



COVID-19 Special Measures Practice Direction – Migration and Refugee Division

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

1. About this Direction

Application

- 1.1 This Direction applies to the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT) during the COVID-19 pandemic.
- 1.2 The purpose of this Direction is to modify the operations and procedures of the AAT, where appropriate and necessary, to enable us to continue to review decisions during the pandemic. In implementing these changes:
 - (a) the health and wellbeing of members, staff, applicants, representatives and other persons involved in AAT processes is our priority; and
 - (b) we are mindful that the pandemic may affect the capacity of the AAT and other persons to take steps to progress applications.
- 1.3 This Direction has effect from 29 April 2020. It applies to all applications, whether lodged before or after this date, and remains in effect until it is superseded or revoked.
- 1.4 Other directions under section 18B of the AAT Act continue to apply to applications to which this Direction applies, including:
 - (a) the [General Practice Direction](#); and
 - (b) the [Migration and Refugee Matters Practice Direction](#); and
 - (c) the [Conducting Migration and Refugee Reviews President's Direction](#); and
 - (d) the [Prioritising Cases in the Migration and Refugee Division Practice Direction](#).

However, where the terms of this Direction are inconsistent with the terms of another direction on the same matter, the terms of this Direction apply.

- 1.5 The AAT may alter the procedures set out in this Direction to suit individual applications, including if an applicant is self-represented and experiences difficulty interacting with the AAT electronically for any reason.

Interpretation

1.6 In this Direction:

constitute means to give a written direction in relation to the member who is, or the members who are, to constitute the Tribunal to conduct the review;

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

Registry means any registry office of the AAT;

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

you refers to an applicant and any representative of the applicant.

2. Our requirements and expectations

2.1 You must comply with the directions set out in this Direction unless we notify you that we have altered the procedure.

2.2 We expect you to use your best endeavours to assist the AAT to fulfil our objective in section 2A of the AAT Act.

Note: The AAT must pursue the objective of providing a mechanism of review that is fair, just economical, informal, quick and is proportionate to the importance and complexity of the matter.

2.3 Representatives play an important role in assisting the AAT, including by:

- (a) lodging all documentary evidence on which an applicant seeks to rely and any written submissions in accordance with these directions; and
- (b) preparing clear and concise written submissions that address the matters the Tribunal must determine.

In deciding whether to allow a representative to present arguments at a hearing, the Tribunal will generally consider the extent to which the representative is likely to assist the Tribunal by doing so.

3. Registry operations, lodging documents and signatures

Registries

3.1 The AAT's Registries are closed to visitors, except in exceptional circumstances. We will provide registry services by telephone and electronically, including:

- (a) through our [online services](http://www.aat.gov.au) accessible via the AAT website (<http://www.aat.gov.au>); and
- (b) by [email](mailto:mrdivision@aat.gov.au) to mrdivision@aat.gov.au.

Note: Guidelines you should follow when sending an email to the AAT can be found on the AAT website.

Lodging and giving documents or other things

- 3.2 To the extent possible:
- (a) an application for a review of a decision must be lodged with the AAT using the online application system for the Migration and Refugee Division accessible via the AAT website at <http://aat.gov.au/apply-online>; and
 - (b) if an application has already been lodged, a document must be lodged with, or given to, us:
 - (i) if you lodged your application as a registered user of the online application system for the Migration and Refugee Division – using that system; or
 - (ii) in any other case – using our online document submission system accessible via the AAT website at <https://online.aat.gov.au/docsubmit>.
- 3.3 If you or another person cannot send us a document using our online services, including an application in the approved form, the document may be:
- (a) emailed to the AAT at mrdivision@aat.gov.au with the AAT case number included in the email subject line; or
 - (b) if it cannot be emailed – faxed to the AAT.
- 3.4 To minimise the need for handling hard copy documents or other things, a document, CD, USB or other thing must only be sent to the AAT by post if the information cannot be sent electronically.
- 3.5 If a document or thing can only be lodged by delivering it to a Registry, you must telephone us to discuss how it can be lodged.
- 3.6 Anyone who experiences difficulty lodging documents electronically should telephone us for assistance.

Signatures

- 3.7 If you or another person does not have access to technology to scan a document that requires a signature, including by taking a photograph of it, the document may be signed electronically instead of physically signing the document. This may be done by the person:
- (a) applying a digital signature; or
 - (b) typing their name in the appropriate place in the document.

4. Priorities for processing cases

4.1 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;
- (c) cases where we determine there are compelling reasons for prioritising the case and, if a hearing is required, the Tribunal determines that it can be conducted by telephone and/or video;

Note: See the Prioritising Cases in the Migration and Refugee Division President's Direction for more information about what constitutes compelling reasons.

- (d) visa cancellation cases where, if a hearing is required, the Tribunal determines that it can be conducted by telephone and/or video:
- (e) cases that can be decided without inviting the applicant to appear before the Tribunal at a hearing, including where:
 - (i) the Tribunal considers that it should decide the review in the applicant's favour on the basis of the material before it;
 - (ii) the applicant consents to the Tribunal deciding the review without the applicant appearing before it; or
 - (iii) the applicant was invited to give information or to comment on or respond to information under section 359, 359A, 424 or 424A of the *Migration Act 1958* (Migration Act) and did not give the information, the comments or the response before the time for giving them had passed.

4.2 Priority for all other cases will be determined by the Division Head of the Migration and Refugee Division.

5. Pre-hearing processes

Prior to constitution

5.1 The AAT will conduct triaging processes to identify:

- (a) cases that may be able to proceed without the need to invite the applicant to appear before the Tribunal at a hearing;
- (b) cases that may be suitable to proceed to a hearing by telephone and/or video.

5.2 The AAT may:

- (a) invite you to give us information, including under section 359 or 424 of the Migration Act; or
- (b) hold a case conference or directions hearing by telephone, or otherwise contact you to discuss how a case or set of cases may progress.

5.3 To inform our triaging processes, you can at any time:

- (a) make an expedited decision request in accordance with paragraph 5.5; or
- (b) notify us that you consent to the Tribunal determining the review without appearing before it in accordance with paragraph 5.7.

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

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Expedited decision request

5.4 You can make an expedited decision request if all of the following requirements are met:

- (a) you have applied for review of a decision to refuse to grant a visa; and
- (b) the visa was refused on the basis that you did not meet one or more criteria that do not involve any element requiring subjective assessment; and
- (c) you can give us documentary evidence that demonstrates the criterion or criteria are now met.

Examples:

1. You *can* make an expedited decision request if your visa application was refused because you did not provide evidence that you meet the English language requirements and you now have this evidence.
2. You *cannot* make an expedited decision request if you are applying for review of a decision about nomination or sponsorship of an activity, occupation, position or person.
3. You *cannot* make an expedited decision request if the criterion requires any subjective assessment such as whether you are in a genuine relationship for a partner visa or you are a genuine temporary entrant for a student visa.

5.5 An expedited decision request must:

- (a) be made in writing and clearly identify that it is such a request;
- (b) be accompanied by the evidence that demonstrates you meet 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 your favour on the basis of the material before it without conducting a hearing.

Consent to the Tribunal deciding the review without a hearing

5.6 You can consent to the Tribunal deciding the review without you appearing before it at a hearing. You should consider doing this if the sole purpose of your application is to ask the Tribunal to refer your matter to the Minister for intervention under section 351 or 417 of the Migration Act.

Note: If the Tribunal cannot decide the review in your favour on the material before it, the Tribunal is generally required to invite you to appear at a hearing to give evidence and present arguments relating to the issues arising in relation to the decision under review. If you consent to the Tribunal deciding the review without you appearing before it, you will no longer be entitled to give evidence and present arguments at a hearing. The Tribunal will decide whether the decision under review should be affirmed, varied, set aside or remitted for reconsideration in accordance with the Tribunal's directions or recommendations based on the material before it.

5.7 If you want to consent to the Tribunal deciding your review without you appearing before it at a hearing, you:

- (a) must notify us in writing; and
- (b) should notify us as soon as possible.

After constitution

- 5.8 After your case is constituted, the Tribunal will determine how your case should progress, including:
- (a) whether to invite you to give, comment on or respond to information under section 359, 359A, 424 or 424A of the Migration Act;
 - (b) whether it can proceed to make a decision in your case without inviting you to appear before it at a hearing;
 - (c) whether to list your case for a hearing by telephone and/or video or adjourn the review until a hearing can be conducted with you in person.
- 5.9 In determining whether and how a hearing should be conducted, relevant considerations may include, but are not limited to:
- (a) 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;
 - (b) the number, nature and availability of any witnesses;
 - (c) the nature and volume of the documentary evidence; and
 - (d) the capacity of an applicant or representative to participate in a hearing by telephone and/or video.
- 5.10 Where the Tribunal is required to invite an applicant to a hearing, the Tribunal will list a hearing by telephone and/or video to the extent possible.
- 5.11 In some cases, the Tribunal may hold a directions hearing by telephone to discuss with you how a case may progress.

Requests for an extension of time to give, comment on or respond to information

- 5.12 If you have been invited to give, comment on or respond to information under section 359, 359A, 424 or 424A of the Migration Act and you are unable to do so within the period specified on the invitation for COVID-19 or other reasons, you must make any request for an extension of time before that period expires. The request must:
- (a) be in writing;
 - (b) specify how much additional time you want; and
 - (c) explain why you need additional time.

The Tribunal will consider your request and we will notify you about how your case will proceed.

Note: If you fail to give, comment on or respond to information within a specified period, you will no longer be entitled to appear before the Tribunal at a hearing and the Tribunal may make a decision without taking any further action to obtain the information.

Requirements relating to specific caseloads

Nomination and sponsorship cases

- 5.13 If you are an employer who has applied for review of a decision about the nomination or sponsorship of an activity, occupation, position or person and:
- (a) your business has ceased operating and is unlikely to re-open as a result of the COVID-19 pandemic; or
 - (b) you no longer want to proceed with your application;
- you should notify us of this in writing as soon as possible.
- 5.14 If you have already given, commented on or responded to information or appeared before the Tribunal at a hearing and your circumstances have materially changed, you should notify us in writing of your changed circumstances as soon as possible.

Partner visa cases

- 5.15 If you have applied for review of a decision to refuse to grant a partner visa, you should consider carefully the nature and volume of evidence you lodge with the AAT about your circumstances.

Example:

1. You may want to lodge a sample of certain types of evidence about your relationship such as joint financial documents, letters or photographs.
- 5.16 If you decide to lodge a sample of supporting material, you must:
- (a) notify us in writing that you have additional evidence that you can lodge; and
 - (b) include a brief description of the nature of the additional evidence.

Protection visa cases

- 5.17 If you have applied for review of a decision about a protection visa and you want the Tribunal to have regard to particular information about the situation in the country of origin relevant to the application (**country information**), you must:
- (a) lodge a copy of that country information with the AAT;
 - (b) explain in your written submissions or otherwise which parts of the information you rely on and why it is relevant to your review.

Note: You should not simply give the AAT a list of documents or a list of links to publicly available country information.

Student visa cases

- 5.18 If you have applied for a review of a decision to refuse to grant a student visa, you must lodge with the AAT prior to the hearing:
- (a) evidence of enrolment in an approved course; or
 - (b) if you have been unable to enrol in an approved course, a statement setting out a detailed explanation of your attempts to obtain enrolment.

6. Hearings

- 6.1 The AAT will not hold any hearing in person, except in exceptional circumstances. Hearings will be conducted:
- (a) by telephone;
 - (b) by video; or
 - (c) by a combination of telephone and video.
- 6.2 The AAT will arrange for any applicant in immigration detention to participate by video to the extent possible. Any interpreter we arrange will generally participate by telephone.

Preparing for the hearing

Responding to the hearing invitation

- 6.3 After we send you an invitation to a hearing, you must complete and return the 'Response to hearing invitation' form (the form) to us as soon as possible and no later than seven (7) days after you receive it.
- 6.4 You must include the following matters in the form or in a separate document sent to us with the form:
- (a) the current telephone number and email address of the applicant and of any representative if they have not been already given to the AAT;
 - (b) the name, telephone number and email address of any person from whom you want the Tribunal to obtain oral evidence and a brief description of:
 - (i) the evidence they would give; and
 - (ii) how it is relevant to your review;
 - (c) if you or a person from whom you want the Tribunal to obtain evidence will need an interpreter to communicate with us at the hearing, the language (and dialect where applicable).
- Note:** The AAT requires a person's telephone number and email address to facilitate their participation in the hearing either by telephone or video.
- 6.5 If you believe that:
- (a) you or another person will experience difficulty participating in the hearing by telephone or video; or
 - (b) the hearing cannot be conducted by telephone or video;
- you must explain why in the form or in a separate document sent to us with the form.
- 6.6 We will tell you if the Tribunal decides that the hearing should not proceed or should be conducted in a different way. You must assume that the hearing will proceed unless we tell you otherwise.

Witness statements

- 6.7 You must lodge with the AAT a signed and dated statement from:
- (a) the applicant; and
 - (b) any person we have told you the Tribunal may contact to obtain oral evidence (**a witness**);
- setting out the evidence the applicant and the witness will give at the hearing.
- 6.8 If you are unable to obtain a signed statement from a witness, you must lodge with the AAT an outline of the evidence the witness will give and how it is relevant to your case.
- 6.9 A witness statement or outline of evidence must be lodged with the AAT as early as possible before the hearing.
- 6.10 The Tribunal will usually ask the applicant and any witness to affirm at the hearing that the content of a witness statement is true.

Lodging documents prior to the hearing

- 6.11 Unless the Tribunal has allowed otherwise:
- (a) all evidence, including witness statements or outlines of evidence; and
 - (b) any written submissions you want the Tribunal to consider;
- must be lodged **at least seven (7) days before the hearing**.
- 6.12 If you have a representative, to the extent possible, the documents should be in searchable PDF format with:
- (a) each document given a separate number;
 - (b) each page numbered sequentially; and
 - (c) an index with the pagination set out and links to each document.
- 6.13 If documents are lodged less than seven (7) days before the hearing, you must explain why in writing when you send us the documents. The Tribunal may reschedule the hearing to the next earliest opportunity, usually within seven (7) days' time.

At the hearing

- 6.14 You must ensure that, during the hearing, you have access to all of the documents that you have lodged with the AAT or that the AAT has given to you.
- 6.15 Unless the Tribunal allows otherwise:
- (a) subject to observing appropriate social distancing and any necessary medical restrictions, the applicant may be in the same room with their representative;
 - (b) any witnesses must be located in a room which is separate from any other person.

Adjournments (postponements)

6.16 The Tribunal will not postpone a scheduled hearing unless there are good reasons to justify the postponement.

Note: The unavailability of a representative may not be, of itself, a sufficient reason to grant a postponement. Requests for a postponement, including requests based on reasons related to COVID-19, will be considered on a case by case basis.

6.17 If you want to ask us to postpone your scheduled hearing, you must make the request as soon as you become aware that you need a postponement. Your request must:

- (a) be in writing and include your AAT case number;
- (b) explain why you need a postponement; and
- (c) be accompanied by any supporting evidence.

6.18 If you need a postponement for medical reasons, including medical reasons related to COVID-19, you must give us evidence from a medical practitioner that sets out:

- (a) when you had your appointment with the medical practitioner;
- (b) why you are not fit to give oral evidence at the scheduled hearing; and
- (c) when the medical practitioner thinks you will be fit to give oral evidence at a hearing.

A medical certificate merely stating 'medical condition' will not generally be sufficient.

6.19 If the Tribunal agrees to the postponement, you will be advised of the postponement in writing. If you have not been notified that your hearing has been postponed, then you must appear at the hearing at the scheduled time.

Failure to appear at the hearing

6.20 If we are unable to contact you for the scheduled hearing, the Tribunal may:

- (a) make a decision on the review without taking further action to allow you to appear before it; or
- (b) dismiss the application.

6.21 In the case of:

- (a) a hearing by telephone – you must be available on your nominated telephone number at the time that has been advised to you for the hearing;
- (b) a hearing by video – you must be available for the hearing in accordance with the instructions we have given you.

6.22 If you are prevented from participating in your hearing at the scheduled time, including due to issues with technology, you must contact us immediately.

6.23 If your application is dismissed, you can apply to have your application reinstated. An application for reinstatement must:

- (a) be made within 14 days after you receive notice of the decision to dismiss the application; and
- (b) explain what prevented your attendance with any supporting evidence.

Note: The Migration Act contains provisions which specify when such a decision is taken to have been received.

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

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7. Use of technology

7.1 When conducting case conferences, directions hearing or hearings by telephone and/or video, the AAT will use:

- (a) standard telephone conferencing facilities; or
- (b) an electronic communication platform such as Microsoft Teams.

We will make available to you information about using a particular platform.

7.2 You must use your best endeavours to ensure that you and any other person, including any witnesses, are able to participate in the listing event using a chosen platform. You and other persons are responsible for your own costs associated with using the platform, including data charges.

7.3 The AAT will, and you must, take appropriate steps to ensure that the hearing of an application for review of a decision about a protection visa under Part 7 of the Migration Act is in private.

7.4 The AAT will record any hearing and, where considered appropriate, a directions hearing, including through the electronic communication platform. By participating in a directions hearing or hearing in accordance with this Direction, you consent to being recorded.

7.5 You must not use a communication or recording device for the purpose of recording or making a transcript of a directions hearing or hearing unless we give you permission to do so.

Justice D G Thomas
President

27 April 2020