



Migration and Refugee Division Practice Direction

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

1 About this Direction

Application

- 1.1 This Direction applies to applications for review of decisions in the AAT's Migration and Refugee Division.
- 1.2 This Direction takes effect on [Date]. It applies to all applications, whether lodged before, on or after this date, and remains in effect until it is superseded or revoked.
- 1.3 The Migration and Refugee Matters Practice Direction dated 1 August 2018 and the COVID-19 Special Measures Practice Direction – Migration and Refugee Division dated 27 April 2020 are revoked at the time this Direction comes into effect.
- 1.4 This Direction should be read in conjunction with the following directions made under section 18B of the AAT Act:
 - (a) the General Practice Direction; and
 - (b) the Giving Documents or Things to the AAT 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.

Note: Some parts of the General Practice Direction do not apply to the Migration and Refugee Division.
- 1.5 Where the terms of this Direction are inconsistent with the terms of another direction on the same matter, the terms of this Direction apply.

Interpretation

- 1.6 In this Direction:

AAT means the Administrative Appeals Tribunal;

AAT Act means the *Administrative Appeals Tribunal Act 1975* (Cth);

applicant means a person who has applied for review of a decision;

application for review means an application for review of a decision under s 347 or 412 of the Migration Act;

authorised recipient means a person who is authorised by an applicant to receive all correspondence on the applicant's behalf;

case management hearing means a hearing conducted by a member to talk to the applicant and any representative about how the review will progress, including the evidence to be lodged and setting timeframes for lodging evidence and/or submissions;

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;

contact details mean an address where documents may be posted to or left for a person and may also include an email address, a fax number, another electronic address or a telephone number;

evidence means factual information you rely on to try to prove something;

Note: Types of evidence include documents from official sources, letters, photos, witness statements, and, in reviews of decisions about protection visas, country information and newspaper articles.

family member means your spouse, de facto partner, child, or step-child;

hearing means a hearing where an applicant is invited under section 360 or 425 of the Migration Act to appear before the Tribunal to give evidence and present oral arguments relating to the issues arising in relation to the decision under review;

Migration Act means the *Migration Act 1958*;

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

Registry means any registry office of the AAT;

representative means a person appointed by an applicant to represent them and act on their behalf in relation to a review;

Note: Under the Migration Act, only certain people can provide immigration assistance. They include a registered migration agent, an Australian lawyer who holds a practising certificate, a close family member (spouse, child, parent, brother or sister) or a nominator or sponsor of a visa applicant.

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

you or **your** refers to an applicant and any representative of the applicant (unless otherwise indicated).

2 Our requirements and expectations

- 2.1 This Direction sets out our requirements and expectations of applicants and representatives in relation to the conduct of reviews in the Migration and Refugee Division. The Tribunal may alter procedures set out in this Direction to suit individual applications for review.
- 2.2 In this Direction, unless the Tribunal has altered the procedure:
- (a) the term '**must**' denotes something that you must do; and
 - (b) the term '**should**' denotes something that the AAT expects you to do and, if you are a representative, indicates good practice

- (c) the term '**may**' denotes something that you can do.
- 2.3 By acting in accordance with this Direction, applicants and representatives can assist the AAT to fulfil our objective set out in section 2A of the AAT Act to provide a mechanism of review that is fair, just, economical, informal, quick and proportionate to the importance and complexity of the matter. You should use your best endeavours to assist the AAT to fulfil the objective in section 2A of the AAT Act.
- 2.4 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.
- 2.5 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.
- 2.6 Representatives must act in a manner consistent with applicable professional conduct rules and standards.

3 After lodging an application for review

Statement of facts, issues and contentions

- 3.1 Within 14 days after lodging an application for review, you must lodge with the AAT a statement of facts, issues and contentions which includes the following:
- (a) a brief statement about the claims that you make, the facts you rely on and why you think the decision under review is wrong;
 - (b) whether you think the decision-maker did not consider certain evidence which was before them and why you think the decision would be different if they had considered it
 - (c) details of any evidence that you have that wasn't before the decision-maker and why you think it assists your case;
 - (d) if you are providing details of evidence that wasn't before the decision-maker, an explanation why it wasn't provided to the decision-maker.

Related applications for review

- 3.2 Within 14 days after lodging an application for review, you must:
- (a) inform us if one or more of your family members has a separate current application for review before the AAT; and
 - (b) if you want to have the hearings in these applications held together, inform us in writing that you consent to this.

Note: Where separate applications for review have been received from more than one member of a family for the same visa subclass, a member will, where practicable and appropriate, seek to conduct hearings for those matters together.

- 3.3 If:
- (a) you are included in an application for review with one or more other family members;
 - (b) you no longer want to be included in that application and want your application for review to be treated separately;
- you must inform us in writing immediately.

Gender-related issues

- 3.4 If there are any factors relating to the application for review that would make it appropriate for a member of a particular gender to conduct the review, you should inform us of this as early as possible.

Requesting access to documents

- 3.5 You should make any request for access to documents under the *Freedom of Information Act 1982* or s 362A of the Migration Act as early as possible after the application for review has been lodged.

4 Communicating with us

Lodging and giving us documents or other things

- 4.1 To the extent possible:
- (a) an application for review of a decision; or
 - (b) a document relating to an application for review that is before the AAT;
- should be lodged with, or given to, the AAT using an AAT online system accessible via the AAT website.

Note: Applications for review and documents may also be lodged or given to the AAT in accordance with the methods outlined in the [Giving Documents or Things to the AAT Practice Direction](#). These methods include leaving it with any person who is performing duties for the AAT at a registry of the AAT, sending it by pre-paid post to a registry of the AAT, faxing it to a specified fax number, or emailing it to a specified email address.

Signatures

- 4.2 If a document requires a signature, you must either sign it physically by hand or sign it electronically using a digital signature.

Your contact details

- 4.3 If a representative lodges an application for review on behalf of an applicant, the representative must give the AAT contact details for the applicant as well as the contact details for the representative.

Note: The contact details given to us for the applicant must not be the same as the contact details for the representative.

- 4.4 You should give us:
- (a) an email address; and
 - (b) a telephone number.

Note: Wherever possible, the AAT will send you documents by email.

- 4.5 If you change your contact details during a review, you must inform us in writing of the change as soon as possible.

Note: You can use our Change of Contact Details – MR Division form (Form MR6).

Communicating with AAT members

- 4.6 You must not contact, or communicate with, a member other than during a hearing. Contact or communication will be through AAT staff at other times.

Assisting us with pronunciation of names and correct form of address

- 4.7 Before a case management hearing or hearing, you should:

- (a) if your name or the name of a witness may be difficult to pronounce, give us a phonetic pronunciation of the name; and
- (b) inform us how you prefer to be addressed including your preferred title and family name.

Note: The AAT's Guideline on Pronunciation of Names and Forms of Address has more information about what you should do.

5 Appointing a representative and/or an authorised recipient

- 5.1 If you are a representative and commence representing an applicant after an application for review has been lodged, you:

- (a) must notify us in writing as soon as possible, and
- (b) should complete and lodge the Appointment of Representative/Appointment of Authorised Recipient – Migration & Refugee Division form (Form MR5).

- 5.2 If you appoint a representative, we will treat them as your authorised recipient unless you inform us in writing that you do not want them to be your authorised recipient.

- 5.3 If you want to appoint another person as your authorised recipient after you have lodged your application for review, you:

- (a) must notify us in writing, and
- (b) should complete and lodge the Appointment of Representative/Appointment of Authorised Recipient – Migration & Refugee Division form (Form MR5).

Note: We must send all correspondence to your authorised recipient, instead of you, unless you withdraw the authorisation.

- 5.4 If you are a representative and you cease representing an applicant, you must notify us in writing as soon as possible.

- 5.5 If you want to withdraw your authorisation for a person to act as your representative or as your authorised recipient, you must complete and lodge the Change of Contact Details – MR Division form (Form MR6).

6 Triaging of cases

6.1 The AAT may conduct triaging processes to inform the prioritisation of applications for review and facilitate case management.

Note: The AAT constitutes applications for review in accordance with the priorities set out in the Prioritising Cases in the Migration and Refugee Division Practice Direction.

6.2 To assist with the triaging processes, the AAT may:

- (a) invite you to lodge evidence or give us other information about issues relevant to your application for review;
- (b) contact you to discuss how an application for review or set of applications may progress; or
- (c) hold a case management hearing.

6.3 You can help inform our triaging and case management processes by:

- (a) lodging evidence and submissions in a timely manner, including as requested by the AAT;
- (b) notifying us if you consent to the Tribunal determining the review without appearing before it in accordance with paragraph 6.6;
- (c) making an expedited decision request in accordance with paragraph 6.8.

Consenting to the Tribunal deciding the review without a hearing

6.4 You may consent to the Tribunal deciding the review without you appearing before it at a hearing.

6.5 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.

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

- (a) notify us in writing, and
- (b) if the applicant is represented, include the applicant's signature in the notice.

Expedited decision requests

6.7 You may 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 objectively 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.

6.8 An expedited decision request must:

- (a) be lodged using the online form 'Request for expedited decision (online)' accessible at <https://www.aat.gov.au/landing-pages/other-forms/request-for-expedited-decision-online>;
- (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.

7 After constitution

7.1 After your case is constituted, the Tribunal will determine how your case will 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 (see section 8 below);
- (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 have a case management hearing; and
- (d) whether to list your case for a hearing.

Evidence, including witness statements or outlines of evidence

7.2 You must lodge any evidence which supports your claims within the timeframe we specify.

Note: You should give us relevant evidence that supports the claims you are making. This will depend on the type of visa that is the subject of the decision under review and the issues in your application for review. The AAT publishes information on our website about the type of evidence and submissions that may be relevant to particular types of cases or caseloads.

See paragraph 7.8 for how you should format your evidence if you have a representative.

- 7.3 You should lodge a signed and dated written statement (**witness statement**) from:
- (a) the applicant or applicants; and
 - (b) any other person you want the Tribunal to call as a witness at the hearing;
- setting out the evidence they will give at the hearing.
- 7.4 If you are unable to obtain a statement from a witness, you should lodge an outline of the evidence the witness will give and how it is relevant to your case.

Written submissions

- 7.5 You must lodge a written submission within the timeframe we specify.
- 7.6 If you have a representative, the written submission provided on your behalf must:
- (a) clearly and concisely identify and address the issues in the review;
 - (b) clearly and concisely identify and address the law relevant to the review;
 - (c) set out in detail the relevant facts that support the submission and refer to the evidence that supports the submission; and
 - (d) include the name of the person who prepared the submission and the date of the submission.
- Note:** See paragraph 7.8 for how you should format your written submission if you have a representative.
- 7.7 If you do not have a representative, your written submission must set out the claims you make, the facts you rely on and why you think the decision under review should be changed.

Format of evidence and written submissions

- 7.8 If you have a representative, to the extent possible, all documents should be in an electronically 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 bookmarks to each section of the document or links to the relevant section of the document.

Copies and originals of documents

- 7.9 Unless we ask you to, you are not required to lodge a hard copy of evidence or submissions you have lodged electronically.
- 7.10 However, if you are invited to an in-person hearing, you must bring with you to the hearing originals of all evidence which we request you to bring.

Translations of documents

- 7.11 All documents that are not in English must be translated into English by a Certified Translator accredited by the National Accreditation Authority for Translators and Interpreters (NAATI).
- 7.12 You must lodge both the original document and the translation.

8 Responding to invitations to give or comment on or respond to information and other requests to lodge evidence and submissions

Invitations with a prescribed period

- 8.1 If you have been invited to give, comment on or respond information under s 359(2), 359A, 424(2) or 424A of the Migration Act, you must do so within the prescribed period.
- 8.2 If you want to request an extension of time to a prescribed period, you must make the request before the expiry of the prescribed period (or if making a request for a further extension, before the expiry of the period as extended).
- 8.3 The request should:
- (a) be in writing ; and
 - (b) explain the reasons for requesting the extension.

Note: If you fail to give, comment on or respond to information within a specified period (either the prescribed period or the period extended by us), 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.

Other requests to lodge evidence or submissions

- 8.4 If you have been requested by the Tribunal to lodge evidence or submission within a specified timeframe, as soon as you become aware that you may not be able to do so, you must request more time.
- 8.5 The request must:
- (a) be in writing;
 - (b) specify how much additional time you want; and
 - (c) explain the reasons for requesting the extension.

9 Hearings

- 9.1 The Tribunal will hold any hearing to which you are invited:
- (a) in person;
 - (b) by video (generally by using Microsoft Teams);
 - (c) by telephone;
 - (d) by a combination of in person, telephone and/or video.
- 9.2 In determining how the hearing will be held, relevant considerations may include, but are not limited to:
- (a) where you are located and your distance from a Registry;
 - (b) whether you have an impairment which would make it difficult for you to attend a Registry in person;

- (c) 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;
- (d) the number, nature and availability of any witnesses;
- (e) the nature and volume of the documentary evidence;
- (f) whether the application for review has been included in a multi-applicant hearing list;
- (g) your capacity or the capacity of another person to participate in a hearing by telephone, by video or in person.

9.3 If you have a preference for a particular hearing method, you must inform us as soon as possible.

Note: We will consider your preference when determining how the hearing will be held. There is no right to a particular hearing method.

Responding to the hearing invitation

9.4 If we send you an invitation to a hearing, you must:

- (a) complete the 'Response to hearing invitation' form in full; and
- (b) lodge the form **no later than seven (7) days after receiving the hearing invitation**.

9.5 If you believe that:

- (a) you or another person will experience difficulty participating in the hearing by telephone, by video or in person; or
- (b) the hearing cannot be conducted by telephone, by video or in person;
- (c) you must explain why in the form or in a separate document sent to us with the form.

9.6 We will tell you if the Tribunal decides that the hearing should be held in a different way. You must assume that the hearing will proceed in the manner advised unless we tell you otherwise.

Interpreter at hearing

9.7 If an interpreter is required for the hearing, you must specify the language/dialect on the 'Response to hearing invitation' form.

9.8 If you are dissatisfied with the quality of interpreting at a hearing, you should tell the Tribunal immediately.

Note: The Tribunal member will assess whether the hearing should continue in light of your comments or whether the hearing should be adjourned until a new interpreter can be obtained.

Lodging evidence and submissions prior to the hearing

9.9 Unless the Tribunal has specified or allowed otherwise, you must lodge **at least seven (7) days before the hearing**:

- (a) all evidence, including witness statements or outlines of evidence, on which you want to rely; and
 - (b) any written submissions.
- 9.10 If you lodge documents less than seven (7) days before the hearing, you must explain why in writing when you send us the documents.
- Note:** The Tribunal may reschedule the hearing to the next earliest opportunity. Rescheduling the hearing will ensure that there is sufficient time for the Tribunal to read and consider the documents.
- 9.11 You must lodge documents in accordance with our requirements set out in paragraphs section 7 above.

Access to your documents at the hearing

- 9.12 You must ensure that, during the hearing, you have access to all of the documents that:
- (a) you have lodged with the AAT and the Department of Home Affairs; and
 - (b) the AAT and Department of Home Affairs have given to you.

Representatives attending a hearing by video or telephone (applicant in a different location)

- 9.13 Representatives must attend the hearing in person at the AAT or at the location of the applicant. If this is not possible, you must request permission to attend the hearing from a third location.
- 9.14 You must:
- (a) make the request in writing at least 2 business days before the hearing; and
 - (b) you must inform us in writing of a direct telephone number on which we can contact you at the scheduled hearing time.

Adjournments (postponements)

- 9.15 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 will be considered on a case by case basis.
- 9.16 If you want to ask us to postpone a scheduled hearing, you must make the request as soon as you become aware that a postponement is required. Your request must:
- (a) be in writing;
 - (b) explain why a postponement is necessary; and
 - (c) be accompanied by any supporting evidence.
- 9.17 If a postponement for medical reasons is required, 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.

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

9.18 If the Tribunal agrees to the postponement, we will notify you 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

9.19 If the applicant does not appear before the Tribunal 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.

9.20 In the case of:

- (a) a hearing in person – you must be at the Registry or other place stated in the hearing invitation by the time of the hearing;
- (b) a hearing by video – you must be available for the hearing in accordance with the instructions we have given you by the time of the hearing;
- (c) a hearing by telephone – you must:
 - (i) if we have notified you that we will telephone you – be available on your nominated telephone number by the time of the hearing; or
 - (ii) if we have notified you to telephone us – follow the instructions we have given you to telephone us by the time of the hearing.

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

9.22 If your application is dismissed, you may 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;
- (b) explain what prevented your attendance; and
- (c) be accompanied by any supporting evidence.

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

Recording of hearings

9.23 The AAT will record any hearing and, where considered appropriate, a case management hearing, including through Microsoft Teams and telephone. By participating in a hearing or directions conference, you or any other person consent to being recorded.

9.24 You or any other person must not use a communication or recording device for the

purpose of recording a hearing or a case management hearing unless we give permission to do so.

10 Public access to hearings held by video or telephone

10.1 To the extent possible, the AAT will allow members of the public to attend, on request, a public hearing of an application for review of a decision under Part 5 of the Migration Act held by telephone or video.

Note: More information, including how to request to attend a public hearing held by telephone or video, can be found on the AAT website.

10.2 The AAT will, and you must, take appropriate steps to ensure that any hearing of an application for review of a decision about a protection visa under Part 7 of the Migration Act conducted in whole or in part by telephone and/or video is in private.

Note: You must ensure that any person who is not entitled to be at the hearing cannot see or hear the hearing.

11 Requirements relating to specific caseloads

Cancellation cases

11.1 If you have applied for review of a decision to cancel a visa, you must lodge evidence and submissions about:

- (a) whether the ground for cancellation exists; and
- (b) if so, whether the visa should be cancelled.

Nomination and sponsorship cases

11.2 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; or
- (b) you no longer want to proceed with your application;

you should inform us of this in writing as soon as possible.

11.3 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 inform us in writing of your changed circumstances as soon as possible.

Partner visa cases

11.4 If you have applied for review of a decision to refuse to grant a partner visa and one of the issues is whether you are in a married or de facto relationship, you should lodge evidence about your relationship.

11.5 You may lodge a representative sample of your evidence, rather than all of the evidence you have.

Example: You may lodge a sample of certain types of evidence such as joint financial documents for a relevant period, letters or a selection of photographs.

11.6 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 and protection findings cases

11.7 If you have applied for review of a decision about a protection visa or a decision made under section 197D(2) of the Migration Act about a protection finding and you want to make a new or varied claim, you must:

- (a) lodge a witness statement from the applicant; and
- (b) clearly identify the new or varied claim in your written submissions.

Note: A new claim is a claim that has not previously been made. A varied claim is a claim that has changed or developed since it was made.

11.8 If you lodge any new evidence in support of the claims you are making, you must clearly identify the new evidence in your written submissions.

11.9 If 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 which parts of the information you rely on and why it is relevant to your review;
- (c) if you disagree with country information prepared by the Department of Foreign Affairs and Trade, explain in your written submissions which part you disagree with and why you disagree with it.

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

11.10 If you have applied for a review of a decision to refuse to grant a student visa, you must lodge evidence of enrolment (Confirmation of Enrolment (CoE)) in an approved course, including the course in which you are currently enrolled and courses in which you were previously enrolled.

Note: You may need to lodge further evidence depending on the nature of the issues such as transcripts of academic results in Australia and Qualifications awarded in Australia; evidence of employment, sample pay records and any tax returns in Australia.