



## Administrative Review Tribunal (Common Procedures) Practice Direction 2024

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I, the Hon Justice Emiliios Kyrou, President of the Administrative Review Tribunal, make the following Practice Direction.

Dated

THE HON JUSTICE EMILIOS KYROU **DRAFT ONLY—NOT FOR SIGNATURE**  
President, Administrative Review Tribunal

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## Part 1. Preliminary

- 1.1 This Practice Direction is made under section 36(1) of the *Administrative Review Tribunal Act 2024* (Act).
- 1.2 This Practice Direction is arranged in 8 Parts:
- (a) Part 1 – Preliminary;
  - (b) Part 2 – Obligations of parties;
  - (c) Part 3 – Applying for review of a decision;
  - (d) Part 4 – General conduct and procedure of reviews;
  - (e) Part 5 – Hearings;
  - (f) Part 6 – Evidence;
  - (g) Part 7 – Statement of Facts, Issues and Contentions; and
  - (h) Part 8 – Ending a proceeding.
- 1.3 This Practice Direction commences on [DATE] and has effect from that date. This Practice Direction applies to all applications whether lodged before, on or after this date, and remains in effect until it is superseded or revoked.
- 1.4 The purpose of this Practice Direction is to make directions about the practice and procedures relating to applications for review of decisions and the conduct of proceedings that apply to all jurisdictional areas and lists of the Tribunal, except where stated otherwise.
- 1.5 This Practice Direction does not apply to the extent that it is inconsistent with:
- (a) a provision of the Act or another Act or instrument under which the Tribunal has powers to review decisions;
  - (b) a provision of a regulation made under the Act or another Act; or
  - (c) a provision of a rule made under the Act.

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- 1.6 If the Tribunal makes a direction in relation to a proceeding that is inconsistent with this Practice Direction, the Tribunal’s direction applies to that proceeding and this Practice Direction does not apply, to the extent of the inconsistency.
- 1.7 A failure by the Tribunal to comply with this Practice Direction does not affect the validity of anything done by the Tribunal.
- 1.8 A failure by a party or any other person to comply with this Practice Direction may have consequences for the progress of the application or the person’s participation in the review, including dismissal of the application or removal of the non-compliant person as a party to the review, in accordance with the provisions of the Act or any other applicable statutory instrument.

### **Definitions**

- 1.9 In this Practice Direction:

*Act* means the *Administrative Review Tribunal Act 2024*.

*ART social services decision* has the same meaning as under the Act.

*character decision* means a decision reviewable by the Tribunal pursuant to section 500 of the *Migration Act 1958*.

*decision-maker* has the same meaning as under the Act.

*eligible social services decision* has the same meaning as under the Act.

*expedited character decision* means a decision made under sections 501 or 501CA of the *Migration Act 1958* where the applicant is in the migration zone at the time of application.

*family violence order* means an order (including an interim order) made under a law of a State or Territory prescribed under the *Family Law Regulations 1984* to protect a person from family violence.

*Guidance and Appeals Panel* has the same meaning as under the Act.

*jurisdictional area* has the same meaning as under the Act.

*list* has the same meaning as under the Act.

*litigation supporter* has the same [meaning as under the Act](#).

*Member* means a member of the Tribunal.

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**migration decision** has the same meaning as **reviewable migration decision** at section 338 of the *Migration Act 1958* but does not include decisions reviewable in the Tribunal pursuant to sections 136 and 500 of the *Migration Act 1958*.

**migration zone** has the same meaning as in section 5 of the *Migration Act 1958*.

**NAATI** means the National Accreditation Authority for Translators and Interpreters.

**NDIS** means the National Disability Insurance Scheme.

**Presiding Member** has the same meaning as under the Act.

**protection decision** has the same meaning as **reviewable protection decision** at section 338A of the *Migration Act 1958* but does not include decisions reviewable in the Tribunal pursuant to section 500 of the *Migration Act 1958*.

**Registrar** means a person appointed as a registrar of the Tribunal under [section 237 of the Act](#) or a person engaged under [section 90 of the Act](#) to perform dispute resolution functions.

**registry** means any registry office of the Tribunal.

**Rules** means the Rules made under the Act.

**Second Review** has the same meaning as under the Act.

**small business taxation assessment decision** has the same meaning as in the *Taxation Administration Act 1953*.

**social security decision** means a decision that the Tribunal has jurisdiction to review under the *A New Tax System (Family Assistance) (Administration) Act 1999*, *Paid Parental Leave Act 2010*, *Social Security Act 1991*, *Social Security (Administration) Act 1999*, *Child Support (Registration and Collection) Act 1988* or *Student Assistance Act 1973*.

**taxation decision** has the same meaning as in the *Taxation Administration Act 1953*.

**Tribunal** means the Administrative Review Tribunal.

**Tribunal case event** has the same meaning as in the Act.

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### ***Practice Directions made in respect of certain jurisdictional areas***

1.10 In addition to this Practice Direction, specific practice directions have been made in respect of:

- (a) Review of migration decisions, protection decisions and character decisions;
- (b) Review of most child support decisions;
- (c) Review of freedom of information decisions; and
- (d) The Guidance and Appeals Panel.

**Note:** Paragraph 1.12 of the *Administrative Review Tribunal (Child Support) Practice Direction 2024* sets out the child support decisions which are covered by that practice direction.

1.11 Parties with applications in any of the jurisdictional areas covered by the practice directions set out at [1.10] above should read the practice direction which relates to that area as it may contain important information in respect of strict time limits and other requirements on parties which may differ from those contained in this Practice Direction. To the extent that any practice direction set out at [1.10] above is inconsistent with this Practice Direction, the provisions of that practice direction prevails.

### **Part 2. Obligations of parties**

2.1 Part 2 of this Practice Direction applies to applications for review in all jurisdictional areas, subject to the modifications and limitations contained in this Part and/or other practice directions (see [1.10] and [1.11] above).

#### ***Obligations of parties and representatives to assist the Tribunal***

2.2 Section 56 of the Act requires all parties and their representatives before the Tribunal to use their best endeavours to assist the Tribunal in achieving its objective under section 9 of the Act and to assist the Tribunal to make the correct or preferable decision in relation to a review.

2.3 By acting in accordance with this Practice Direction, parties can assist the Tribunal to fulfil its objective.

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### ***Communicating with the Tribunal***

- 2.4 Parties and their representatives must provide the Tribunal with a current telephone number and email address, unless neither the party nor the representative have access to a telephone or the internet.
- 2.5 The Tribunal will send documents and notices about an application for review to the most recent email address provided in connection with the review, unless the Tribunal determines otherwise.
- 2.6 Where a litigation supporter is appointed, the Tribunal will communicate with the litigation supporter and the representative of the party (where a representative has been appointed).
- 2.7 Parties must not contact, or communicate with, Members other than during a hearing, including a directions hearing. At all other times, contact or communication may only be made through Tribunal staff or Registrars.
- 2.8 Substantive communications between the Tribunal and a party should be copied to all other participating parties, unless a confidentiality application or order is in place or there is another legal reason for not doing so.

**Note:** Where a family violence order or other court order is in place prohibiting one party from contacting another, correspondence should not be copied to that other party.

### ***Giving documents or things to the Tribunal***

- 2.9 Except where expressly stated otherwise in this Practice Direction, a document or thing may be lodged with, or given to, the Tribunal by:
  - (a) submitting it using the Tribunal online system accessible via the Tribunal website ([www.art.gov.au](http://www.art.gov.au));
  - (b) giving it to a staff member or Registrar of the Tribunal at a registry;
  - (c) sending it by pre-paid post or reply-paid post to a registry;
  - (d) emailing it to the email address of a registry; or
  - (e) using a digital file transfer method approved by the Tribunal.



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- 2.10 For the purposes of [2.9] above and [3.2] below, contact details for each registry, and guidelines that should be followed when sending an email to the Tribunal, can be found on the Tribunal website at [www.art.gov.au](http://www.art.gov.au).
- 2.11 Except where expressly stated otherwise in any Act conferring powers upon the Tribunal, the Tribunal is taken to have received a document or thing given to it:
- (a) when submitting it using the Tribunal online system accessible via the Tribunal website ([www.art.gov.au](http://www.art.gov.au)) or approved digital file transfer—immediately;
  - (b) when giving it to a staff member or Registrar of the Tribunal at a registry—immediately;
  - (c) when sending it by pre-paid post or reply-paid post to a registry—at the end of the day the document is received at a registry of the Tribunal; or
  - (d) when emailing to a registry—at the end of the day it was sent.

### ***Accessibility***

- 2.12 Parties may request an interpreter, adjustments or other assistance to participate in proceedings. Requests should be made as early as possible.
- 2.13 The Tribunal will consider any requests under [2.12] above and any requirements set out in the Act and decide what is appropriate on a case-by-case basis.
- 2.14 Adjustments may be provided:
- (a) where any specific supports or arrangements are required to enable a person to effectively participate in the review, having regard to the diverse needs and broad range of applicants. For example, if a person is deaf or has a hearing or speech impairment, the Tribunal may use the [National Relay Service](#) to communicate with the person and arrange for a hearing loop if required;
  - (b) where the Tribunal has been advised that there is a history of family violence between a party and another party, witness or other person attending a hearing (noting that there is an obligation to advise the Tribunal if there is any history of family violence between the parties in reviews of social security decisions where there are parties other than the applicant and the decision-maker); or

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- (c) where a person requires an interpreter, including an AUSLAN interpreter, for communication with the Tribunal or understanding evidence and submissions given to the Tribunal.
- 2.15 Requests can be made using one of the methods specified at [2.9] above. or by telephoning the registry using the contact details specified at [\[Hyperlink\]](#).
- 2.16 A request for an interpreter should specify the required language and/or dialect.
- 2.17 The Tribunal may appoint an interpreter either by request from a party or on its own initiative.
- 2.18 Where the Tribunal decides an interpreter is required, it will arrange for an independent [NAATI](#) accredited interpreter where available. Representatives, relatives and friends will not generally be allowed to act as interpreters.
- 2.19 A person who is dissatisfied with the quality of interpreting at a hearing should tell the Tribunal immediately.

#### ***Appointment and removal of representative in certain circumstances***

- 2.20 A party to a proceeding may choose another person to represent them. The Tribunal can order that a person can no longer be represented by their representative where the Tribunal is satisfied that:
- (a) the representative has a conflict of interest in representing the person;
  - (b) the representative is not acting in the best interests of the person;
  - (c) representation by the representative presents a safety risk to any person;
  - (d) representation by the representative presents an unacceptable privacy risk to any person; or
  - (e) the representative is otherwise impeding the Tribunal.
- 2.21 Generally, the Tribunal will invite a person to comment, or have their representative comment on their behalf, before making an order that their representative no longer represents them in the proceeding.
- 2.22 In deciding whether to make an order that a representative no longer represent a person under [2.20] above, the Tribunal may consider:

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- (a) the ability of the person to participate in the proceedings if they are no longer represented by the representative;
  - (b) the availability of alternative representation;
  - (c) whether measures can be put in place which may mitigate the concerns of the Tribunal if the representative is allowed to continue; and
  - (d) whether adjustments can be made to enable the person to effectively participate without the representative.

### **Part 3. Applying for review of a decision**

- 3.1 Part 3 of this Practice Direction applies to applications for review in all jurisdictional areas, subject to the modifications and limitations contained in this Part and/or other practice directions (see [1.10] and [1.11] above).

#### ***How to apply for a review***

- 3.2 An application for review of a decision, other than a migration decision or a protection decision, may be made by:
- (a) completing and submitting the electronic application form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au);
  - (b) downloading and completing the paper form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au) and:
    - (i) posting, or otherwise delivering it to a registry specified on the Tribunal website at [www.art.gov.au](http://www.art.gov.au); or
    - (ii) emailing it to an email address of a registry; or
  - (c) letter—that includes the details set out at [3.3] below and a copy of the decision sought to be reviewed (if available)—which is:
    - (i) posted or otherwise delivered to a registry specified on the Tribunal website at [www.art.gov.au](http://www.art.gov.au); or
    - (ii) emailed it to an email address of a registry.
- 3.3 The following details must be included in any type of application for review referred to at [3.2] above:
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- (a) the applicant's name;
  - (b) contact details of the applicant or their representative;
  - (c) the nature of the decision sought to be reviewed;
  - (d) the date of the decision;
  - (e) the date the applicant received the decision; and
  - (f) the reasons why the applicant says the decision should be reviewed.

**Note:** The process for applying for review of a migration decision or a protection decision is set out in the *Administrative Review Tribunal (Migration, Protection and Character) Practice Direction 2024*. Paragraphs [3.2] above to [3.8] below do not apply to those reviews.

- 3.4 Failure to include the information set out at [3.3(c)] to [3.3(f)] above will not invalidate an application, but may affect its progress. For example, an application that does not contain the date of the decision may not progress until the Tribunal can identify the decision that is the subject of the application.
- 3.5 Where the Tribunal requires further information from a party to progress an application for review, the Tribunal may request the party to provide that information in writing.
- 3.6 For review of social security decisions (except for applications under the *Paid Parental Leave Act 2010*) and decisions made by the National Disability Insurance Agency, an application may also be made by telephoning the registry using the contact details referred to at [2.10] above and providing the application information set out at [3.3] above to staff of the Tribunal.
- 3.7 If an application fee is payable, the fee must be paid within the time prescribed by the Rules. The Tribunal may dismiss an application for review if the fee is not paid within the time prescribed by the Rules.
- 3.8 An applicant may be eligible for a fee reduction. Applicants applying through the online application form may apply for a fee reduction using that form. A form for fee reduction is also available on the Tribunal website at [www.art.gov.au](http://www.art.gov.au).

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### ***Applying for Second Review of an ART social security decision***

- 3.9 An application for a Second Review of an ART social security decision is to be made in the same manner as an application for a first review of an eligible social services decision.

### ***Time for making an application for a review***

- 3.10 Applications for review must be made within the period prescribed in the Rules or by an Act or instrument under which the Tribunal has power to review the decision.
- 3.11 If no period is prescribed, the application for review must be made within a period the Tribunal considers reasonable unless there are special circumstances that justify the Tribunal reviewing the decision (see [section 20 of the Act](#)).

**Note:** The time for applying for review of a migration decision, a protection decision or an expedited character decision is set out in the *Administrative Review Tribunal (Migration, Protection and Character) Practice Direction 2024*.

### ***When and how time to apply may be extended***

- 3.12 An applicant may apply to the Tribunal for an order to extend the period in which they may apply for review of a decision, unless a provision of the Rules or an Act or instrument under which the Tribunal has powers to review the decision provides otherwise.

**Note:** The Tribunal cannot extend the time for filing an application seeking review of:

- (a) an application by an employer for first review of a paid parental leave decision;
  - (b) a migration decision;
  - (c) a protection decision; or
  - (d) an expedited character decision.
- 3.13 Applications for an extension of time, where available, may be made by any of the following means:
- (a) completing and submitting the electronic application form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au);
  - (b) downloading and completing the paper form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au) and:

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- (i) posting, or otherwise delivering it to a registry specified on the Tribunal website at [www.art.gov.au](http://www.art.gov.au); or
  - (ii) emailing it to an email address of a registry;
  - (c) letter, which is:
    - (i) posted, or otherwise delivered to a registry specified on the Tribunal website at [www.art.gov.au](http://www.art.gov.au); or
    - (ii) emailed to an email address of a registry.
- 3.14 The Tribunal may give, or require the applicant to give, a copy of the application for an extension of time to a person the Tribunal considers is affected by the application.
- 3.15 A party who receives notice of an application for an extension of time must notify the Tribunal within 14 days if they wish to oppose the application for an extension. The Tribunal may refuse an extension of time even if the granting of the extension is not opposed by any other party.

#### **Part 4. General conduct and procedure of reviews**

- 4.1 Part 4 of this Practice Direction applies to applications for review in all jurisdictional areas, subject to the modifications and limitations contained in this Part and/or other practice directions (see [1.10] and [1.11] above).

##### ***Tribunal documents provided by the decision-maker***

- 4.2 The documents which are required to be given to the Tribunal by a decision-maker on commencement of a review under the Act or another enactment must:
- (a) be in a text-searchable PDF;
  - (b) be organised chronologically;
  - (c) remove duplicate documents where not required for context;
  - (d) be paginated; and

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- (e) be provided with an index.
- 4.3 If a party applies to the Tribunal under section 28 of the Act to adjust the time within which a decision-maker is required by section 23 of the Act to give documents to the Tribunal, that party must notify any other parties of that application, as soon as possible after the application is made.
- Note 1:** A decision-maker is not required to give documents to the Tribunal pursuant to section 23 of the Act where the decision under review is a migration decision, a protection decision or an expedited character decision.
- Note 2:** Section 23 of the Act does not apply in relation to an application for review of a reviewable objection decision. See section 14ZZF of the *Taxation Administration Act 1953* for the requirements on the decision-maker to give documents to the Tribunal.
- 4.4 If a decision-maker applies for an order prohibiting or restricting the publication or other disclosure of a document, they must do so as soon as practicable and inform any other party as soon as practicable of their application.
- Note:** This paragraph does not apply in child support matters covered by the *Administrative Review Tribunal (Child Support) Practice Direction 2024*. Instead, paragraphs 5.9 to 5.12 of the *Administrative Review Tribunal (Child Support) Practice Direction 2024* apply.
- 4.5 If a decision-maker applies for an order under 4.3] or [4.4] above, the Tribunal may reach a decision with or without a Tribunal case event.

### ***Requesting a decision under review be stayed***

- 4.6 Unless a provision of an Act or instrument under which the Tribunal has power to review the decision provides otherwise, a party may apply for an order staying or otherwise affecting the operation or implementation of the decision by any of the following means:
- (a) completing and submitting the electronic application form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au);
- (b) downloading and completing the paper form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au) and:
- (i) posting, or otherwise delivering it to a registry specified on the Tribunal website at [www.art.gov.au](http://www.art.gov.au); or
- (ii) emailing it to an email address of a registry; or

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- (c) by letter sent by post, email or otherwise delivered to a registry, including the information set out at [3.3] above, and the reasons why an order staying (or otherwise affecting) the operation of the decision should be granted.

**Note:** Contact details for each registry can be found on the Tribunal website at [www.art.gov.au](http://www.art.gov.au).

- 4.7 The Tribunal will give the parties a reasonable opportunity to make submissions before making, varying or revoking an order staying (or otherwise affecting) the operation of the decision.

**Note:** The Tribunal cannot make an order staying the operation of:

- (a) a migration decision;
- (b) a protection decision;
- (c) certain social security decisions that are not eligible social services decisions; or
- (d) a taxation decision except for a small business taxation assessment decision.

### ***Requesting a review be expedited***

- 4.8 At any stage of the review process, a party may request that the Tribunal expedite the review process. The Tribunal will only expedite the review process if it is satisfied that it is appropriate to do so.

**Note:** Some enactments require the Tribunal to expedite certain reviews. They include the requirement to:

- (a) expedite a hearing in circumstances where Services Australia is continuing to pay benefits pending the review by the Tribunal;
- (b) make a decision within 84 days for an expedited character decision; and
- (c) make a decision within 7 working days in relation to certain bridging visa decisions.

- 4.9 A request for expedition should be made in writing, set out why the Tribunal should expedite the review and include any evidence to support the request. The *Request for expedited decision* form available from the Tribunal website at [www.art.gov.au](http://www.art.gov.au) may be used to make the request.



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- 4.10 If the Tribunal receives a request for a review to be expedited, it will invite any other participating party to the review to make a submission on the request.
- 4.11 The Tribunal will not usually expedite the review process unless:
- (a) all participating parties will be ready to proceed on the date of the hearing; and
  - (b) the Tribunal is satisfied that an expedited review process would not disadvantage any party.
- 4.12 The Tribunal will not adjourn a hearing for a review process that has been expedited unless there are good reasons.
- 4.13 Paragraphs 3.12 to 3.14 of the *Administrative Review Tribunal (Migration, Protection and Character) Practice Direction 2024* also apply to requests for expedition of a migration decision or a protection decision.

***Applying to be made a party***

- 4.14 Paragraphs [4.16] to [4.19] below do not apply to applications for review of taxation decisions, migration decisions, protection decisions and decisions made under section 501 of the *Migration Act 1958*.
- 4.15 The Tribunal may notify a person of their right to apply to be made a party to a review where it considers that person's interests may be affected by the decision.
- 4.16 The Tribunal may make a person, other than the applicant or the decision-maker, a party to the review if it is satisfied the person's interests are affected by the decision and considers it appropriate that the person become a party to the proceeding. If a person becomes a party to a proceeding, the Tribunal will notify all parties to the proceeding.
- 4.17 A person may apply to be made a party by writing to the Tribunal by a method specified at [2.9] above and by including:
- (a) the name and contact details of the person applying to be a party;
  - (b) the Tribunal reference number (if known);
  - (c) the name(s) of the other parties to the review (if known); and
  - (d) the reason or reasons for the application to become a party including how the review may affect their interests.

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- 4.18 A person, other than the applicant or decision-maker, may withdraw as a party to a proceeding by giving written notice to the Tribunal by a method specified at [2.9] above.

**Note:** A first review applicant may not be permitted to withdraw from a Guidance and Appeals Panel proceeding or a Second Review proceeding, in which that applicant may become a respondent. In such a case, the Tribunal would need to consider, among other things, whether such a withdrawal would impede the proper review of the decision the subject of the proceeding.

### ***Directions hearings and other Tribunal case events***

- 4.19 All parties must act in good faith in relation to the conduct of Tribunal case events. Where a party is represented at a Tribunal case event, the representative must be in a position to properly articulate the position of that party and be mindful of their obligations to the Tribunal.

**Note:** The Tribunal expects parties to confer before a directions hearing or other Tribunal case event with a view to agreeing as far as possible the directions or orders to be sought.

- 4.20 The Tribunal may list a directions hearing or other Tribunal case event to discuss the conduct of a review or to consider non-compliance of a party with a direction, or to make orders. The orders or directions that may be made include that the party file and serve a Statement of Facts, Issues and Contentions, witness statements, and expert and other evidence, where applicable.

**Note:** Part 7 below deals with Statements of Facts, Issues and Contentions.

- 4.21 Parties can also request the Tribunal hold a directions hearing. A party requesting that a directions hearing be held should make that request in writing and set out why the directions hearing is required.

### ***Dispute resolution processes***

- 4.22 In some cases where there is more than one participating party, the Tribunal may list the application for review for a dispute resolution process (such as a conciliation or a mediation) to facilitate the settlement of the application for review.

**Note:** The parties should refer to the Tribunal's website for further information relating to the types of dispute resolution processes undertaken by it.  
[\[hyperlink\]](#)

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- 4.23 Parties must advise at least two weeks before the date of the dispute resolution process, the name and position of the person who will attend and who has authority to settle. At least one of the persons attending must have the authority to settle.
- 4.24 Unless prior approval has been granted by the Tribunal, the person authorised to settle the application for review must be in attendance for the duration of the dispute resolution process in the same manner as the other attendees.
- 4.25 If the parties have engaged representatives for the dispute resolution process, the representative should be in attendance.
- 4.26 Before the dispute resolution process, all of the relevant material the parties wish to rely upon should be in the possession of all parties and the relevant issues should be clearly defined. All parties must be able to articulate at the dispute resolution process the basis on which they contend a decision should be made by the Tribunal in their favour.
- Note:** If a party wishes to file a confidential document to assist the Tribunal to facilitate a resolution of the proceeding, the party may seek an order that the document not be disclosed to any other party. See [6.6] to [6.7] below regarding non-disclosure orders.
- 4.27 If the parties reach in-principle agreement at the dispute resolution process, the Tribunal expects that formal resolution of the matter will occur promptly.
- 4.28 Some types of dispute resolution processes (including conciliations and mediations) are strictly confidential and nothing that is said by any party during them can be relied upon by another party as evidence. However, parties may agree that particular evidence provided at such a dispute resolution process can be relied on as evidence.

### ***Compliance with Tribunal orders and directions***

- 4.29 All parties must comply with orders and directions made by the Tribunal.
- 4.30 Representatives must ensure that the representative's client(s) comply with any orders or directions made by the Tribunal. For the avoidance of doubt, [4.30] does not affect a party's obligation to comply with [4.29].

### ***Matters involving more than one participating party***

- 4.31 In matters involving more than one participating party, when a party or the party's representative form the view that they will not be able to comply with an
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order or direction made by the Tribunal, the party must, within the specified period, write to the Tribunal and:

- (a) request further time to comply with the Tribunal's order or direction;
- (b) explain the reasons for requesting further time; and
- (c) inform the Tribunal whether each other participating party consents to or opposes the request, unless they are prohibited from contacting the other party.

*All matters*

4.32 Parties should not assume that a requested extension of time for compliance with an order or direction made by the Tribunal will be granted, even if the extension is consented to by all participating parties. The Tribunal will generally take into account the following factors in deciding whether to grant an extension:

- (a) the reasons provided for not complying with the order or direction;
- (b) the amount of notice provided in requesting the extension;
- (c) whether there have been other delays in progressing the application for review;
- (d) whether any prior extension of time has been granted;
- (e) whether granting the extension of time will result in any Tribunal case event needing to be rescheduled;
- (f) the length of additional time requested;
- (g) the effect the requested extension of time would have on the resources of the Tribunal and other Tribunal users; and
- (h) any other factor the Tribunal considers is relevant.

4.33 In the event of non-compliance with an order or direction by an applicant or the applicant's representative, the Tribunal may:

- (a) require further information from the applicant or the applicant's representative as to the non-compliance including, for example, a signed statement setting out the steps taken to comply;

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- (b) dismiss the application for review in accordance with section 100 of the Act;
  - (c) remove the applicant's representative in accordance with section 66 of the Act on the basis that they are not acting in the best interests of the applicant or on the basis that the applicant's representative is otherwise impeding the Tribunal;
  - (d) if the Tribunal considers that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding—make a decision without a hearing in accordance with section 106(5) of the Act; or
  - (e) take any other action the Tribunal considers appropriate.
- 4.34 In the event of non-compliance with an order or direction by a respondent or the respondent's representative the Tribunal may:
- (a) require further information from the respondent or the respondent's representative as to the non-compliance including, for example, a signed statement setting out the steps taken to comply;
  - (b) remove the respondent as a party from the application for review in accordance with section 83(3) of the Act;
  - (c) remove the respondent's representative in accordance with section 66 of the Act on the basis that they are not acting in the best interests of the respondent or on the basis that the respondent's representative is otherwise impeding the Tribunal;
  - (d) if the Tribunal consider that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding—make a decision without a hearing in accordance with section 106(5) of the Act; or
  - (e) take any other action the Tribunal considers appropriate.

## **Part 5. Hearings**

- 5.1 Part 5 of this Practice Direction applies to applications for review in all jurisdictional areas, subject to the modifications and limitations contained in this Part and/or other practice directions (see [1.10] and [1.11] above).

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***How a hearing may be held***

- 5.2 The Tribunal may hold a hearing:
- (a) in person;
  - (b) by video conferencing platform;
  - (c) by telephone; or
  - (d) by a combination of in person, telephone and/or video.
- 5.3 In determining how the hearing will be held, relevant considerations may include, but are not limited to:
- (a) where the parties, and in particular the applicant, are located and their distance from a registry;
  - (b) any expressed preference from a party and the reasons for that preference;
  - (c) whether any party or representative has an impairment, or any vulnerabilities, which would make it difficult for them to attend a registry in person or to participate in a hearing by video or by telephone;
  - (d) where there is a history of family violence between a party and another party, witness or another person attending the hearing, such that at least one of those persons should participate in a hearing by video or telephone;
  - (e) the nature and complexity of the legal and factual issues to be decided, including the extent to which the Tribunal may need to assess the credibility of oral evidence given by the applicant or a witness and of documentary evidence;
  - (f) the number, nature, location and availability of any witnesses; and
  - (g) the nature and volume of the documentary evidence.
- 5.4 There is no entitlement to a particular hearing method.

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### ***Hearings to be held in public except in certain circumstances***

- 5.5 Except where otherwise required by law or a direction made under the Act, the Tribunal hearings are held in public.

**Note:** Hearings of the following review types must, by law, be held in private:

- (a) review of a decision under the social security law within the meaning given by the *Social Security Act 1991*;
  - (b) review of a decision under the family assistance law within the meaning given by the *A New Tax System (Family Assistance) (Administration) Act 1999*;
  - (c) first review of a decision under the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*;
  - (d) review of a decision under the *Paid Parental Leave Act 2010*;
  - (e) review of a decision in the Intelligence and Security jurisdictional area;
  - (f) review of a protection decision; and
  - (g) review of a taxation decision where a party has requested that a hearing be in private under section 14ZZE of the *Taxation Administration Act 1953*.
- 5.6 The Tribunal may direct by order that a hearing, or part of a hearing, be held in private and give directions in relation to who may be present.
- 5.7 If a party wishes that a hearing, or part of a hearing, be held in private the party must make an application in writing to the Tribunal advising of the reasons why the hearing should be held in private.

### ***Consenting to the Tribunal deciding a review without a hearing***

- 5.8 The Tribunal may make a decision without holding a hearing if the parties consent.
- 5.9 Where a party has a representative, the representative should notify the Tribunal of the party's consent to the Tribunal deciding the review without a hearing by completing the *Consent to the Tribunal Deciding the Review Without a Hearing* form.

### ***Setting a hearing date***

- 5.10 Where a hearing is required, the Tribunal will set a hearing date.

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- 5.11 In applications involving more than one participating party (other than applications for review of character decisions):
- (a) Prior to a hearing date being set, represented parties may be required to file a hearing certificate identifying proposed witnesses, availability of the party and the representatives, and the anticipated length and mode of the hearing. The Tribunal may also require unrepresented parties in such matters to file a hearing certificate. If a party fails to provide the hearing certificate within the time specified, the Tribunal may set the hearing date without further consultation.
  - (b) Witnesses should not be required for cross-examination unnecessarily and generic formulations such as requiring for cross-examination ‘all witnesses on which the other party intends to rely’ are not appropriate.
  - (c) If a statement from a witness is included in the documents filed for the purposes of the hearing and a party contends that the statement should be given weight, that should be made clear prior to the hearing to give the other party an opportunity to consider whether that witness should be made available for cross-examination at the hearing.

### *Adjournments*

- 5.12 The Tribunal will not adjourn a hearing date unless it considers that there are good reasons to justify the adjournment. In general, the following matters are not, of themselves, sufficient reasons for an adjournment to be granted:
- (a) the unavailability of counsel or representation; and
  - (b) the consent of any other participating party.
- 5.13 An application for an adjournment should be made in writing to the Tribunal at the earliest opportunity and set out the reasons for seeking an adjournment, the period sought, and be accompanied by any documents that support the application. An application for an adjournment on the basis that the parties are close to settling the proceeding should specify a date by which they expect to formally resolve the proceeding.
- 5.14 An application for an adjournment made within 10 days of a hearing is unlikely to be granted unless there are good reasons for doing so.
- 5.15 If the Tribunal grants an adjournment, the Tribunal will seek to re-list the matter for hearing as soon as practicable afterwards.
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***Prohibition on cameras and recording devices during Tribunal case events***

- 5.16 The use of cameras and audio or video recording or transmission devices in Tribunal case events is strictly prohibited without the express permission of the presiding member or Registrar.
- 5.17 Mobile phones are not to be used in Tribunal hearing rooms for the purpose of communicating with any person. They must be switched off or switched to silent mode before entering a hearing room where a matter is to be, or is being, heard. This includes hearings where parties are appearing remotely.
- 5.18 The use of transcription software is not to be used during a Tribunal case event without the express permission of the Presiding Member or Registrar.

***Addressing Tribunal members during a hearing***

- 5.19 In general, parties should address a Tribunal member by:
- (a) their title (e.g. Deputy President, Senior Member or Member);
  - (b) their name (e.g. Ms Smith); or
  - (c) a combination of both (e.g. Senior Member Smith).
- 5.20 Where a member of the Tribunal is a judge, they should be addressed as ‘Your Honour’.

***Referral of matters to the Guidance and Appeals Panel***

- 5.21 The practices and procedures applicable to the referral to, and conduct of, matters before the Guidance and Appeals Panel are set out in the *Administrative Review Tribunal (Guidance and Appeals Panel) Practice Direction 2024*.

**Part 6. Evidence**

- 6.1 Part 6 of this Practice Direction applies to applications for review in all jurisdictional areas, subject to the modifications and limitations contained in this Part and/or other practice directions (see [1.10] and [1.11] above).
- 6.2 In general, all evidence relevant to a matter before the Tribunal must be:
- (a) identified as early as possible in the review process;

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- (b) lodged with the Tribunal in accordance with any directions made by the Tribunal in respect of each case; and
  - (c) in English, or accompanied by a NAATI certified translation into English. The Tribunal may not accept any evidence that is not in English without a certified translation.
- 6.3 The Tribunal may require the author of any documents submitted as evidence to give oral evidence if the Tribunal is unable to accept the document without hearing from them.
- 6.4 Where there is more than one participating party to the review:
- (a) The Tribunal will not normally permit the tender of any evidence (with the exception of summonsed material) which an opposing party has not been given notice of prior to the hearing. If, after the giving of evidence is completed, either party identifies a need to rely upon additional evidence, the Tribunal's permission should be sought at the earliest possible opportunity.
  - (b) If a party has submitted a witness statement or a report from a witness, and the other party or the Tribunal has indicated that it wishes to cross-examine that witness, the party who has submitted the witness statement or report is responsible (administratively and financially) for making the witness available at the hearing. If the party does not make the witness available, this may lead to the statement or report:
    - (i) being excluded entirely;
    - (ii) being admitted but given less weight than the evidence of other witnesses who were made available for cross-examination; or
    - (iii) being admitted but given no weight at all.
- 6.5 Unless the Tribunal has given permission to give written submissions or other documents after a hearing has concluded, or the documents are required or permitted by law, such documents will not usually be taken into account.

***When publication or disclosure of information is prohibited or restricted***

- 6.6 A party may apply in writing to the Tribunal for a direction by order prohibiting or restricting the disclosure or publication of information:

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- (a) tending to reveal the identity of or otherwise concerning:
    - (i) a party to or witness in a proceeding in the Tribunal; or
    - (ii) any person related to or otherwise associated with any party to or witness in a proceeding in the Tribunal;
  - (b) concerning a party, witness or other person; or
  - (c) relating to a proceeding in the Tribunal that is either:
    - (i) information that comprises evidence or information about evidence; or
    - (ii) information given to the Tribunal.
- 6.7 The Tribunal may also make a non-disclosure or prohibition order on its own initiative.
- 6.8 Any protection decision, character decision or bridging visa decision relating to a protection visa, or any social security decision that is published will be given a pseudonym, and relevant identifying information omitted.

- Note 1:** The *Migration Act 1958* does not permit the Tribunal to publish any information of a person, or a relative or other dependent of a person, who:
- (a) has applied for a protection visa (including a protection-related bridging visa); or
  - (b) is seeking review of the cancellation of a protection visa (including a protection-related bridging visa).

**Note 2:** The Tribunal may publish reasons for decision on review of a social security decision that does not include information that may identify a party to a review, or a person related or associated with a party, or a witness in the review. This does not apply to the Secretary of the Department of Social Services or the Child Support Registrar.

**Note 3:** Section 14ZZJ of the *Taxation Administration Act 1953* provides that in taxation decision proceedings, if the hearing is not conducted in public, the Tribunal must ensure as far as practicable that its reasons are framed so as not to be likely to enable the identification of the applicant.

### ***Expert evidence***

- 6.9 Parties who wish to rely upon expert medical or other expert evidence must have regard to the *Tribunal's Guideline on Persons Giving Expert and Opinion*
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*Evidence.* Compliance with the Guideline may be relevant to determining the weight which may be given to the evidence.

- 6.10 A party who asks an expert to prepare a report or give evidence at the Tribunal must ensure that the expert:
- (a) is given a copy of the Guideline; or
  - (b) confirms that they already have a copy of the Guideline.
- 6.11 Paragraphs [6.9] and [6.10] above do not apply to reviews of eligible social services decisions and Second reviews.

***Parties may request the Tribunal to issue a summons***

- 6.12 The Tribunal may, either by application from a party or on its own initiative, summon a person to:
- (a) appear before the Tribunal to give evidence; or
  - (b) produce any document or thing specified in the summons.
- 6.13 The Tribunal may refuse a request to issue a summons.
- 6.14 A person who is issued with a summons by the Tribunal must comply with that summons within the period specified in the summons. The period specified must be at least 14 days after the date of the summons, unless a shorter period is agreed to by the person who is being summoned.
- 6.15 Unless the summons specifies otherwise, a person will comply with [6.12(b)] above by producing the document or thing electronically.
- 6.16 Where documents are produced electronically, the Tribunal will facilitate inspection by providing participating parties to the proceeding with copies of those documents by email. Where inspection cannot be facilitated by email, the Tribunal will specify in writing how inspection may take place.
- 6.17 Inspection will not be permitted where:
- (a) the Attorney-General certifies under section 91 of the Act that disclosure would be contrary to the public interest;

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- (b) inspection would otherwise result in a disclosure of information which is prohibited or restricted by the Act, another Act or an instrument made under an Act; or
  - (c) the Tribunal upholds a notice of objection from the person required to produce the document or thing or any party to the proceeding.
- 6.18 An objection for the purposes of [6.17(c)] above must state the reasons for the objection and must be made by completing and submitting the *Notice of Objection* form accessible from the Tribunal website at [www.art.gov.au](http://www.art.gov.au).

### ***Implied undertaking***

- 6.19 If a party has obtained a document provided under compulsion in an application before the Tribunal, the law implies that the parties who have received that document have given an undertaking that the document will not be used for any purpose other than the purpose for which it was given to the Tribunal unless:
- (a) the document was received in evidence by the Tribunal in a public hearing of the application for review and there is no restriction on the publication or disclosure of the document by an order of the Tribunal or by another statutory provision; or
  - (b) the Tribunal gives a party or parties permission to use the document for another purpose.
- 6.20 The implied undertaking applies to:
- (a) documents produced under sections 23 and 25 of the Act;
  - (b) documents lodged pursuant to a direction given by the Tribunal (including expert reports or witness statements); and
  - (c) documents produced in response to a summons issued by the Tribunal.
- 6.21 The implied undertaking continues even after an application for review has been finalised. A breach of the implied undertaking by using the document or documents for another purpose may have serious legal consequences.
- 6.22 Documents which are provided to the Tribunal in one application for review may be used in another application for review if:
- (a) the applications have been lodged by the same applicant and are currently before the Tribunal; and

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- (b) the Tribunal has determined that these applications should be dealt with together.

6.23 If a party wishes to use a document subject to the implied undertaking for another purpose, including a document that was given to the Tribunal in an application for review that has been finalised, they must make a request to the Tribunal for permission to be released from the implied undertaking. The request must:

- (a) be in writing;
- (b) specify with particularity the documents in relation to which release is sought;
- (c) explain clearly:
  - (i) the reasons for release from the implied undertaking;
  - (ii) who will use the documents; and
  - (iii) the purpose for which the document will be used; and
- (d) if possible, specify whether the person to whom the documents relate consents to the release from the implied undertaking.

6.24 Unless there is a good reason not to do so, a copy of the request must be sent to any other party or parties to the application in which the documents were originally provided. The Tribunal may direct that a copy of the request be sent to the other party or parties to the application for review in which the documents were originally provided before making a decision on the request.

6.25 A request to be released from the implied undertaking may be determined with or without a Tribunal case event.

## **Part 7. Statements of Facts, Issues and Contentions**

7.1 The Tribunal may order parties to lodge a Statement of Facts, Issues and Contentions. Any Statement of Facts, Issues and Contentions filed by a party must be divided into three parts, entitled, 'Facts', 'Issues' and 'Contentions'.

7.2 The part entitled 'Facts' should:

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- (a) set out the relevant facts which the party contends are necessary to determine the application for review, in chronological order; and
  - (b) refer to other material before the Tribunal which, the party states, supports the relevant facts.

7.3 The part entitled ‘Facts’ should not contain opinions.

7.4 The part entitled ‘Issues’ should:

- (a) refer to the issues which, in that party’s opinion, are necessary for the Tribunal to determine; and
- (b) use neutral language.

**Note:** In reviews of taxation decisions, the respondent should state with precision the extent, if any, to which the respondent agrees to confine the issues in dispute.

7.5 The part entitled ‘Contentions’:

- (a) should explain the conclusions that the party argues the Tribunal should make, and why those conclusions should be made;
- (b) may refer to facts which are disputed and explain why one version of events should be accepted and not another;
- (c) should refer to cases and legislation when appropriate; and
- (d) should set out the type of decision under section 105 of the Act that the party argues the Tribunal should make.

## **Part 8. Ending a proceeding**

8.1 Once the Tribunal has made a decision which finally determines all outstanding issues in a matter, the Tribunal no longer has the power to make any further orders. However, if a party becomes aware of any obvious error in the text of a decision or statement of reasons, the party should bring that error to the attention of the Tribunal.

8.2 Where the Tribunal has given reasons for its decision in accordance with the Act, the Tribunal will not provide any further explanation of the decision.