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4.1 METHOD OF DISPATCH OF DOCUMENTS

4.1.1 The notification provisions for the Immigration Assessment Authority (IAA) essentially reflect those of the Migration and Refugee Division (MRD) of the Administrative Appeals Tribunal (the Tribunal), with some minor differences.

Giving documents to a person other than the Secretary

4.1.2 If the *Migration Act 1958* (the Migration Act) or Migration Regulations 1994 (the Regulations) require or permit the IAA to give a document to a person (the 'recipient') other than the Secretary by a method specified in s.473HB, those methods are as follows:

- **by hand to the recipient** - a Reviewer, a person authorised in writing by the Senior Reviewer, or staff¹, handing the document to the recipient;²
- **by hand to another person** - a Reviewer, a person authorised in writing by the Senior Reviewer³, or staff, handing the document to another person who is at the last residential or business address of the recipient provided to the IAA in connection with the review, appears to live there (in the case of a residential address) or work there (in the case of a business address) and appears to be at least 16 years of age;⁴
- **by post** - a Reviewer, or staff, dating the document and dispatching it within 3 working days (in the place of dispatch) of the date of the document, by prepaid post or other prepaid means, to:
 - the last address for service of the recipient provided to the IAA in connection with the review; or
 - the last residential or business address of the recipient provided to the IAA in connection with the review; or
 - if the recipient is a minor – the last address for a carer of the minor provided to the IAA;⁵
- **by fax, email or other electronic means** - a Reviewer, or staff, transmitting the document by fax, email or other electronic means to the last fax number, email address or other electronic address, as the case may be, of the recipient provided to the IAA, or if the recipient is a minor – the last fax number, email address or other electronic address, as the case may be, for a carer of a minor that is provided to the IAA.⁶

4.1.3 If the IAA gives a document to a carer of a minor, the IAA is taken to have given the document to the minor, but is not prevented from giving the minor a copy of the document.⁷ A carer to whom the IAA is dispatching or transmitting a document, must be at least 18 years of age and an individual who the IAA reasonably believes has day-to-day care and responsibility for the minor, or works in or for an organisation that has such care and

¹ The Registrar of the Tribunal is required to make available officers of the Tribunal to assist the IAA in the performance of its administrative functions: s.473JE(2).

² s.473HB(3).

³ An authorisation is currently in the process of being made.

⁴ s.473HB(4).

⁵ s.473HB(5).

⁶ s.473HB(6).

⁷ s.473HB(7).

responsibility and the individual's duties – whether jointly or alone with another person – involve care and responsibility for the minor.⁸

Address does not need to be provided by the recipient

4.1.4 One substantive difference between the notification provisions of the IAA and the MRD is that the address to which documents must be sent is the last 'provided to the IAA', but not necessarily 'by the 'recipient'.⁹ This includes an address provided to the IAA by the applicant, his or her authorised representative, the Department¹⁰ or potentially a third party.¹¹

4.1.5 It reflects the fact that referred applicants may not have notified the IAA directly of their contact details given that all fast track reviewable decisions are reviewed by the IAA upon referral from the Minister, and the IAA's jurisdiction, unlike the MRD, does not require an application for review to be lodged. As part of the referral process there is also an obligation on the Secretary to provide certain contact details.¹² These are not necessarily limited to those that have been specifically provided by the recipient for the purpose of receiving documents. In particular, the Secretary must provide:

- the last address for service, residential or business address, fax number, email address or other electronic address provided to the Minister by the referred applicant for the purpose of receiving documents;
- if the Minister believes that last address for service, residential or business address, fax number, email address or other electronic address provided to the Minister by the referred applicant is no longer correct or has not been provided to the Minister by the referred applicant, an address or number (if any) that the Minister reasonably believes to be correct at the time the decision is referred;
- if the referred applicant is a minor, the last address for service, residential or business address, fax number, email address or other electronic address for a carer of the minor.

Purpose for which address is provided to the IAA

4.1.6 In order to use a residential address, business address or address for service for the purposes of notification, it must be provided to the IAA *in connection with the review*.¹³ In contrast, a fax, email or other electronic address need only be *provided to the IAA*.¹⁴ This suggests that a fax or email address may be used by the IAA where it is provided for reasons other than in connection with the review, however in practical terms it would seem unlikely that the IAA would be provided with such an address for another purpose.

⁸ s.473HB(2).

⁹ Compare s.473HB(4)–(6) to s.441A(3)–(5).

¹⁰ The Secretary is required to give to the IAA details about a referred applicant's address(es) in respect of each fast track reviewable decision referred to the IAA: s.473CB. See Part 1 of this Guide for further details.

¹¹ For example, a new address or change of address may be provided to the IAA by a family member of the applicant, a community based organisation providing non-migration assistance to the applicant, a health care provider or another government department. Confirmation should be sought from the applicant personally if a new address or a change of address is provided by a third party.

¹² s.473CB(d).

¹³ See s.473HB(4) and (5).

¹⁴ See s.473HB(6).

4.1.7 The methods of giving a document under s.473HB are intended to operate independently. For example, the IAA is authorised to use the most recent fax number even though it might have been given an even more recent e-mail address.¹⁵

Giving documents to the Secretary

4.1.8 If the Migration Act or Regulations require or permit the IAA to give a document to the Secretary of the Department¹⁶ by a method specified in s.473HC, the methods are as follows:

- **by hand** - a Reviewer, a person authorised in writing by the Senior Reviewer¹⁷, or staff¹⁸, handing the document to the Secretary or an authorised officer;¹⁹
- **by post** - a Reviewer, or staff, dating the document and dispatching it within 3 working days (in the date of dispatch) of the date of the document, by post or by other means²⁰, to an address, notified to the IAA in writing by the Secretary, to which such documents can be dispatched;²¹
- **by fax, email or other electronic means** - a Reviewer, or staff, transmitting the document by fax, email or other electronic means, to the last fax number, email address or other electronic address notified to the IAA in writing by the Secretary for the purpose.²²

Other methods of giving documents

4.1.9 If the Act or Regulations require or permit the IAA to give a document to a person, and the relevant provision does not state that the document must be given by a method specified in s.473HB or s.473HC or by a method prescribed for a person in immigration detention, the IAA may give the document to the person by any method that it considers appropriate. Such a method may be one specified in s.473HB or s.473HC or prescribed for persons in immigration detention.²³

4.1.10 If the person to whom the document is to be given is a minor, the IAA may give the document to an individual who is at least 18 years of age if it reasonably believes that the individual has day-to-day care and responsibility for the minor or works in or for an organisation that has such care and responsibility, and the individual's duties – whether jointly or alone with another person – involve care and responsibility for the minor.²⁴ If a document is given to such an individual, the IAA is taken to have given the document to the minor but is not prevented from giving the minor a copy of the document.²⁵

¹⁵See Explanatory Memorandum to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* at p.151.

¹⁶ See definition in s.5(1).

¹⁷ An authorisation is currently in the process of being made.

¹⁸ The Registrar of the Tribunal is required to make available officers of the Tribunal to assist the IAA in the performance of its administrative functions: s.473JE(2).

¹⁹ s.473HC(2).

²⁰ 'By other means' may include, for example, by courier.

²¹ s.473HC(3).

²² s.473HC(4).

²³ s.473HA(1). There are currently no methods prescribed for persons in immigration detention.

²⁴ s.473HA(2).

²⁵ s.473HA(3).

4.2 WHEN A DOCUMENT IS TAKEN TO BE RECEIVED

4.2.1 The receipt provisions for the IAA essentially reflect those of the MRD.

Receipt by persons other than the Secretary

4.2.2 If the IAA gives a document to a person other than the Secretary (for example, an applicant or an applicant's authorised recipient) by a method specified in s.473HB (even if it was not required to do so), then the person is taken to have received the document (irrespective of whether the person has in fact received it²⁶) as follows:

- **if handed to recipient** - if the document was handed to the person (as per s.473HB(3)) – the person is taken to have received the document when it is handed to the person;²⁷
- **if handed to another person** - if the document was handed to another person at a residential or business address (as per s.473HB(4)) – the person is taken to have received the document when it is handed to that person;²⁸
- **if posted** - if the document was dispatched by prepaid post or other prepaid means (as per s.473HB(5)) – the person is taken to have received the document 7 working days (in the place of that address) after the date of the document;²⁹
- **if faxed, emailed etc** - if the document is transmitted by fax, email or other electronic means (as per s.473HB(6)) – the person is taken to have received the document at the end of the day on which the document is transmitted.³⁰

Receipt by Secretary

4.2.3 If the IAA gives a document to the Secretary by a method specified in s.473HC (even if it was not required to do so), then the Secretary is taken to have received the document as follows:

- **if handed** - if the document was handed to the Secretary or to an authorised officer (as per s.473HC(2)) – the Secretary is taken to have received the document when it is handed to the Secretary / authorised officer;³¹
- **if posted** - if the document was dispatched by post or other means (as per s.473HC(3)) – the Secretary is taken to have received the document 7 working days (in the place of that address) after the date of the document;³²

²⁶ See for example *MZYSZ v MIAC* [2012] FMCA 390 (Burchardt FM, 23 May 2012) where the Court found that despite an error by the post office in not delivering a particular document, the applicant was deemed to have received it 7 working days after the date of the document as a result of the equivalent provision to s.473HD(4).

²⁷ s.473HD(2).

²⁸ s.473HD(3).

²⁹ s.473HD(4).

³⁰ s.473HD(5). This provision applies despite ss.14, 14A and 14B of the *Electronic Transactions Act 1999* ('ET Act'): s.473HD(6). According to the Explanatory Memorandum to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, these provisions of the ET Act provide for the time of dispatch, time of receipt, place of dispatch and place of receipt of electronically transmitted documents to be determined by reference to variable factors, such as when the electronic communication leaves or enters an information system, which might never be known by the originator of the information. Therefore, given the need in the migration context for time of receipt of documents to be easily determinable and with certainty for the purposes of establishing, for example, the date on which a bridging visa will cease, it is preferable to expressly provide for deemed receipt and not rely on the default provisions of the ET Act (see pp.153-154).

³¹ s.473HE(2)

³² s.473HE(3).

- **if faxed, emailed etc** - if the document is transmitted by fax, email or other electronic means (as per s.473HC(4)) – the Secretary is taken to have received the document at the end of the day on which the document is transmitted.³³

4.3 COMMON ISSUES – METHOD OF DISPATCH AND RECEIPT

4.3.1 The following principles relevant to the dispatch and receipt of documents, likely to be considered applicable to the IAA, can be distilled from the case law relating to the equivalent provisions in the Migration Act applicable to the Department and/or the MRD.

The meaning of ‘dispatch’ and evidencing it

4.3.2 ‘Dispatch’ means the physical act of sending the document to the relevant address (irrespective of whether it is received at that address); at the very least it is necessary for the envelope to pass from the possession of the agency.³⁴

4.3.3 Whether a document has been dispatched *within 3 working days* is a question of fact; although no specific type of evidence is required, probative evidence such as mail register, electronic and physical file records will assist in demonstrating this requirement has been met.³⁵

What does transmitting mean?

4.3.4 In the context of transmitting a document by fax, email or other electronic means, ‘transmitting’ means ‘sending’, and a person is taken to have received the document at the end of the day on which it is sent.³⁶

Does re-notification affect prescribed response periods?

4.3.5 Once a person is properly notified in accordance with one of the methods specified in s.473HB, the prescribed period for response will not recommence if the applicant later receives a copy of the notification.³⁷

Is the IAA required to send documents to a new address given to the Department?

4.3.6 New addresses or changes of address must be provided to the IAA once the matter has been referred to the IAA.

³³ s.473HE(4). This provision applies despite ss.14, 14A and 14B of the *Electronic Transactions Act 1999*: s.473HE(5).

³⁴ See *SZOBI v MIAC (No. 2)* [2010] FCAFC 151 (Stone, Jagot and Bromberg JJ, 16 December 2010) per Stone and Jagot JJ at [19] and Bromberg J at [30]; *Han v MIAC* [2007] FMCA 246 (Jarrett FM, 5 March 2007) at [27]-[28]. See also *On v MIBP* [2016] FCCA 481 (Judge Manousaridis, 11 March 2016) at [14], in which the Court applied the Oxford English Dictionary definition of ‘dispatch’ being to ‘send off to a destination or for a purpose’, such that the dispatching of a document means the sending off of a document.

³⁵ See for example *Bataju v MIBP* [2014] FCCA 2922 (Judge Nicholls, 12 December 2014), where the Court was satisfied that a document was dispatched within 3 working days on the basis of testimony of usual mail procedures and a dispatch log.

³⁶ *Sainju v MIAC* (2010) 185 FCR 86 at [56]-[57]. See also *Shah v MIAC* [2011] FMCA 18 (Cameron FM, 16 February 2011), where the Court applied ss.147 and 161 of the *Evidence Act 1995* (Cth) to find that, in the absence of conclusive evidence that the Tribunal’s fax had not been received by the applicant’s agent’s fax machine, the fax had in fact been sent when the transmission logs recorded it as having been sent.

³⁷ *Zhang v MIAC* [2007] FCAFC 151 and *MIAC v Manaf* (2009) 111 ALD 437. Although the Court at first instance in *ASE15 v MIBP* [2015] FCCA 2581 (Judge Street, 17 September 2015) found there could be more than one valid notification of a primary decision, this judgment was overturned on appeal in *MIBP v ASE15* [2016] FCAFC 37 (North, Barker and Mortimer JJ, 11 March 2016) with the Full Federal Court finding that there were no facts upon which to base the finding that the Minister had withdrawn the earlier notification and had intended to give a second or additional notification (at [32]). As no second notification was intended to have been given by the Minister the Court found it was unnecessary to consider whether two separate notifications for the purposes of s.66 was possible.

- 4.3.7 If the applicant or his/her representative advises the Department of a new address or a change of address subsequent to the matter being referred to the IAA, the IAA is not required to use that address and is only required to send correspondence to the last address provided to the IAA.³⁸

Does an address have to be provided in writing?

- 4.3.8 There is no statutory requirement that an address used for notification be provided in writing. An address (or change of address) may be provided to the IAA orally or in writing, however for evidentiary purposes it is advisable to ask for confirmation in writing.³⁹

Address provided in connection with judicial review proceedings

- 4.3.9 A residential address, business address or address for service provided in the context of judicial review proceedings to the Department, Court or solicitors acting only for the Minister will not amount to provision of an address to the IAA by an applicant in connection with the review for the purposes of ss.473HB(4) and (5).⁴⁰ In contrast, fax or email addresses provided to the IAA need not be provided 'in connection with the review'.⁴¹
- 4.3.10 Where an applicant has provided an address in connection with a particular review prior to judicial review, the address provided ought to remain valid upon remittal of that fast track review application, given that the review upon remittal is a continuation of the review initiated by the referral from the Minister.⁴²

Multiple addresses

- 4.3.11 If an applicant or the Department has provided the IAA with an address for service as well as a residential or business address, or electronic address, in connection with the review, there will be compliance with the Migration Act if the IAA sends correspondence to *any* one of those addresses.⁴³

Addresses provided incidentally

- 4.3.12 An address provided incidentally, for example in the form of letterhead, may in some circumstances be sufficient for notification purposes.⁴⁴

Misstated addresses, errors in addressing and aliases

- 4.3.13 If a misstated address is provided by the applicant and the IAA uses that address for notification it will not amount to an error.⁴⁵
- 4.3.14 Likewise there may be no error in notification if the IAA makes a small deviation to correct an obviously misstated address.⁴⁶

³⁸ *SZKHY v MIAC* [2008] FCA 206 (Graham J, 25 February 2008).

³⁹ *SZNZL v MIAC* (2010) 186 FCR 271 at [37].

⁴⁰ *SZGLD v MIAC* [2009] FMCA 667 (Barnes FM, 22 July 2009) at [42]-[43]. This is also the case where the address is provided to the IAA through an agent or intermediary acting for the IAA (e.g. a solicitor), as the address has not been provided 'in connection with the review': *SZGLD* at [53].

⁴¹ See s.473HB(6).

⁴² *SZEPZ v MIMA* (2006) 159 FCR 291.

⁴³ See for example, *SZKTR v MIAC* [2007] FMCA 1447 (Driver FM, 21 August 2007) at [6] and undisturbed on appeal in [2007] FCA 1767 (Marshall J, 20 November 2007).

⁴⁴ *Singh v MIAC* (2010) 239 FLR 287 and *Von Kraft v MIMA* [2007] FMCA 244 (Barnes FM, 15 March 2007).

⁴⁵ See for example, *Cheng v MIAC* (2011) 198 FCR 559.

- 4.3.15 On the weight of current authority, a reference to an incorrect postcode will not invalidate a notification.⁴⁷
- 4.3.16 A minor error or incomplete transcription of the name of the recipient may not invalidate the notification in every case.⁴⁸
- 4.3.17 A notification will not be addressed to the correct person if it is addressed to a person (e.g. an applicant) 'care of' another person (e.g. an authorised recipient).⁴⁹
- 4.3.18 There is no error in circumstances where the salutation in a covering email is incorrectly addressed if the document is actually sent to the email address last provided to the IAA.⁵⁰
- 4.3.19 Where a referred applicant has an alias, the IAA may notify them by any of their known names used in connection with their review.⁵¹
- 4.3.20 A failure to comply with addressing requirements may not *necessarily* result in jurisdictional error, or the applicant not being notified for the purposes of the Migration Act, if the applicant or authorised recipient nonetheless receives the document or a copy of it (see [below](#)).

Notifications in English

- 4.3.21 The IAA is under no obligation to express its communications in any language other than English.⁵²

Calculating time

- 4.3.22 The calculation of several time periods under the notification and receipt provisions is expressed in terms of working days. As noted above, in some circumstances documents must be dispatched within 3 working days of the date of the document, and in other circumstances documents are taken to have been received 7 working days after the date of the document. Section 5 of the Act defines a 'working day' in relation to a place, as any day that is not a Sunday, Saturday or public holiday in that place. When calculating time for these purposes the relevant period does not include the day on which the calculation is said to begin.⁵³
- 4.3.23 If the last day of the prescribed period to respond to IAA correspondence falls on a Saturday, a Sunday or a holiday the recipient has until the end of the next day that is not a Saturday, a Sunday or a 'holiday' to respond.⁵⁴ The term 'holiday' is defined for these purposes to mean either a day that is a public holiday in the place in which the correspondence is due to be received, or a day on which the place or office where the correspondence is due to be received is closed for the whole day (for example, the public service holiday between Christmas and New Year).⁵⁵

⁴⁶ See for example, *SZOQY v MIAC* [2011] FMCA 120 (Cameron FM, 9 March 2011).

⁴⁷ *SZKGF v MIAC* [2008] FCAFC 84 (Stone, Jacobsen and Edmonds JJ, 27 May 2008) at [11]-[12]; *SZLBR v MIAC* [2008] FCAFC 85 (Stone, Jacobson and Edmonds JJ, 27 May 2008).

⁴⁸ *Naheem v MIMA* [1999] FCA 1360 (Sundberg J, 1 October 1999).

⁴⁹ *VEAN of 2002 v MIMIA* (2003) 133 FCR 570. However, this principle is subject to the operation of s.473HD(7) if the authorised recipient nonetheless receives the document or a copy of it.

⁵⁰ *Brar v MIAC* [2012] FMCA 593 (Nicholls FM, 2 August 2012).

⁵¹ *MIAC v SZMTR* (2009) 180 FCR 586 at [27] and [39]-[40].

⁵² *SZQBV v MIAC* [2011] FMCA 727 (Cameron FM, 20 September 2011) at [29].

⁵³ Item 6, s.36(1), *Acts Interpretation Act 1901*.

⁵⁴ s.36(2), *Acts Interpretation Act 1901*.

⁵⁵ s.36(3), *Acts Interpretation Act 1901*.

4.4 GIVING DOCUMENTS TO THE IAA

- 4.4.1 If a person is required or permitted to give a document or thing to the IAA in relation to the review of a fast track reviewable decision, the person must do so by a method set out in Practice Directions issued by the President⁵⁶ or if a method is set out in the Regulations – by that method.⁵⁷ [Practice Direction for Applicants, Representatives and Authorised Recipients](#) specifies documents should be emailed or posted to the IAA. No other method is currently set out in the Regulations.

4.5 AUTHORISED RECIPIENTS

- 4.5.1 The requirements relating to authorised recipients for the IAA essentially mirror those applicable to the MRD, with one minor difference.
- 4.5.2 If a fast track reviewable decision in respect of a referred applicant is referred for review, and the referred applicant gives the IAA written notice of the name and address of another person (the ‘authorised recipient’) authorised by the referred applicant to receive documents in connection with the review, the IAA must give the authorised recipient, instead of the referred applicant, any document that it would otherwise have given to the referred applicant.⁵⁸
- 4.5.3 If the IAA gives a document to the authorised recipient, the IAA is taken to have given the document to the referred applicant. This does not however prevent the IAA giving a copy of the document to the referred applicant.⁵⁹
- 4.5.4 The referred applicant may vary or withdraw the notice of the appointment of an authorised recipient at any time, but must not vary the notice so that any more than one person becomes an authorised recipient.⁶⁰ The authorised recipient may also vary the notice by varying that address;⁶¹ however the authorised recipient cannot unilaterally vary or withdraw their authorisation to receive documents on behalf of the referred applicant.⁶²
- 4.5.5 The authorised recipient provisions do not apply to the IAA giving documents to, or communicating with, the referred applicant when the referred applicant is appearing at an interview with the IAA.⁶³
- 4.5.6 As the referred applicant has to give notice of the authorised recipient *to the IAA*, an appointment made to another body such as the Department will not meet the legislative requirements for the appointment of an authorised recipient. Furthermore, it is not possible for the appointment of an authorised recipient with the Department (under s.494D) to be treated as an appointment of that person as an authorised recipient before the IAA under

⁵⁶ Made under s.473FB. These Directions may make provision for a person to give a copy of a document, rather than the document itself, to the IAA: s.473HF(2).

⁵⁷ s.473HF(1).

⁵⁸ s.473HG(1).

⁵⁹ s.473HG(2).

⁶⁰ s.473HG(3). This restriction is subject to the Regulations providing otherwise.

⁶¹ s.473HG(4).

⁶² *Guan v MIAC* [2010] FMCA 802 (Nicholls FM, 22 October 2010). See also Explanatory Memorandum to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014* at p.155.

⁶³ s.473HG(5).

s.473HG, or for the appointment of that person to be otherwise 'transferred over' to the IAA upon referral from the Department.⁶⁴

- 4.5.7 The one difference between the authorised recipient provisions of the IAA and the MRD is that for the MRD they apply regardless of whether a review application is validly made.⁶⁵ Given that fast track reviewable decisions are reviewed by the IAA upon referral from the Minister and the IAA does not require an application for review being lodged, any such provision for the IAA is not necessary.

Common issues – authorised recipients

- 4.5.8 The following principles relevant to authorised recipients, likely to be considered applicable to the IAA, can be distilled from the case law relating to the equivalent provisions applicable to the Department and/or the MRD.

Who can be an authorised recipient?

- 4.5.9 An authorised recipient must be a natural person rather than a firm or organisation.⁶⁶

How is an appointment made?

- 4.5.10 The appointment of an authorised recipient may be in any particular form that is in writing.⁶⁷
- 4.5.11 A written signature of the person appointing the authorised recipient is not required. It is sufficient if a person, acting on the authority of the applicant, gives the written notice.⁶⁸

Withdrawal and variation of the appointment

- 4.5.12 An applicant, or a person acting on their instructions, may withdraw or vary their notice of an authorised recipient orally⁶⁹ or implicitly through their conduct.⁷⁰
- 4.5.13 A withdrawal operates on the entire written notice given under s.473HG and consequently the written notice ceases to have effect.⁷¹
- 4.5.14 In contrast, if the appointment is varied, the written notice given under s.473HG remains in effect, but part of its content is altered.⁷²
- 4.5.15 A variation under s.473HG(3) can be permanent or temporary. It may also be oral or in writing, but it can only be made by the applicant or the agent of the applicant where that person is acting within the scope of their authority.⁷³
- 4.5.16 The s.473HG appointment notice may be varied by removing an address, where there is more than one address, as well as by substituting a different address.⁷⁴ Whether the notice

⁶⁴ Although s.473CB(1)(d)(i) requires the Secretary to give to the IAA details of 'the last address for service provided by the Minister by the referred applicant for the purposes of receiving documents', the concept of 'address for service' relates only to an address, not a person with authority to receive documents. Further, the terms of s.473CB(1)(d) cannot be characterised as effectively 'transferring' the appointment of an authorised recipient before the Department to the IAA.

⁶⁵ ss.379G(1A) and 441(1A) as amended by *Migration Legislation Amendment Act (No.1) 2014* (No.106, 2014).

⁶⁶ *Li v MIMA* (1999) 94 FCR 219 at [40]; *SZJSP v MIAC* [2007] FCA 1925 at [18].

⁶⁷ *Jalagam v MIAC* [2009] FCA 197 (Edmonds J, 6 March 2009).

⁶⁸ *Jalagam v MIAC* (2008) 221 FLR 202; *Huang v MIAC* [2011] FMCA 271 (Smith FM, 6 May 2011). Most commonly this would arise where an applicant's representative, acting within the scope of his/her authority, appoints him or herself as the applicant's authorised recipient.

⁶⁹ *MZZDJ v MIBP* (2013) 216 FCR 153.

⁷⁰ *SZLWE v MIAC* [2008] FCA 1343 (Perram J, 19 September 2008); *SZJDS v MIAC* (2012) 201 FCR 1.

⁷¹ *MZZDJ v MIBP* (2013) 216 FCR 153 at [31].

⁷² *MZZDJ v MIBP* (2013) 216 FCR 153 at [32].

⁷³ *MZZDJ v MIBP* (2013) 216 FCR 153 at [33] – [35].

has been varied so as to remove or change a previously notified address, or whether it is simply the expression of a preference for the use of a particular address, is a factual question and will depend on the circumstances.

- 4.5.17 As an authorised recipient cannot unilaterally withdraw his or her own nomination as an authorised recipient (i.e. other than under instructions), the IAA must continue to correspond with an authorised recipient even if the authorised recipient has notified the IAA that he or she no longer wishes to receive documents for the applicant.⁷⁵

Addressing correspondence where there is an authorised recipient

- 4.5.18 Where correspondence is given by prepaid post, the envelope in which the invitation is sent must be addressed to the authorised recipient at the authorised recipient's address. It is irrelevant whether the address block on the document itself is correctly addressed to the authorised recipient.⁷⁶
- 4.5.19 Where correspondence is given by prepaid post, it is insufficient to address the envelope simply to the firm at which an authorised recipient may be employed.⁷⁷
- 4.5.20 If the envelope is addressed to the applicant *care of* the authorised recipient's address, the IAA will not have given the document to the authorised recipient and the applicant will not have been validly notified of the invitation or notice.⁷⁸
- 4.5.21 If the IAA fails to correctly give notification to an authorised recipient, notification may not have occurred in accordance with the Migration Act, even if the IAA also gives notification to the applicant themselves.⁷⁹
- 4.5.22 A failure to comply with addressing requirements in relation to an authorised recipient may not *necessarily* result in jurisdictional error or the applicant not being notified for the purposes of the Migration Act, if the authorised recipient nonetheless receives the document or a copy of it (see [below](#)).

4.6 FAILURE TO COMPLY WITH NOTIFICATION OBLIGATIONS

- 4.6.1 Under s.473HD(7), if the IAA purports to give a document to a person in accordance with a method specified in s.473HB (even if it was not required to do so) but makes an error in doing so, and the person nonetheless receives the document or a copy of it, then the person is taken to have received the document at the times mentioned in the deeming provisions (s.473HD(2), (3), (4), (5)) as if the IAA had given the document to the person without making an error in doing so. However, if the person can show that they received it at a later time, the person is taken to have received it at that (later) time.⁸⁰
- 4.6.2 A failure to comply with the IAA's notification obligations, even when not cured by the operation of s.473HD(7) will not, in every case, result in jurisdictional error invalidating the IAA's decision.

⁷⁴ *MZZDJ v MIBP* (2013) 216 FCR 153 at [56].

⁷⁵ *Guan v MIAC* [2010] FMCA 802 (Nicholls FM, 22 October 2010) at [24]-[27].

⁷⁶ *MIAC v SZKPQ* (2008) 166 FCR 84.

⁷⁷ *SZJSP v MIAC* [2007] FCA 1925 (Madgwick J, 22 November 2007).

⁷⁸ *VEAN v MIMIA* (2003) 133 FCR 570; *Lee v MIMA* (2007) 159 FCR 181.

⁷⁹ Although this may not necessarily result in jurisdictional error - see *MIAC v SZIZO* (2009) 238 CLR 627. Also, if the authorised recipient nonetheless received the document or a copy of the document, then s.473HD(7) would apply.

⁸⁰ s.473HD(7).

- 4.6.3 The effect of a failure to comply with statutory notification procedures essentially identical to those of the IAA was considered by the High Court in *MIAC v SZIZO*.⁸¹ In that case, the applicant had appointed his daughter, who was also an applicant before the then Refugee Review Tribunal (RRT), as his authorised recipient. The RRT had sent a hearing invitation to the applicant instead of his authorised recipient, but he received it and attended the hearing. The High Court, on appeal, drew a distinction between the procedural provisions dealing with the manner of giving notice and the provisions in the Migration Act aimed at ensuring a procedurally fair review, such as the obligation to disclose adverse information. The Court held that in circumstances where the applicant was not denied natural justice by reason of the omission, there was no jurisdictional error.
- 4.6.4 The reasoning of the High Court leaves open the possibility that a failure to comply with the statutory notification procedures could, for example, invalidate an invitation under s.473DC to get new information or an invitation under s.473DE to comment on adverse new information, and result in jurisdictional error, if the error prevented the applicant from properly advancing his or her case or otherwise involved a denial of procedural fairness.⁸²
- 4.6.5 Where s.473HD(7) applies because a referred applicant has in fact received the notice within the normal 'deemed receipt' period, notwithstanding an error, in many cases there will not be a denial of natural justice and, therefore, no jurisdictional error arising from the error. However, if the referred applicant has demonstrated that the notice was received after the normal period, it may be that the notice did not give the required period of notice of an interview or the prescribed period for response to adverse information such that he or she may have been prevented from properly preparing or presenting his or her case. In such circumstances there could potentially be a jurisdictional error for breach of s.473DC or s.473DE notwithstanding the operation of s.473HD(7).
- 4.6.6 Accordingly, the IAA should always endeavour to strictly comply with the statutory notification provisions. If, in the course of a review, it becomes apparent that there has been a failure to comply with the statutory notification procedures, consideration should be given to whether the error may have resulted in procedural unfairness and whether the notice should be resent. This will be particularly important if there is no evidence that the notice was received or the applicant has not responded to it.

⁸¹ *MIAC v SZIZO* (2009) 238 CLR 627.

⁸² Note however, that the High Court in *MIAC v SZIZO* (2009) 238 CLR 627, was considering the notification scheme in the then RRT prior to the enactment of s.441C(7) (the equivalent provision to s.473HD(7)). It is also important to note that the RRT's obligations under s.425 (duty to invite applicant to a hearing) and s.424A (obligation to invite comment or response to adverse information) differ considerably from the IAA's statutory powers to get 'new information' at an interview under s.473DC or to invite comment on adverse 'new information' under s.473DE. See Part 2 of this Guide for further details.