



# Migration and Refugee Matters

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

## 1. About this Direction

- 1.1 This Direction applies to cases that are dealt with in the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT). It sets out the AAT's (our) expectations of applicants and their representatives, in relation to the conduct of reviews in this Division. Part 1 applies to applicants and representatives in all cases. Part 2 applies to representatives in cases about protection (refugee) visas.
- 1.2 By following the requirements of this Direction, applicants and representatives (you) can ensure efficient and comprehensive consideration of the applicant's claims and assist in the fair, just, economical, informal, quick and proportionate conduct of reviews.
- 1.3 This Direction has effect from 2 August 2018.

## PART 1 – DIRECTIONS FOR APPLICANTS AND REPRESENTATIVES IN ALL PROCEEDINGS

### 2. Applying for review

#### ***Related applications***

- 2.1 You should inform us if several family members have separate applications before us.
- 2.2 If you are included in an application with other family members and no longer want to be included in that application and want your application to be treated separately, you should advise us in writing immediately.

#### ***Gender-related issues***

- 2.3 You should inform us at the earliest opportunity of any factors relating to the application that would make it appropriate for a member of a particular gender to conduct the review.

#### ***Requesting a decision without a hearing***

- 2.4 You should notify us promptly in any cases where you consent to us deciding the review without you appearing before us.

### 3. Communicating with us

- 3.1 There should be no direct contact or communication between you and AAT members other than during a hearing. Contact or communication will be through AAT staff at other times.
- 3.2 You must notify us in writing of any change of address or contact details.
- 3.3 You are expected to provide, wherever possible, an email address for communications from us. Wherever possible, email communication should be used to send and receive documents.

### 4. Change of representative

- 4.1 If you are a representative, you must notify us in writing as soon as you commence or cease representing the applicant. Where a new representative is appointed, an 'Appointment of representative' form (MR5) must be given to us.

### 5. Giving submissions and evidence to us

- 5.1 You are expected to:
  - (a) provide, on lodgement of an application for review, all relevant evidence and a detailed submission setting out your claims, or, if this is not possible (where, for example, a representative is appointed after the application is lodged), to give us all relevant material and submissions no later than 14 days from the date the application was lodged or the date the representative was appointed, whichever is the later day
  - (b) lodge any additional submissions or documentary information, which were not earlier available, no later than seven days (or no later than one day for detention cases) before any scheduled hearing
  - (c) identify clearly any changes to previous claims or any new or additional claims in any submission
  - (d) make any post-hearing submissions within the period determined by us.

#### ***Copies, originals and translations***

- 5.2 Generally, there is no requirement for a copy of letters, submissions or copies of documents transmitted electronically to be also sent by mail.
- 5.3 Where a document is evidence of a particular matter, the original must be given to us, or be available to be provided to us on request. Originals of all documents which have been provided to us by electronic means must be brought to any hearing of the case.
- 5.4 If you bring an original document to the hearing to submit as evidence, you are requested to bring a copy of the document as well.
- 5.5 All documents that are not in English should be translated into English by a translator with a 'Translator' level accreditation from the National Accreditation Authority for Translators and Interpreters (NAATI). Both the documents and the translations should be provided.

## 6. Responding to invitations to give or comment on information

- 6.1 If providing comments or information within a prescribed period, you are expected to do so as early as possible within the prescribed period.
- 6.2 A request for an extension of time to a prescribed period for responding to a request for information (under subsection 359(2)/424(2) of the *Migration Act 1958*) or an invitation to comment on or respond to information (under section 359A/424A of the *Migration Act*) must be made before the expiry of the prescribed period and should generally be made in writing, including the reasons for requesting the extension.
- 6.3 Any other requests for more time to comment, respond or provide information should also be made in writing and must identify the new deadline sought and why more time is needed.

## 7. Hearings

### ***Responding to a hearing invitation***

- 7.1 You must give us a completed 'Response to hearing invitation' form as early as possible before the hearing, and no later than seven days after receiving the hearing invitation.
- 7.2 If an interpreter is required for the hearing, you must specify the language/dialect on the form.

### ***Seeking an adjournment***

- 7.3 If you seek an adjournment of a scheduled hearing, you must contact us immediately and state the reasons why the date is unsuitable.
- 7.4 If you seek an adjournment of the hearing on medical grounds, you must contact us as soon as possible and must provide a certificate from a medical practitioner certifying that you are unable to attend and give oral evidence, and indicating when the medical practitioner considers you will be able to attend a hearing and give oral evidence. If you are a representative acting on behalf of an applicant, you must submit such medical certificates no later than two business days before the scheduled hearing day (where available).

### ***Interpreters***

- 7.5 If you are dissatisfied with the quality of interpreting at a hearing you should tell the member immediately. The member will assess whether the hearing should continue in light of your comments.

### ***Representatives attending a hearing by telephone***

- 7.6 In general, if you are representing or assisting an applicant in an AAT review, you should attend the hearing in person at the AAT or at the location of the applicant. Where this is not possible, you may request permission to attend the hearing by telephone from a third location. The request must be made in writing as early as possible and at least two business days before the hearing, and you must inform us in writing of the direct telephone number on which we can contact you at the scheduled hearing time.

- 7.7 If the hearing concerns a protection visa review and we grant the request, you must make arrangements to preserve the private nature of the hearing and must explain these arrangements to us at the start of the hearing.

## **PART 2 – ADDITIONAL DIRECTIONS FOR REPRESENTATIVES IN REFUGEE PROCEEDINGS**

### **8. Applying for review**

- 8.1 You should ensure that a copy of the decision for review is attached to the application for review. You should also attach any new material not previously provided to the Department of Home Affairs on which you propose to rely.

### **9. Requesting access to documents**

- 9.1 You are to make any request to us for access to documents under the *Freedom of Information Act 1982* as soon as possible after the application for review is lodged.

### **10. Written submissions**

- 10.1 All written submissions are to:
- (a) be given to us as early as possible and within such time as directed by us
  - (b) clearly and concisely identify and address the issues in the review
  - (c) set out in detail the relevant facts that support the submission
  - (d) be accompanied by any new material relied on to support the claims, including copies of any country information which is not easily or publicly available
  - (e) identify the specific source of any country information relied on (including page and paragraph numbers where appropriate)
  - (f) explain how any country information referred to is relevant to the circumstances of the applicant's case
  - (g) include the name of the person who prepared the submission, the date of the submission, and page numbers.
- 10.2 If a submission refers to a new or varied claim (a claim that was not made previously or that has changed or developed since it was last made), the submission must clearly identify it as a new or varied claim, and you must give us a written statement from the applicant in support of that claim.

### **11. Pre-hearing submission**

- 11.1 At least seven days before the first scheduled hearing, or as otherwise directed by us, you are to give us a written submission that clearly and concisely sets out all claims made and maintained by the applicant.
- 11.2 The pre-hearing submission should be accompanied by a signed declaration from the applicant that the submission has been read or explained to them and that it accurately and completely presents their claims.

## **12. Witness statements**

- 12.1 Where it is proposed that a person other than the applicant give evidence at a hearing, a witness statement setting out the witness's evidence is to be given to us at least seven days before the hearing. Where a witness is unable to adopt or sign a witness statement, you are to set out in writing particulars of the evidence you expect the witness to address and how it is relevant to the applicant's case.

**Justice David Thomas**  
**President**

1 August 2018