



# Prioritising Applications in the Migration and Refugee Division

This Direction is given under section 18B of the *Administrative Appeals Tribunal Act 1975*.

## 1. About this Direction

- 1.1 This Direction applies to applications for review of decisions that are dealt with in the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT). It is intended to ensure consistency and fairness in the AAT's approach to the prioritisation of applications in this Division.
- 1.2 This Direction has effect from 1 March 2023.
- 1.3 In this Direction:

**AAT** means the Administrative Appeals Tribunal;

**applicant** means a person who has applied for review of a decision;

**our, us** or **we** means the AAT or the Tribunal;

**representative** means a person appointed by an applicant to represent them and act on their behalf in relation to a review;

**Tribunal** means the member or members constituted to conduct the review in a particular case.

## 2. Priorities for constituting and processing applications

- 2.1 The following applications are to be given the highest priority:
  - (a) applications involving persons in immigration detention;
  - (b) applications where there is a question as to whether or not the AAT has jurisdiction to conduct a review; and
  - (c) applications where a member or an officer at APS4 level or above determines there are compelling reasons to prioritise the application.
- 2.2 The following applications are to be given the next highest priority:
  - (a) applications for review of visa cancellation decisions;
  - (b) applications remitted or returned from a court for the AAT to reconsider;

- (c) applications where the Tribunal has determined the application meets the requirements for an expedited decision request<sup>1</sup>;
  - (d) applications which have been remitted to the Department of Home Affairs (Department) and which have again been refused, resulting in the applicant making a further application for review; and
  - (e) applications for review of close family visitor visa refusal decisions in accordance with regulation 4.23 of the Migration Regulations 1994.
- 2.3 Priority for all other applications, other than as provided above, is to be by date of lodgement of the application for review, subject to the batching of applications with similar issues or the President or the Head of the Migration and Refugee Division authorising a targeted approach to particular caseloads.

### 3. 'Compelling reasons' for priority processing

3.1 If an applicant considers there are compelling reasons for their application to be given priority processing, they or their representative may make a request to the AAT. The request should:

- (a) be in writing;
- (b) outline why the applicant considers there are compelling reasons for priority processing; and
- (c) be accompanied by any evidence that supports the request.

**Note:** If the application has already been constituted, the request will usually be referred to the Tribunal for determination. If the application has not been constituted, the request will usually be referred to an officer at the APS4 level or above for determination.

3.2 A member or officer at the APS4 level or above may determine there are compelling reasons to prioritise an application:

- (a) in response to a request; or
- (b) otherwise in the course of their duties based on the information available in relation to the application.

3.3 A member or officer at the APS4 level or above may determine there are compelling reasons if:

- (a) the applicant faces significant adverse circumstances which are beyond those experienced by other applicants in the same visa subclass facing comparable processing times; and
- (b) prioritising the application is likely to ameliorate the significant adverse circumstances faced.

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<sup>1</sup> The requirements for an expedited decision request are set out in the [Migration and Refugee Division Practice Direction](#). Applicants may make an expedited decision request in accordance with the process set out in the Migration and Refugee Division Practice Direction. The AAT may also identify cases suitable for an expedited decision through outreach and other case management processes.

- 3.4 Examples of circumstances that may give rise to compelling reasons include, but are not limited to:
- (a) applications for review of a decision to refuse or cancel a child, orphan relative or adoption visa where the primary visa applicant is under 18 years of age at the time of the primary application with the Department;
  - (b) where a child under 18 years of age will be reunited with a parent, guardian or carer, from whom they would otherwise remain separated, as a direct consequence of a decision of the Tribunal;
  - (c) a serious accident, illness or medical condition affecting an applicant's health such that it would be unreasonable to prolong the review process; and
  - (d) applications where long delays in the review application being constituted and considered would result in the review applicant no longer being eligible for the visa applied for, even if the primary decision were to be set aside.
- 3.5 Circumstances that will generally not in themselves constitute compelling reasons include, but are not limited to:
- (a) extended processing periods;
  - (b) a normal pregnancy;
  - (c) the applicant's spouse residing overseas; and
  - (d) where the reunification of a parent, guardian or carer with a child under 18 years of age will depend on a subsequent visa pathway or alternate process, separate from the decision under consideration by the Tribunal.
- 3.6 Media or other public interest in an application will not automatically ensure the grant of priority. Each application will be individually assessed to determine the existence of compelling reasons.

**The Hon Justice Susan Kenny**  
**Acting President of the Administrative Appeals Tribunal**

22 February 2023