



Prioritising Cases 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 cases 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 cases in this Division.
- 1.2 This Direction has effect from 2 August 2018.

2. Priorities for constituting and processing cases

- 2.1 The following cases are to be given the highest priority:
 - (a) cases involving persons in immigration detention
 - (b) cases where there is a question as to whether or not the AAT has jurisdiction to conduct a review.
- 2.2 The following cases are to be given the next highest priority:
 - (a) cases where a member or an officer at APS4 level or above decides there are *compelling reasons* for prioritising the case
 - (b) all visa cancellation cases
 - (c) all protection visa cases
 - (d) cases remitted or returned from a court for the AAT to reconsider
 - (e) cases which have been remitted to the Department of Home Affairs and which have again been refused, resulting in the applicant making a further application for review
 - (f) close family visitor refusal cases in accordance with regulation 4.23 of the *Migration Regulations 1994*.
- 2.3 Priority for all other cases, other than as provided above, is to be by date of lodgement of the application for review, subject to the batching of cases 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 Members and officers at the APS4 level and above may determine that a case be given priority because of compelling reasons, either in response to a request or in the course of their normal duties. Where the case has already been constituted, requests for priority processing are to be dealt with by the member.
- 3.2 'Compelling reasons' refers to cases where both of the following situations apply:
- (a) significant adverse circumstances exist in the applicant's case 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.
- 3.3 The assessment of the applicant's request for priority constitution should take into account the entirety of their circumstances.
- 3.4 Examples of circumstances that may give rise to compelling reasons include, but are not limited to:
- (a) child, orphan relative and adoption visa cases where the primary visa applicant is under 18 years of age at the time of lodgement of the primary application with the Department
 - (b) continued separation of a child under 18 years from their parent, guardian or carer
 - (c) subclass 300 cases where the review applicant and the primary visa applicant marry after the primary decision but before the review is finally determined
 - (d) an accident, illness or medical condition affecting an applicant's health such that it would be unreasonable to prolong the review process
 - (e) cases 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 would generally not in themselves constitute compelling reasons include, but are not limited to:
- (a) extended processing periods
 - (b) a normal pregnancy
 - (c) applicant's spouse residing overseas.
- 3.6 Cases attracting media, public or ministerial interest do not automatically ensure the granting of priority. Each case will be individually assessed to determine the existence of compelling reasons.

Justice David Thomas
President

1 August 2018

For further information about the AAT, please call us on **1800 228 333** or go to www.aat.gov.au.