaluation of arguments and evidence is another critical aspect of preparing written

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[1] *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582 ('*Plaintiff M1/2021*').

[2] *Verrill v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 802 ('*Verrill*').

[3] Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Review of Administrative Action and Government Liability* (6th ed, Thomson Reuters, 2017). This text discusses the importance of identifying and evaluating legal and factual issues in the context of administrative decision-making.

[4] Margaret Allars, *Introduction to Australian Administrative Law* (Butterworths, 1990). This reference provides a detailed analysis of the principles governing the identification of legal and factual issues in decision-making.

[5] William Wade, Christopher Forsyth and Julian Ghosh, *Administrative Law* (12th ed, Oxford University Press, 2022). This authoritative text discusses the role of identifying and evaluating legal and factual issues in administrative law.

[6] Jason Donnelly et al, *Douglas and Jones's Administrative Law* (9th ed, Federation Press, 2024). This book covers the role of identifying and evaluating legal and factual issues in the context of administrative decisions.

[7] H L Ho, 'The Judicial Duty to Give Reasons' (2000) 20 *Legal Studies* 42.

[8] Geoffrey Flick, *Natural Justice: Principles and Practical Application* (2nd ed, Butterworths, 1984). This book delves into the principles of natural justice, particularly how they apply to the evaluation of arguments and evidence.

reasons.[9] This process requires decision-makers to not only identify arguments presented by parties but also critically assess their merits.[10] They must weigh the reliability and relevance of evidence, synthesise information and ensure the decision is rational and just, considering all relevant factors.[11]

The drafting of written reasons also facilitates the re-examination of a decision-maker's initial views.[12] During this process, decision-makers may revise their assessments of the case, reflecting on new insights or reconsidering the legal and factual issues.[13] This iterative process helps ensure that the final decision is well-reasoned and accurately addresses all relevant concerns.[14]

The ultimate goal of preparing written reasons is to achieve the correct or preferable outcome in a case.[15] This requires comprehensive analysis, weighing of competing interests and adherence to legal consistency[16]. Decision-makers must ensure that their conclusions are fair, just, and consistent with legal principles, often reflecting on the practical implications of their decisions.[17]

Finally, the preparation of written reasons fosters rational and considered decision-making.[18] It encourages decision-makers to engage in a thoughtful process, ensuring that their conclusions are based on a detailed understanding of the case.[19] Written reasons not only promote transparency and accountability but also safeguard against hasty judgments, ensuring that decisions are both legally sound and publicly justifiable.[20]

The importance of sufficient reasons for decision was the subject of discussion and

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[9] Frederick Schauer, 'Giving Reasons' (1995) 47 *Stanford Law Review* 633.

[10] Denis J Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures* (Clarendon Press, 1996). Galligan explores the necessity of thorough evaluation of arguments and evidence in ensuring due process.

[11] Michael Kirby, 'Judicial Activism: Power without Responsibility? No, Appropriate Activism Conforming to Duty' (2006) 30 *Melbourne University Law Review* 576.

[12] Jason Bosland and Jonathan Gill, 'The Principle of Open Justice and the Judicial Duty to Give Public Reasons' (2014) 38 *Melbourne University Law Review* 482.

[13] Michael Kirby, 'Ex Tempore Judgments – Reasons on the Run' (1995) 25 *University of Western Australia Law Review* 213.

[14] Robert Orr and Robyn Briese, 'Don't Think Twice: Can Administrative Decision Makers Change Their Mind?' (2002) *AIAL Forum* 35, 11.

[15] Sir Frank Kitto, 'Why Write Judgments?' (1992) 66 *Australian Law Journal* 787.

[16] Edward H Levi, 'The Nature of Judicial Reasoning' in Sidney Hook (ed), *Law and Philosophy: A Symposium* (New York University Press, 1964) 263, 281.

[17] Peter Cane, *Administrative Law* (5th ed, Oxford University Press, 2011). This text provides an in-depth analysis of how written reasons contribute to achieving the correct or preferable outcome in administrative decisions.

[18] Leighton McDonald, 'Reasons, Reasonableness and Intelligible Justification in Judicial Review' (2015) 37(4) *Sydney Law Review* 467, 482–3.

[19] See further Matthew Groves, 'Reviewing Reasons for Administrative Decisions: Wingfoot Australia Partners Pty Ltd v Kocak' (2013) 35(3) *Sydney Law Review* 627.

[20] Stephen Gageler, 'Administrative Law within the Common Law Tradition' (2023) 53 *Australian Bar Review* 6.

determination in the recent decision of the High Court of Australia in *Chief Commissioner of Police (Vic) v Crupi* ('*Crupi*').[21] There, the Chief Commissioner of Police sought special leave to appeal a decision by the Supreme Court of Victoria, which ordered the disclosure of documents relating to an informer, 'Informer Z,' in the murder trial of Vincenzo Crupi.[22]

Crupi had been charged with the 2016 murder of solicitor and police informant Giuseppe 'Pino' Acquaro.[23] The defence argued that these documents could aid their case by suggesting that other individuals may have had a motive to kill Acquaro.[24] The Chief Commissioner resisted the disclosure of approximately 600 pages of documents on public interest immunity ('PII') grounds, arguing that revealing this information could expose the identity of Informer Z, placing the informer's life at significant risk.[25]

The Supreme Court of Victoria, in a brief judgment, ordered the disclosure of the documents, reasoning that some of the information might substantially assist Crupi's defence.[26] However, the court did not engage in a thorough balancing of the competing public interests as required by s 130 of the *Evidence Act 2008* (Vic) –namely, protecting the informer's identity versus ensuring a fair trial.[27] The Chief Commissioner attempted to appeal this decision, but the Court of Appeal found it lacked jurisdiction, leading the Commissioner to apply for special leave to the High Court of Australia.[28]

The High Court granted special leave to appeal on the ground of inadequate reasoning.[29] The Court held that the primary judge failed to properly explain how the decision to disclose the PII material had been reached, particularly in relation to balancing the risks to Informer Z's safety against the need for a fair trial.[30] The Court also noted that the judgment did not address whether only portions of the documents, rather than the full set, should be disclosed. Consequently, the High Court allowed the appeal, set aside the Supreme Court's orders, and remitted the matter for fresh determination by a different judge.[31]

The takeaway from *Chief Commissioner of Police* is the need for detailed judicial reasoning, especially in cases involving PII. The High Court's decision to allow the appeal and remit the case highlights the necessity for courts to thoroughly justify decisions involving sensitive information, ensuring public safety and justice are properly weighed.

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[21] *Chief Commissioner of Police (Vic) v Crupi* (2024) 98 ALJR 1131.
[22] Ibid [1].
[23] Ibid [3].
[24] Ibid [7].
[25] Ibid [4].
[26] Ibid [1].
[27] Ibid [21].
[28] Ibid [2].
[29] Ibid [14].
[30] Ibid [23].
[31] Ibid [26].

III THE IMPLICATIONS OF DELAYED WRITTEN REASONS

There are seven implications to consider.

A *Challenges of Urgent Decision-making*

In urgent decision-making, time constraints may prevent the immediate preparation of written reasons, particularly in emergency scenarios where quick decisions are necessary. Even when written reasons are delayed, decision-makers must ensure that their decisions are grounded in a thorough evaluation of the legal and factual issues. Swift decisions do not excuse a lack of rigour; decision-makers must still engage in a comprehensive intellectual process to ensure the decision remains sound.

B *Role of Intellectual Rigour*

Even when written reasons are deferred, the decision-making process must remain deliberate and methodical. The absence of written reasons at the time of a decision does not diminish the need for careful consideration.

Decision-makers should document key legal and factual points to ensure that, when reasons are later formalised, they reflect the rational process underlying the decision.

C *Importance of Timely Written Reasons*

While it may not always be possible to provide immediate written reasons, doing so enhances transparency and clarity for all parties involved. Written reasons, when timely, enable the decision to be understood and scrutinised, offering confidence to stakeholders that the decision was fair and well-founded.

D *Idea of Maintaining Accountability Despite Delays*

Delayed written reasons can challenge accountability by leaving parties uncertain about the reasoning behind a decision.[32] However, accountability can still be preserved by ensuring that even in urgent cases, the decision-making process is well-documented and adheres to principles of fairness and legality. When written reasons are eventually provided, they should accurately capture the reasoning applied at the time.

E *Addressing Perceptions of Injustice*

When written reasons are delayed, parties may perceive the decision as arbitrary or feel their arguments were overlooked. This perception can undermine confidence in the process. Clear communication regarding the reasons for delays and the eventual provision of comprehensive written explanations helps mitigate these risks and preserves the integrity of the process.

[32] Robin Burnett, 'The Giving of Reasons' (1983-84) 14(2) *Federal Law Review* 157.

F *Practical implications of delay*

Delays in written reasons can create practical challenges for parties unsure of how to proceed with compliance or appeal. To address this, decision-makers should ensure timely communication of any delay and provide a clear timeframe within which written reasons will be available. This transparency helps reduce uncertainty and maintains trust in the process.

G *Ensuring Fairness in Urgent Decisions*

Even in time-sensitive contexts, the decision-maker must still adhere to principles of fairness and rigour. The absence of immediate written reasons should not detract from the fact that the decision was made with due care. Later-provided written reasons must reflect the thoroughness and rational basis of the decision, ensuring fairness and accountability even under urgent circumstances.

IV *Plaintiff M1/2021*

In *Plaintiff M1/2021*,[33] the High Court of Australia addressed critical issues surrounding visa cancellation and non-refoulement obligations under the *Migration Act 1958* (Cth), highlighting the importance of ensuring fairness in urgent decisions. The plaintiff, a South Sudanese citizen who arrived in Australia in 2006 on a Refugee and Humanitarian visa, faced visa cancellation under s 501(3A) due to a criminal conviction for unlawful assault.[34]

Recognising the urgency of his situation, the plaintiff sought revocation of this decision, expressing a well-founded fear of persecution, torture and death if returned to South Sudan because of his tribal background.[35]

The crux of the case revolved around the plaintiff's assertion that returning him would breach Australia's international non-refoulement obligations – principles designed to prevent individuals being sent back to places where they face serious harm.[36] The delegate of the Minister for Home Affairs refused to revoke the cancellation, reasoning that non-refoulement considerations could be addressed in a future protection visa application.[37] The plaintiff challenged this, arguing that the delegate failed to give proper and timely consideration to the immediate risks he would face, thereby undermining the fairness of the urgent decision at hand.[38]

The High Court held that while the delegate was required to read, understand, and evaluate the plaintiff's representations – including those concerning potential non-

[33] *Plaintiff M1/2021* (n 1).
[34] Ibid [2].
[35] Ibid [3].
[36] Ibid [107].
[37] Ibid [5].
[38] Ibid [8].

refoulement obligations – these obligations, not yet enacted into domestic law, were not mandatory relevant considerations at this stage.[39]

The Court found that deferring the assessment of non-refoulement obligations to the protection visa process was permissible within the statutory framework of the Migration Act.[40] This meant that the urgent concerns raised by the plaintiff would not be immediately addressed in the visa cancellation review but postponed to a later stage.[41]

This decision raises significant concerns about fairness in urgent decisions. By allowing the delegate to delay evaluating the plaintiff's non-refoulement claims, the Court effectively diminishes the immediate protection that such obligations are meant to provide. The plaintiff's fears were neither abstract nor speculative; they involved concrete threats of persecution and severe harm.[42] Deferring consideration of these serious risks overlooks the essential purpose of non-refoulement principles – to offer prompt protection before harm occurs, not after prolonged procedural delays.

Moreover, the Court's approach potentially undermines the fairness owed to individuals in urgent circumstances. Non-refoulement is a fundamental principle of international human rights law, intended to shield vulnerable individuals from imminent danger.[43]

By shifting the responsibility to a future protection visa application, the decision subjects individuals like the plaintiff to extended periods of uncertainty and possible detention, without immediate recourse to the protections they urgently require. The ruling also highlights systemic issues in the migration process by separating the assessment of non-refoulement obligations from the initial cancellation decision. This bifurcation can lead to inefficiencies and a lack of holistic consideration of an individual's urgent circumstances, contrary to the principles of fairness that should guide administrative decisions. The Court's justification – that these matters can be addressed later – fails to acknowledge the immediate risks and the importance of timely, fair consideration of all relevant factors in urgent decisions.

Plaintiff M1/2021 thus serves as a pivotal case in Australian migration law, especially concerning the fairness of urgent decision-making processes. Despite being published on 11 May 2022, it has been cited in over 640 subsequent cases,[44] indicating its substantial impact on the legal landscape.[45]

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[39] Ibid [20].
[40] Ibid [39]-[40].
[41] Ibid [40].
[42] Ibid [40].
[43] Ibid [16].
[44] See <https://jade.io/article/915708>
[45] See, for example, *Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCAFC 119; *AZR20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCAFC 107; *Pewhairangi v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCAFC 94; *Raiz v Director of Professional Services Review* [2024] FCAFC

The fundamental issue with *Plaintiff M1/2021* is that it allows a Part 9 decision-maker[46] to avoid providing any reasons concerning non-refoulement claims.[47] Instead, the responsibility for addressing these claims is deferred to another decision-maker further down the line.[48] This delay in considering non-refoulement claims results in genuine unfairness.

Despite the clear limits imposed by *Plaintiff M1/2021*, deferral of consideration of risk of harm claims in the context of character cases under Part 9 of the Migration Act has not been entirely avoided. The recent decision in *CKT20*[49] is a good example. There, the appellant sought to extend the time to appeal a decision upholding the cancellation of his visa under s 501(3A) of the *Migration Act 1958* (Cth) due to his criminal history.[50] The appellant, a South Sudanese national, claimed a risk of persecution based on his Dinka ethnicity, which the Tribunal failed to consider.[51]

The Full Federal Court allowed the appeal, finding that the Tribunal's failure to address the appellant's ethnicity-related non-refoulement claims amounted to jurisdictional error.[52] The Court noted that while the Tribunal was not required to make a definitive finding on non-refoulement, it was obligated to engage with the claim,[53] as it was clearly raised by the evidence.[54]

The Court quashed the Tribunal's decision and ordered a new review, emphasising the need for tribunals to consider all relevant claims, particularly those involving international non-refoulement obligations.[55] In that way, *CKT20* mandates that a Part 9 decision-maker is required to provide reasons to squarely address risk of harm claims that have been raised.

V Character Cases Before the Tribunal

A troubling pattern emerged before the AAT, replaced by the Administrative Review Tribunal (the 'ART') from 14 October 2024, where decision-makers were increasingly publishing their decisions but delaying publication of their statements of reasons for several weeks.[56] This practice raised significant concerns regarding the transparency,

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91; *Minister for Immigration, Citizenship and Multicultural Affairs v McQueen* (2024) 98 ALJR 594; *DKY22 v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCAFC 24.

[46] A decision-maker who has statutory power under ss 501 or 501CA of the *Migration Act 1958* (Cth).

[47] Amanda Duffy, 'Expulsion to Face Torture? Non-refoulement in International Law' (2008) 20(3) *International Journal of Refugee Law* 373.

[48] A decision-maker who has statutory power under s 36 of the *Migration Act 1958* (Cth).

[49] *CKT20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 294 FCR 318 ('*CKT20*').

[50] Ibid [6].

[51] Ibid [23].

[52] Ibid [146].

[53] See further *Mai v Nguyen* [2024] NSWCA 215.

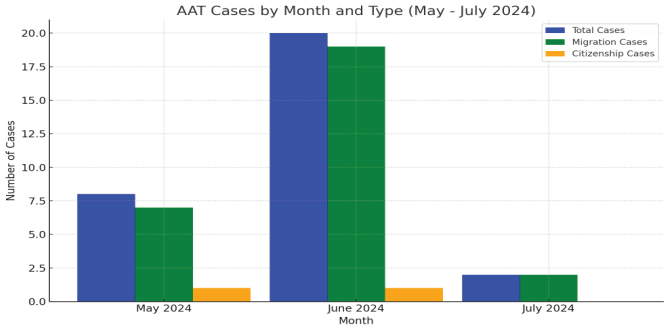
[54] *CKT20* (n 49), [135]–[136].

[55] Ibid [139].

[56] **July 2024**: *GQHJ and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2630; *Puohotaua and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA

accountability, and fairness of the decision-making process within that Tribunal.

For example, between May and July 2024, the Tribunal published orders, and a delayed statement of reasons as follows in character cases:[57]



2620. **June 2024**: *Rewha and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1425; *Stoneley and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1591; *Vu and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1783; *Cruckshank and Minister for Immigration, Citizenship, and Multicultural Affairs* [2024] AATA 1782; *LLQQ and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1666; *Trass-Maraki and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2417; *NMQG and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2150; *HTKV and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2316; *Faanoi and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2071; *Camarse and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2146; *Moegatuli Afegogo and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2222; *BRWS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] AATA 2231; *Wang and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2357; *Peek and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2361; *Dass and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2398; *Lucas and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2459; *Ba and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2507; *Strickland and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2606; *CDGJ and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2612; *Ivany and Minister for Immigration, Citizenship, and Multicultural Affairs* [2024] AATA 2422. **May 2024**: *GRPN and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1099; *Buntin and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1534; *RDQK and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1152; *Bui and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2302; *Chang and Minister for Immigration, Citizenship, and Multicultural Affairs* [2024] AATA 1266; *Liu and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1550; *Marson (Hanley) and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 2114; *Kapi and Minister for Immigration, Citizenship and Multicultural Affairs* [2024] AATA 1664.

[57] **Total Cases**: 30. **Peak Activity**: The majority of cases occurred in June 2024 (20 cases).

The timely provision of written reasons is fundamental to the integrity of any judicial or quasi-judicial process.[58] When a decision is made public without the accompanying rationale, it leaves the affected parties and the public in a state of uncertainty.[59] The absence of immediate reasons undermines the ability of the parties to fully understand the basis of the decision, which is crucial for determining whether an appeal or review might be warranted.[60] This delay can also impede the parties' ability to take timely and appropriate action, as they lack the necessary insight into the Tribunal's reasoning.[61]

Moreover, the delayed publication of reasons can create a perception of arbitrariness in the decision-making process.[62] Without an immediate explanation of the reasoning behind a decision, there is a risk that the decision may be viewed as being made without sufficient consideration or justification.[63] This can erode confidence in the Tribunal's processes and lead to a broader perception of injustice, particularly in sensitive cases where the stakes are high, such as those involving character assessments.

In cases before the former AAT (and now before the ART), where decisions often have profound implications on individuals' lives – such as decisions regarding visa cancellations on character grounds – the need for clear and prompt reasoning is even more pronounced.[64] The delayed publication of reasons not only affects the individuals directly involved but also sets a concerning precedent for the handling of future cases.[65] It suggests a potential lack of rigor in the decision-making process and raises questions about the adequacy of the intellectual engagement with the issues at hand.[66]

Furthermore, this pattern of delay may impact the Tribunal's overall efficiency and effectiveness. If reasons are not published promptly, it may lead to an accumulation of unresolved issues, creating bottlenecks in the appeals process and potentially overwhelming the Tribunal's capacity to manage its caseload.[67] This, in turn, could

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[58] See Justice Michelle Gordon, 'Analogical Reasoning by Reference to Statute: What Is the Judicial Function' (2019) 42(1) *University of New South Wales Law Journal* 4, 10–13.

[59] Mark Weinberg, "Adequate, Sufficient and Excessive Reasons" (Speech delivered at the Judicial College of Victoria, Melbourne, 4 March 2014): <https://classic.austlii.edu.au/au/journals/VicJSchol/2014/9.pdf>

[60] See Justice Alan Goldberg writing extra-judicially in 'When are Reasons for Decision Considered Inadequate?' (2000) 24 *Australian Institute of Administrative Law Forum* 1.

[61] See Wayne Martin, 'The Decision-Maker's Obligation to Provide a Statement of Reasons, Fact and Evidence. The Law' (1999) 51 *Admin Review* 19.

[62] See also John Griffiths, 'What Are Adequate Reasons?' (Speech delivered at Council of Australasian Tribunals' Decision-Writing Program, Sydney, 12–13 March 2020) [6]–[8].

[63] Chris Wheeler, 'Judicial Review of Administrative Action: An Administrative Decision-Maker's Perspective' (2016) No 87 *AIAL Forum* 79.

[64] *Hands v Minister for Immigration and Border Protection* (2018) 267 FCR 628 [3].

[65] Robert Thomas, 'Evaluating Tribunal Adjudication: Administrative Justice and Asylum Appeals' (2005) 25(3) *Legal Studies* 462. This article discusses how delays in tribunal decisions can set a worrying precedent for future cases, suggesting a lack of rigour in decision-making and questioning the intellectual engagement with key issues.

[66] See Bruce Chen, 'A Right to Reasons: *Osmond* in Light of Contemporary Developments in Administrative Law' (2014) 21 *Australian Journal of Administrative Law* 208.

[67] Ben Zipser, 'Revisiting *Osmond*: In Search of a Duty to Give Reasons' (1998) 9 *Public Law Review* 3.

contribute to further delays and a backlog of cases, exacerbating the challenges faced by those seeking justice through the ART.[68]

The delay in publishing reasons also complicates the review process for higher courts and oversight bodies.[69] If reasons are not available, it becomes difficult to assess whether the decision was made in accordance with the law and whether the appropriate legal standards were applied.[70] This lack of immediate transparency can hinder the ability of appellate courts to perform their function effectively,[71] potentially leading to increased litigation and further delays in the resolution of disputes.[72]

In summary, the pattern of delayed publication of statements of reasons before the Tribunal is a matter of significant concern. It has far-reaching implications for the transparency, accountability, and perceived fairness of the decision-making process. Addressing this issue is essential to maintaining the integrity of the process and ensuring that the ART serves as a reliable and just forum for resolving complex and sensitive matters. It will need to take steps to ensure that its decisions are accompanied by timely and well-reasoned explanations, thereby upholding the principles of justice and reinforcing public confidence in its processes.[73]

A *Verrill v Minister for Immigration, Citizenship and Multicultural Affairs*

A good example of the preceding issues was recently discussed by Justice Thawley in *Verrill*.[74] The case of *Verrill* concerned an application for judicial review following a decision by the AAT which affirmed the cancellation of the applicant's visa.[75] The applicant in this case is a citizen of the United States who arrived in Australia in 1978 at the age of six.[76] Over the years, he accumulated a significant criminal record in Australia, including various offences related to domestic violence.[77]

On 3 February 2023, the applicant's Class BF transitional (permanent) visa was cancelled under s 501(3A) of the *Migration Act 1958* (Cth) due to his criminal history.[78] Following the cancellation, the applicant sought to have this decision revoked, filing an

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[68] The Hon Justice Alan Goldberg, 'When Are Reasons for Decision Considered Inadequate' (2000) 24 *AIAL Forum* 1, 2.
[69] The Hon Justice A S Bell, 'Delivering Reasons in the Tribunal Context' (2020) 27 *Australian Journal of Administrative Law* 8.
[70] Denis O'Brien, 'Statements of Reasons for Administrative Decisions: *Ex Post Facto* or *Pars Rei Gestae*' (1990) 1 *Public Law Review* 217.
[71] Peter Bayne, 'Administrative Law: Reasons, Evidence and Internal Review' (1991) 65 *Australian Law Journal* 101.
[72] Ronald Sackville, 'The Evolution of the Duty of Decision-Makers to Give Reasons' (2016) 23 *Australian Journal of Administrative Law* 128.
[73] Oliver Jones, 'When Do Reasons for Judgment Fail to Attract Comity?' (2024) 33 *Journal of Judicial Administration* 3.
[74] *Verrill* (n 2).
[75] Ibid [4].
[76] Ibid [2].
[77] Ibid.
[78] Ibid [3].

application on 24 August 2023.[79] However, a delegate of the Minister for Immigration, Citizenship and Multicultural Affairs decided not to revoke the cancellation under s 501CA(4) of the Act.[80]

Dissatisfied with the delegate's decision, the applicant lodged an application for review with the AAT on 25 August 2023.[81] The Tribunal conducted a hearing on 30 October 2023, during which the applicant was unrepresented. Subsequently, on 16 November 2023, the Tribunal affirmed the delegate's decision, meaning the cancellation of the applicant's visa stood.[82] The significance of this date, being the 84th day after the delegate's decision was notified to the applicant, is tied to s 500(6L)(c) of the Migration Act.[83] This provision dictates that if the AAT (and now the ART) fails to make a decision within 84 days, the decision under review is deemed affirmed by operation of law.[84]

Written reasons for the AAT's decision were not provided until 21 December 2023, 35 days after the decision was made.[85] This delay was crucial because, under s 477A(1) of the Migration Act, an application for judicial review must be lodged within 35 days of the decision date.[86] The applicant subsequently filed an application for an extension of time under rule 31.23 of the *Federal Court Rules 2011* (Cth) on 4 February 2024, after missing the 35-day deadline due to the delayed provision of the AAT's written reasons.[87]

Verrill's application for an extension of time was not opposed by the Minister, although it was not explicitly consented to either.[88] The Court was required to determine whether it was necessary to grant the extension in the interests of the administration of justice.[89] The Federal Court, upon reviewing the merits of the applicant's proposed grounds for judicial review, decided to grant the extension of time.[90]

The grounds for the applicant's application for judicial review were primarily focused on alleged errors made by the Tribunal, including the failure to properly consider the impact of the visa cancellation on Australian business interests, particularly the effect on his son's roofing business.[91] Additionally, the applicant argued that he was denied procedural fairness because the Tribunal failed to inform him of his right against self-incrimination during questioning about his past illicit drug use.[92]

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[79] Ibid.
[80] Ibid.
[81] Ibid [4].
[82] Ibid [4]-[5].
[83] Ibid [4].
[84] Ibid.
[85] Ibid [5].
[86] Ibid [5], [7].
[87] Ibid [6].
[88] Ibid [15].
[89] Ibid.
[90] Ibid.
[91] Ibid [16].
[92] Ibid.

Writing in the context of the Tribunal's delayed publication of its statement of reasons, Justice Thawley concluded:

> There is some delay, but account should be taken of the fact that the Tribunal's written reasons only became available 35 days after its decision was made. One of the primary purposes of a statement of reasons is to enable determination of whether a decision is affected by error……
>
> A decision-maker's views can change during the course of preparing written reasons, both in relation to the outcome and the reasons for that outcome. For this reason, whilst it is not always possible to provide written reasons at the time of making a decision, particularly in circumstances of urgency, it is generally preferable to do so provided they can be adequately expressed given the relevant time constraint.[93]

Justice Thawley's reasoning in the context of a delayed statement of reasons for decision by the Tribunal offers several important lessons:

1. **The Essential Role of Written Reasons**. It emphasises that written reasons are crucial for determining whether a decision is affected by legal error. Without these reasons, it becomes challenging, if not impossible, to meaningfully assess the validity of the decision and to consider the potential grounds for a judicial review. This underscores the importance of timely and thorough documentation of a decision-maker's rationale.

2. **Promotion of Rational and Considered Decision-Making**. The process of preparing written reasons is not merely a formality; it actively contributes to the decision-making process itself. Writing out reasons helps ensure that the decision-maker has carefully identified and evaluated the relevant legal and factual issues, weighed the evidence appropriately, and considered the logic and merit of their initial views. This process is vital for reaching the correct or preferable outcome, especially when multiple outcomes are possible.

3. **The Broader Interests of the Administration of Justice**. Section 477A(2) of the Migration Act allows the Federal Court to extend the period for filing an application for judicial review, but only if it is necessary in the interests of the administration of justice. The judge's' reasoning highlights that this power is broad and must be exercised with the overall fairness and integrity of the justice system in mind, rather than just the interests of the individual applicant. Factors such as the delay, reasons for the delay and the potential merits of the case are all crucial in this assessment.

4. **Intellectual Rigour in Decision-Making**. As Justice Thawley notes, even in urgent situations where written reasons cannot be immediately provided, the decision must still be the result of a thorough intellectual process. This involves a careful review of the case, understanding and evaluating the representations made, and ensuring that the decision aligns with the statutory requirements. This

[93] Ibid [9], [11].

principle ensures that decisions are not rushed or made superficially, thereby maintaining the integrity of the decision-making process.

5. **Impact of Delayed Reasons on Legal Advice and Judicial Review**. The delay in providing written reasons can significantly affect the ability of an applicant to seek legal advice and pursue judicial review. In this case, the applicant's inability to provide reasons to his lawyer hindered the lawyer's capacity to assess the prospects of success and to comply with the certification requirement under s 486I of the Act. This highlights the practical implications of delayed reasons and the importance of timely communication in the legal process.

6. **Necessity of Extending Time in the Interests of Justice**. The court must be satisfied that extending time to file for judicial review is necessary in the interests of justice. In this case, the merits of the underlying application and the practical difficulties faced by the unrepresented applicant were significant factors in granting the extension. This demonstrates the court's role in ensuring that justice is served, even when procedural timelines are not met due to delays beyond the applicant's control.

7. **Judicial Discretion and Fairness**. The reasoning also illustrates the importance of judicial discretion in ensuring fairness in the legal process. By considering the broader interests of justice, including the delay in providing reasons and the applicant's efforts to seek legal advice, the court can balance procedural rules with the need to ensure a just outcome.

In summary, Justice Thawley's reasoning teaches that the provision of timely and thorough written reasons is fundamental to the administration of justice. It not only ensures transparency and accountability but also facilitates a fair and considered decision-making process. The court's ability to extend time for judicial review in appropriate cases reflects the necessity of maintaining these principles, even when procedural challenges arise.

Although other legislative regimes impose time limits on administrative decision-makers to make a decision,[94] s 500(6L) of the Migration Act imposes what can only be described as a guillotine provision; if a decision is not made within the prescribed period, the decision under review is deemed to be affirmed. This can have significant consequences for individuals seeking administrative review of migration decisions.

Imposing time limits for an administrative decision-maker to make a decision presents several challenges. The time constraint may place undue pressure on decision-makers,

[94] See, eg, *Civil and Administrative Tribunal Act 2013* (NSW) s 62(2) (28 days); *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 46(1) (28 days); *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 122 (45 days); *South Australian Civil and Administrative Tribunal Regulations 2015* (SA) reg 6 (21 days); *State Administrative Tribunal Act 2004* (WA) s 21 (28 days); *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) sch 3 cl 9(2) (21 days); *ACT Civil and Administrative Tribunal Act 2008* (ACT) s 22B (28 days); *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) s 35 (28 days).

particularly in complex cases that require thorough consideration of evidence, legal issues, or policy implications. A rigid deadline could result in rushed decisions, increasing the risk of errors, procedural fairness concerns or inadequate reasoning, which could lead to appeals or judicial or administrative review. The goal of ensuring timely decisions must be balanced with the need for quality and just outcomes, and a short time frame may undermine this balance.

Such a strict limit may not account for varying administrative burdens or the complexities of different cases. Some matters may involve voluminous evidence, consultations with stakeholders, or legal intricacies that require more time than straightforward cases.

A uniform 28-day deadline, for example, does not allow for flexibility to accommodate these differences, potentially leading to administrative inefficiencies or inconsistencies in decision-making processes. Decision-makers may also be forced to prioritise speed over thoroughness, compromising the quality of the outcomes.

Imposing a hard deadline without providing adequate resources or mechanisms to meet the timeline can lead to systemic inefficiencies. Administrative bodies may struggle with insufficient staffing or resources to handle their caseloads within the deadline, exacerbating backlogs or causing delays in other areas.

If the consequence of failing to meet the deadline is that the original decision is deemed affirmed, as seen in some legislative frameworks, it can undermine the right to a fair review process and negatively impact the individuals or entities awaiting the decision. Thus, a balance between timeliness and procedural fairness is crucial in administrative decision-making.

VI Conclusion

The obligation to provide written reasons in administrative decision-making plays a crucial role in promoting transparency, accountability and fairness within legal and administrative systems. Written reasons not only serve as a safeguard against arbitrary or capricious decisions but also ensure that decision-makers systematically address the legal and factual issues in each case.

By articulating the rationale behind a decision, decision-makers are forced to engage with the relevant law, facts and evidence, which helps mitigate the risk of oversight or error. This process not only benefits the parties directly involved in the case but also enhances the broader legal system by contributing to the development of legal principles and precedents.

In the context of administrative law, the provision of timely written reasons is particularly important for enabling parties to understand the basis of decisions affecting their rights and interests. Clear and reasoned decisions allow affected individuals or entities to assess whether the decision was lawful, fair and just, and whether they should seek an appeal or judicial review.

Without timely written reasons, parties may be left in a state of uncertainty, unable to fully comprehend the rationale behind the decision, or worse, unable to take informed legal action. This is particularly concerning in migration matters, as seen in cases like *Plaintiff M1/2021* and *CKT20*, where the stakes are often extremely high, involving fundamental issues such as the right to remain in a country or protection from harm.

However, while the importance of written reasons is clear, there are challenges when these reasons are delayed, particularly in urgent decision-making contexts. Administrative decision-makers may face practical difficulties in providing immediate written reasons, especially in cases where decisions must be made quickly due to time-sensitive issues, such as visa cancellations or deportations.

Nonetheless, even in such cases, it is essential that the decision-making process remains intellectually rigorous and well-documented, ensuring that the reasons, when eventually provided, reflect the thorough and considered nature of the decision. This balancing act is critical for preserving accountability, as delayed or inadequate reasons can foster perceptions of injustice and diminish public confidence in the system.

Further, delayed reasons can also complicate the judicial review process. Courts, as well as oversight bodies, rely heavily on the provision of written reasons to assess whether a decision complies with the law and adheres to established legal standards. Without these reasons, the review process can be stalled or rendered incomplete, leading to increased litigation and additional delays. In cases such as *Verrill*, where delayed reasons impacted the applicant's ability to seek timely legal advice, the consequences of such delays become even more evident, highlighting the broader implications of procedural inefficiencies.

Thus, while the goal of timeliness in decision-making is essential, it must be carefully balanced with the need for a fair, just and thorough examination of the issues. The practice of deferring written reasons, particularly in complex or high-stakes cases, underscores the importance of supporting administrative bodies with adequate resources and flexibility to meet their obligations without sacrificing the quality of their decisions. Ultimately, the provision of well-reasoned, transparent and timely decisions is central to maintaining the integrity of the legal system and ensuring that justice is served in both urgent and routine administrative matters.