

STATEMENT TO DAMIEN CARRICK, ABC LAW REPORT  
1 August 2022

Re article titled: *A data driven approach to evaluating and improving judicial decision making: statistical analysis of the judicial review of refugee cases in Australia* will be published in the next edition of the UNSW Law Journal.

**Statement from the Federal Circuit and Family Court of Australia (Division 2)  
Attributable to the Court spokesperson.**

The researchers have acknowledged that there are significant limitations to this study.

As the research is based on data only and limited details from the coversheet of a judgment, the Court is concerned that this research has the potential to mislead litigants, as no meaningful consideration of the factual and legal context of the judges' decisions has been considered.

Judicial decision making should not be evaluated through this limited and simplistic approach.

Whilst the Court is open to scrutiny and constructive criticism, the approach taken in this study raises concerns, as expressed in the past.<sup>1</sup>

It should also be noted that there is a robust appeal process which ensures that judicial decision making is subject to appropriate review and scrutiny.

Any consideration of raw statistical material gathered from the cover sheets of migration judgments should be accompanied by a relevant analysis of the context in which those decisions were made and a thorough review of the judge's reasons for judgment. The purpose of those reasons for judgment is to explain how a judge came to the decision that they did, that reasoning cannot be accurately obtained from the coversheet of a judgment alone. Without such an analysis, one cannot make an informed assessment of the significance of any raw statistics.

The Court can only review certain types of decisions under the *Migration Act 1958* (Cth) made by the Minister for Immigration, Citizenship and Multicultural Affairs, the Department of Home Affairs, the Administrative Appeals Tribunal and the Immigration Assessment Authority on a limited basis.

The Court's review process is restricted to determining whether a serious legal error, called a 'jurisdictional error' was made.

The Court cannot consider the merits of an applicant's case or decide whether an applicant should be granted a visa, nor can the Court grant an applicant a visa.

Jurisdictional errors include failing to consider a relevant consideration or relying on irrelevant material, asking the wrong question or failing to observe the requirements of procedural fairness. If an applicant's review application is successful, the Court can send their case back to the relevant decision maker for re-determination. The Court can also prevent the Minister from acting on the decision.

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<sup>1</sup> Chief Justice James Allsop, 'Courts as (Living) Institutions and Workplaces', (2019) 93 *Australian Law Journal*.