



Administrative Review Tribunal (Migration, Protection and Character) Practice Direction 2024

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 5 Parts:
 - (a) Part 1 – Preliminary;
 - (b) Part 2 – Applying for review of a migration or protection decision;
 - (c) Part 3 – General conduct and procedure of migration and protection reviews;
 - (d) Part 4 – Minister’s obligations in proceedings;
 - (e) Part 5 – Specific arrangements for reviews of expedited character decisions.
- 1.3 This Practice Direction commences on [DATE] and has effect from that date. This Practice Direction applies to all applications for review of migration, protection and character decisions set out at [1.11] below, whether lodged before, on or after this date, and remains in effect until it is superseded or revoked.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 the review of migration, protection and character decisions.
- 1.5 This Practice Direction should be read together with the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024*.
- 1.6 To the extent that this Practice Direction is inconsistent with the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024* in relation to applications for review of migration, protection and character decisions, the provisions of this Practice Direction prevail. However, where this Practice Direction is silent in respect of any matter, the provisions of the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024* shall apply.
- 1.7 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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- 1.8 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.
- 1.9 A failure by the Tribunal to comply with this Practice Direction does not affect the validity of anything done by the Tribunal.
- 1.10 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, in accordance with the provisions of the Act or any other applicable statutory instrument.

Definitions

- 1.11 In this Practice Direction:

Act means the *Administrative Review Tribunal Act 2024*.

business skills visa decision means a decision reviewable in the Tribunal pursuant to section 136 of the *Migration Act 1958*.

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

character review means a review of a character decision.

Department means the Department of Home Affairs or any subsequently named Department responsible for the administration of the *Migration Act*.

deportation decision means a decision reviewable in the Tribunal pursuant to section 200 of the *Migration Act*.

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

G Documents means the documents required to be provided to an applicant under section 501G of the *Migration Act*.

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

legal practitioner means a person who is a restricted legal practitioner or an unrestricted legal practitioner within the meaning of section 275 of the *Migration Act*.

Member means a member of the Tribunal.

migration agent means an individual registered as a migration agent under Division 3 of Part 3 the *Migration Act*.

migration decision has the same meaning as a **reviewable migration decision** at section 338 the *Migration Act* but does not include business skills visa decisions, character decisions or deportation decisions.

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

protection decision means a **reviewable protection decision** under section 338A of the *Migration Act* but does not include a character decision relating to a protection visa.

registry means any registry office of the Tribunal.

Rules means the Rules made under the Act.

Secretary means the Secretary of the Department of Home Affairs or any subsequently named Department responsible for the administration of the *Migration Act*.

Tribunal means Administrative Review Tribunal.

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

Decisions covered by this Practice Direction

1.12 This Practice Direction applies to:

- (a) migration decisions;
- (b) protection decisions; and
- (c) expedited character decisions.

1.13 This Practice Direction does not apply to the following decisions in the *Migration Act*:

- (a) character decisions made under section 501 of the *Migration Act* where the applicant is not in the migration zone at the time of application;
- (b) decisions to refuse a protection visa on the basis of sections 5H(2), 36(1C) or 36(2C) of the *Migration Act*;
- (c) business skills visa decisions made under section 136 of the *Migration Act*;
- (d) deportation decisions made under section 200 of the *Migration Act*; and
- (e) decisions relating to migration agents under Part 3 of the *Migration Act*.

1.14 The *Administrative Review Tribunal (Common Procedures) Practice Direction 2024* applies to the review of decisions set out at [1.12] above.

Part 2. Applying for review of a migration or protection decision

How to apply for a review

- 2.1 A person making an application for review of a migration decision or a protection decision should follow the requirements contained in this Practice Direction. The *Migration Act* and the *Migration Regulations 1994* contain strict requirements which, if not followed, can result in the invalidity of applications.
- 2.2 An application for review of a migration decision or protection decision must:
- (a) include the prescribed information (if any);
 - (b) be accompanied by the prescribed documents (if any); and
 - (c) be accompanied by the prescribed fee (if any).
- 2.3 The application for review of a decision set out at [1.12] above may be made by:
- (a) completing and submitting the electronic application form accessible from the Tribunal website at: www.art.gov.au;
 - (b) downloading and completing the paper form accessible from the Tribunal website at: www.art.gov.au and:
 - (i) posting or otherwise delivering it to a registry of the Tribunal specified on the Tribunal website at www.art.gov.au; or
 - (ii) emailing it to [email address]; or
 - (c) a letter that includes the requirements specified at [2.2] above which is:
 - (i) posted or otherwise delivered to a registry of the Tribunal specified on the Tribunal website at www.art.gov.au; or
 - (ii) emailed to [email address].
- 2.4 If the Tribunal considers that an application does not meet the requirements for making a valid application, the Tribunal may invite the person making the application to make submissions as to why the application is valid. The Tribunal will assess the validity of the application on the papers and notify the person who made the application in writing of the outcome.

Application fees

- 2.5 An applicant seeking review of a migration decision may be eligible for a fee reduction. Applicants applying through the online application form may apply for a fee reduction using the *Request for Fee Reduction* form. The form for fee reduction is also available on the Tribunal website at: www.art.gov.au.

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- 2.6 If an applicant is seeking a fee reduction, at least 50 percent of the prescribed fee and the request for reduction of the fee must be received prior to the expiry of the period for making the application set out in at [2.11] below.
- 2.7 The Tribunal cannot review an application for review if the application is not properly made, including in relation to any payable fees prescribed by the *Migration Regulations 1994*.

Applications involving family members

- 2.8 Within 14 days after lodging an application for review of a migration or protection decision, the applicant must:
- (a) inform the Tribunal if one or more of the applicant's family members has a separate current application for review before the Tribunal in relation to the same type of visa refusal decision; and
 - (b) if the applicant wants to have these applications heard together—inform the Tribunal in writing that they and their family member(s) consent to this.
- Note:** Before the Tribunal orders that applications by family members be heard together, it will require written consent from each family member or their authorised representative.
- 2.9 The applicant must inform the Tribunal in writing as soon as possible if:
- (a) a person is included in an application for review with one or more of their family members; and
 - (b) that person no longer wants to be included in that application and wants their application for review to be treated separately.
- 2.10 The applicant should also inform the Tribunal in writing as soon as possible if, after making their application:
- (a) a child of the applicant is born, and whether the applicant is seeking to have that child included in the application;
 - (b) the applicant's spousal relationship ends; or
 - (c) a family member of the applicant who is associated or joined to the applicant's application is deceased.
 - (d) where the applicant is a company—it enters administration, is placed in liquidation or ceases trading.

Time for making an application for a review of migration and protection decisions

- 2.11 An application for review of a migration decision or a protection decision must be made:
- (a) if the person is in immigration detention—within 7 days after the date on which the person was notified of the reviewable decision;
 - (a) otherwise—within 28 days after the date on which the person was notified of the reviewable decision.
- Note:** Notified for the purposes of [2.11] means taken to be notified in accordance with section 379C of the *Migration Act*.
- 2.12 The Tribunal cannot extend the time for filing an application seeking review of the decisions referred to at [2.11] above.
- 2.13 The time for making an application for review of an expedited character decision is set out in Part 5 of this Practice Direction.

Part 3. General conduct and procedure of migration and protection reviews

Certain provisions of the Act do not apply

- 3.1 There are a number of important ways in which the procedures in relation to most applications for review by the Tribunal do not apply to the review of migration and protection decisions. For these reviews:
- (a) a person who believes that the person’s interests may be affected by the application cannot apply to be a party to the application and the Tribunal is not required to give, or require an applicant to give, notice of the application to such a person;
 - (b) the Tribunal cannot extend the time for making an application for review;
 - (c) the Tribunal cannot stay the operation of the reviewable decision;
 - (d) the Tribunal may not make a decision agreed by the parties;
 - (e) legal or financial assistance under section 294 of the Act cannot be provided except where the President refers a matter to the Guidance and Appeals Panel;
 - (f) no application can be made by an applicant to the President for referral to the Guidance and Appeals Panel following the making of the Tribunal’s decision.

3.2 The *Migration Act* also contains other procedures that are different to other applications for review by the Tribunal including (but not limited to) provisions in relation to:

- (a) who can apply for review: see section 347A of the *Migration Act*;
- (b) information that may be the reason, or a part of the reason, for affirming the decision under review: see section 359A of the *Migration Act*; and
- (c) restrictions on the disclosure of certain information: see sections 375 to 378 of the *Migration Act*.

Appointing a representative and/or an authorised recipient

3.3 With limited exceptions, a person who is not a registered migration agent or an Australian legal practitioner is prohibited by section 280 of the *Migration Act* from providing immigration assistance.

3.4 It is the responsibility of the applicant and the applicant's representative to ensure the Tribunal is notified of who is representing the applicant at all times.

3.5 If a representative lodges an application for review on behalf of an applicant, the representative must give the Tribunal separate contact details for the applicant as well as contact details for the representative.

3.6 A person who commences representing an applicant after an application for review has been lodged must:

- (a) notify the Tribunal in writing as soon as possible; and
- (b) complete and lodge the *Appointment of Representative / Appointment of Authorised Recipient* form available at www.art.gov.au.

3.7 If a representative ceases representing an applicant, the representative must notify the Tribunal in writing as soon as possible of the following:

- (a) the date the cessation took effect; and
- (b) the last known contact details of the applicant.

3.8 The Tribunal can order that a person can no longer be represented by the person's representative in certain circumstances: see section 66(3) of the Act and paragraphs 2.21 to 2.23 of the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024*.

3.9 Where an ***authorised recipient*** has been appointed under sections 379G or 441G of the *Migration Act*, the Tribunal will send all documents, including notices of Tribunal case events, to this authorised recipient instead of the applicant.

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- 3.10 If an applicant wishes to withdraw authorisation for a person to act as the applicant's representative or as the applicant's authorised recipient, the applicant must complete and lodge the *Change of Contact Details* form available at www.art.gov.au.
- 3.11 Only the applicant can withdraw the authority of the authorised recipient to receive documents in connection with the review. If an authorised recipient seeks to withdraw, this must be accompanied by a *Change of Contact Details* form completed by the applicant.

Expedited decision requests

- 3.12 An applicant may request that the Tribunal expedite its review process in accordance with paragraphs 4.9 to 4.14 of the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024*.
- 3.13 An applicant may make a request for expedited review by the Tribunal of a migration or protection decision if all of the following requirements are met:
- (a) the applicant has applied for a review of a migration or a protection decision to refuse to grant a visa;
 - (b) the visa was refused on the basis that the applicant did not meet one or more criteria; and
 - (c) the applicant can provide documentary evidence that objectively demonstrates the criterion or criteria are now met.
- 3.14 An expedited decision request made in accordance with [3.13] above must:
- (a) be lodged using the online form: *Request for expedited decision*;
 - (b) be accompanied by the evidence that demonstrates the applicant now meets the relevant criterion or criteria; and
 - (c) include a written submission that explains how the evidence satisfies the relevant criterion or criteria and how the Tribunal can decide the review in the applicant's favour on the basis of the material before it without conducting a hearing.

Access to information given to the Tribunal by the Department

- 3.15 Under section 362A of the *Migration Act* an applicant is entitled to request that the Department provide access to any written material, or a copy of any written material, given or produced to the Tribunal by the Department for the purpose of the review.

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- 3.16 An applicant should make this request as soon as practicable after commencing an application for review. The Tribunal will not consider a late request for the written material, or the absence of a response by the Department to such a request, to be adequate reasons, on their own, for adjournment of a hearing.

Part 4. Minister's obligations in proceedings

- 4.1 The Minister is the decision-maker in reviews of migration decisions and protection decisions. The Minister has obligations under the *Migration Act* to, among other things, give to the Tribunal documents that are relevant to the review of the decision.

When the Minister does not participate in the proceeding

- 4.2 The Minister is taken to be a non-participating party to the review of a migration or protection decision (except in relation to a Guidance and Appeals Panel proceeding) and, unless ordered to do so by the President or a Deputy President of the Tribunal, will not appear before the Tribunal, give written submissions or otherwise participate in the proceeding.
- 4.3 When the Minister is a non-participating party, the Minister has an obligation, when required to do something by the Tribunal or by the Act, to use their best endeavours to assist the Tribunal to make the correct or preferable decision in relation to the proceeding and achieve the objective in section 9 of the Act.
- 4.4 If the Minister does not comply with the obligation under paragraph 4.2 of the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024*, the Tribunal will consider exercising its power under section 63(2) of the Act to require the Minister to attend a directions hearing to discuss the Minister's non-compliance with their obligation to assist the Tribunal.

Note: An order under section 63(2) of the Act may only be made by the President or a Deputy President.

When the Minister participates in the proceeding

- 4.5 The Minister is a participating party to the review of character decisions and Guidance and Appeals Panel proceedings in relation to migration and protection decisions.

Part 5. Specific arrangements for reviews of expedited character decisions

- 5.1 There are specific arrangements relating to character reviews for persons who are in the migration zone at the time the reviewable decision was made. Applicants

should read and follow these arrangements as there are strict timeframes which must be observed.

- 5.2 The specific arrangements in this Part do not apply to the review of:
- (a) a character decision made under section 501 to cancel or refuse to grant a visa of a person who is outside of the migration zone at the time of the decision;
 - (b) a decision to refuse a protection visa relying on sections 36(1C) or 36(2C) of the *Migration Act*; and
 - (c) a decision of the Tribunal in relation to a character review that has been remitted to the Tribunal from the Federal Court of Australia.
- 5.3 The procedures set out in the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024* will apply to the review of those matters set out at [5.2] above.

Strict time limits apply

- 5.4 The *Migration Act* contains very strict time limits in respect of an application for review of an expedited character review. They are:
- (a) an application must be made within 9 days after the receipt of a decision to cancel, refuse or not revoke the cancellation of a visa. This time cannot be extended by the Tribunal;
 - (b) the Tribunal cannot have regard to any document not provided to the Minister at least 2 business days prior to the hearing of the application and cannot have regard to any oral evidence on a matter unless it is set out in a written statement and provided to the representative of the Minister 2 business days prior to the hearing of the matter; and
- Note:** The two business days prior to the hearing are exclusive of the day of the hearing. For example, if a hearing commences on a Friday, the two prior business days period ends on the Tuesday.
- (c) the Tribunal must make a decision on the application within 84 days of the date on which the applicant was notified of the reviewable decision otherwise the Tribunal will be deemed to have affirmed the decision.

Determining whether an expedited character review can be heard

- 5.5 If the Tribunal considers that an application for review has been filed outside of the period specified at [5.4] above, it will seek submissions on the issue, either in writing or at a Tribunal case event to determine whether it can hear the application. The Minister must provide evidence which establishes the date on which the applicant was notified of the decision and whether the applicant was

properly notified in accordance with the requirements of section 501G of the *Migration Act*. The Minister is expected to be represented at any case event the Tribunal convenes for this purpose.

- 5.6 If the Tribunal finds, or the Minister accepts prior to the Tribunal making a decision, that the applicant was not properly notified, the Minister's representative must:
- (a) advise the Tribunal of the re-notification on the same day the re-notification occurs; and
 - (b) provide a copy of the re-notification and all accompanying documents to the Tribunal.
- 5.7 If an applicant has been re-notified in accordance with [5.6] above, the relevant time limits identified at [5.4] above will commence from the date of the re-notification.
- 5.8 If an applicant is re-notified in accordance with [5.6] above, the applicant must file a new application if the applicant wishes that decision to be reviewed.

General conduct of reviews of expedited character decisions

- 5.9 The expedited nature of a character review means that the Tribunal and parties will need to take steps to progress the hearing very quickly. To facilitate this:
- (a) The Tribunal will convene a directions hearing no later than 2 weeks following the receipt of an application, at which time directions for the filing of relevant documents will be made. At this directions hearing, parties will be expected to advise the Tribunal:
 - (i) the anticipated length of the hearing and the likely number of witnesses who will be called;
 - (ii) whether any expert evidence is likely to be filed; and
 - (iii) whether any request for a summons will be made.
 - (b) The Minister must file and serve in hard copy the G Documents in the form as set out in paragraph 4.2 of the *Administrative Review Tribunals (Common Procedures) Practice Direction 2024*. The Minister must also file an electronic copy of the G Documents in the same prescribed form no later than 1 week after the date of a directions hearing. This should contain the signed acknowledgement of receipt of the Notice of Cancellation.
 - (c) Where an applicant is unrepresented, the Minister must file the Minister's evidence and statement of facts, issues and contentions first.

Where an applicant is represented, the applicant must file the applicant's evidence and statement of facts, issues and contentions first.

- (d) Parties will not be required to file hearing certificates unless specifically directed to do so by the Tribunal.

Note: Part 7 of the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024* contains requirements relating to statements of facts, issues and contentions.

- 5.10 Parties should not assume that any extension of time for compliance with an order or direction will be granted by the Tribunal, even if consented to by the other party.

Delivery of the Tribunal's reasons in reviews of expedited character decisions

- 5.11 The Tribunal must deliver written reasons for its decision in an expedited character review.
- 5.12 It may not always be possible for the Tribunal to deliver written reasons for a decision within the statutory time limits for making a decision in an expedited character review. In these circumstances, the Tribunal may deliver its decision in writing and give its written reasons for its decision within a reasonable time after delivery of its decision.
- 5.13 Where the Tribunal delivers its reasons for its decision orally in an expedited character review, it must provide its written reasons for that decision within 14 days after the day on which the Tribunal's decision was made (pursuant to section 111(3) of the Act).