



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

## PRINCIPAL MEMBER DIRECTION – 1/2010

[Date of issue: 15 July 2010]

Principal Member Direction 1/2010 (in effect from 15 July 2010)

This Direction applies to both the Migration Review Tribunal and the Refugee Review Tribunal.

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This is a Principal Member Direction made under sections 353A and 420A of the *Migration Act 1958*. It is to be followed and applied, as far as practicable, by all Tribunal Members and officers.

### CASELOAD AND CONSTITUTION

#### Introduction

1. The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) are statutory bodies established under the *Migration Act 1958* (the Act) to provide final independent merits review of visa and visa-related decisions made by the Minister for Immigration and Citizenship, or by delegates of the Minister. The Tribunals are required to provide a mechanism of review that is fair, just, economical, informal and quick (sections 353 and 420 of the Act), must apply relevant legislation and must have regard to any Ministerial Directions made under section 499 of the Act.
2. The MRT reviews decisions made in relation to general migration visas while the RRT reviews decisions made in relation to protection (refugee) visas.
3. Sections 354 and 357 of the Act provide for the constitution of the MRT and section 421 provides for the constitution of the RRT. Sections 355 and 355A (for the MRT) and sections 422 and 422A (for the RRT) provide for the reconstitution of the Tribunal in certain circumstances. Sections 402 (for the MRT) and 467 (for the RRT) deal with the disclosure of interests in relation to a review.
4. In order for this Direction to be effectively implemented, Members need to actively manage their caseloads from the time of constitution until decision in accordance with all Principal Member Directions and guidelines on the fair and efficient conduct of reviews.
5. The Tribunals expect to receive approximately 10,000 lodgements in 2010-11 and need to determine more than this number of reviews to reduce the cases on hand. A significant factor in the growth of cases on hand has been the increase in MRT lodgements. An ongoing challenge for the Tribunals is to reduce the number of MRT cases on hand while still meeting the 90-day requirement for RRT decisions.

#### Objective

6. This Direction sets out the arrangements for the constitution of the Tribunals. The Direction has the following objectives:
  - giving priority to cases based on the circumstances of individual applicants;

- enabling time standards to be met;
- delivering high quality reviews;
- independence and impartiality in decision-making;
- the fair and equitable allocation of cases to Members; and
- achieving a reduction in the number of MRT cases on hand.

## **Priorities**

7. The following cases have priority for constitution:
  - Cases involving persons being held in immigration detention.
  - All protection visa cases.
  - All bridging visa cases.
  - All visa cancellation cases (including non-revocation student cancellation cases).
  - All child, orphan relative and adoption visa cases.
  - All visitor refusal cases.
  - Cases involving vulnerable persons.
  - Cases remitted or returned from a court for the Tribunal to reconsider.
  - Cases which have been remitted to the Department and which have again been refused, resulting in the applicant making a further application for review.
  - Cases which involve jurisdiction issues.
  - Cases which involve a decision to cancel approval as a business sponsor under section 137B and cases involving an action under section 140L in relation to a sponsor.
  - Cases where prospective marriage visa applicants have married.
  - Any case which the Principal Member, or a Member or officer authorised by the Principal Member, decides should be given priority because of special circumstances.
8. Otherwise, cases are constituted in order of the date of lodgement of the application for review, subject to any directions of the Principal Member for the allocation, through a targeted approach, of batches of cases involving similar issues. Batching enables Members to work more efficiently and allows the Tribunals to deal with a greater volume of cases.
9. Registry staff will identify all cases which fall into the priority categories listed in paragraph 7. All requests by applicants or representatives for expedited processing will be considered carefully. Applicants and representatives will be advised in writing whether or not priority is granted.
10. All bridging visa (detention) cases are to be constituted immediately after lodgement of the application for review.
11. All other cases from applicants in immigration detention are to be constituted within 2 working days of the lodgement of the application for review, including cases where the Department's documents have not yet been received.
12. All other priority cases are to be actioned for constitution as soon as possible and no later than 28 calendar days from the date on which the case was allocated priority status, including cases where the Department's documents have not yet been received.

13. Despite the time standards set out above, all cases involving a jurisdiction issue in respect of one or more review applicants will be actioned for constitution after an assessment of the jurisdiction issue by a registry officer.
14. A case which is related to another case may be constituted to the same Member regardless of the above case priorities (e.g. another application by the same person, or a related application by a family member or employer).
15. Members and officers are required to have regard to the priority assigned to an applicant's case when dealing with it. In most cases, this means priority for allocation and then priority for processing of the review.

### **The constitution of the Tribunal**

16. The Principal Member, Deputy Principal Member or Senior Member determines by way of a written direction who is to constitute the Tribunal for the purpose of a particular review.
17. A written direction may be in the form of a list of cases setting out the constitution of the Tribunal for several cases (a constitution schedule).
18. The constitution of the Tribunal is effected by the Principal Member, Deputy Principal Member or Senior Member signing a constitution schedule. The signed copy of the constitution schedule is maintained in a register and recorded electronically.
19. Once a constitution schedule has been signed, the Caseload Strategy Section will update the case management system and advise the Registry. The Registry will then arrange for the relevant files to be delivered to Members' offices (within one working day for detention cases, and within two working days for other cases). A constitution minute is to be placed on file as a record of the constitution.
20. In order to enable cases to be constituted appropriately, the Principal Member or Deputy Principal Member or Senior Member is to be notified of any cases which involve unusually complex legal or other issues, cases which are sensitive or have attracted (or are likely to attract) public interest, cases involving security or law enforcement information and cases involving the review of a decision made by the Minister personally. Generally, the more complex and sensitive cases are to be constituted to the Principal Member, Deputy Principal Member or Senior Members.
21. Bridging visa (detention) reviews are to be allocated from a roster of Members approved by the Principal Member, Deputy Principal Member or a Senior Member.
22. In accordance with the Tribunals' Gender Guidelines, consideration will be given to whether there are any factors in relation to an application that would make it appropriate for a Member of a particular gender to conduct the review.
23. Arrangements are to be agreed between Members and Senior Members as to a Member's pattern of work and appropriate caseload. Senior Members will notify the Caseload Strategy Section in writing of agreed arrangements and of any changes to those arrangements.
24. A Member may be constituted a particular range of cases based on a Member's knowledge or experience, eg, cases involving a particular visa subclass or issues. Cases will be allocated based on MRT and RRT operational requirements. As far as possible, Member preferences will be taken into account.
25. Subject to the availability of Members and the number of cases in each location, cases are to be constituted to a Member in the location most convenient for the conduct of the review.

26. As a general rule, if a person has previously had a case reviewed by the Tribunal, any new case, or any case remitted for reconsideration, in which that person is an applicant will be constituted to a Member other than the Member who had previously constituted the Tribunal.
27. The RRT may only be constituted by a single Member. The MRT will be constituted by a single Member, unless otherwise directed by the Principal Member. If the MRT is constituted by 2 or 3 Members, the Presiding Member will be identified pursuant to section 357.

### **The reconstitution of the Tribunal**

28. The Tribunal may be reconstituted if a Member becomes unavailable (section 355 or 422) or for the efficient conduct of the review (section 355A or 422A).
29. A Member may be regarded as unavailable to complete a review in a range of circumstances, including: leave, impending leave, illness; a conflict of interest or an applicant having moved to a location where it would be more efficient for another Member to hold a hearing.
30. If a Member considers he or she has a conflict of interest, he or she should, in the first instance, approach his or her Senior Member.
31. If a Member considers he or she is unable to complete a review, he or she should, in the first instance, approach his or her Senior Member.
32. The reasons for reconstituting the Tribunal in relation to a particular case will be included in the case record.

### **Preparation of constitution schedules**

33. All cases will be examined by registry staff as soon as possible after lodgement to identify the issues involved and any information which may be relevant to the constitution of the cases.
34. Following consultations with the Principal Member, Deputy Principal Member and Senior Members, the Caseload Strategy Section will prepare draft constitution schedules and briefings for the Principal Member (or delegate) for the constitution of cases within each Registry.
35. While constitutions will normally be conducted on a regular basis (e.g. twice weekly), constitutions in respect of detention cases will be considered as soon as possible.
36. The briefings prepared by the Caseload Strategy Section will include Member case performance information, Member availability and caseloads and note individual cases that may require particular attention.
37. In preparing draft constitution schedules, the Caseload Strategy Section will propose the allocation of cases according to case priorities and in accordance with arrangements advised in writing by Senior Members in respect of individual Members.

### **Management of caseloads**

38. In order to deal with the number of applications on hand over the year, 835 applications, on average, need to be allocated to Members each month. Allocations per full-time Member will range from 10-13 cases per month for Members with a high proportion of RRT cases, to at least 12-20 cases per month for Members with a high proportion of MRT cases.
39. The attached graph indicates the bandwidth within which cases will be allocated to Members depending on their level of experience and mix of MRT and RRT cases.

40. All Members are expected to perform at their highest possible level and are expected to decide a number of reviews annually which is consistent with the number of cases they have been allocated.
41. Senior Members will determine the range of cases that may be constituted to a Member, and set an active caseload for each Member. Caseload levels will need to be varied by Senior Members from time to time depending on a Member's capacity, availability and experience and on the number and priority of MRT and RRT cases requiring allocation.
42. If a Member considers there is a need to increase or decrease the number or range of cases constituted to the Member, the Member should consult his/her Senior Member and, if there is agreement on a variation, the Senior Member should advise the Caseload Strategy Section in writing.
43. Taking into account their responsibilities, including the expectation that they will generally deal with a greater proportion of sensitive and complex cases, the Deputy Principal Member is expected to complete at least the equivalent of one third of a full-time Member's caseload, and a Senior Member is expected to complete at least the equivalent of one half of a full-time Member's caseload.

### **Part-time Members**

44. Senior Members determine the pattern of attendance of part-time Members and, in consultation with the Principal Member, set the total number of attendance days in a year, having regard to the availability of cases, the Member's preferred work pattern and the Member's performance and ability to meet time standards.
45. There may be variations from time to time in the amount of work made available for individual part-time Members, and there may need to be adjustments to the number of attendance days over the year. As much notice as possible will be given to part-time Members of any reduction in the days approved for them.

### **Time standards**

46. The Tribunals aim to resolve all applications for review as quickly as possible. The Tribunals' time standards are:
  - **Bridging visa (detention) cases** - 7 working days from lodgement to decision.
  - **Protection visa cases** - 90 calendar days from receipt of the Department's documents to decision.
  - **MRT visa cancellation cases** - 150 calendar days from lodgement to decision (and 90 calendar days from constitution to decision).
  - **All other MRT cases** – 350 calendar days from lodgement to decision (and 150 calendar days from constitution to decision).
47. The Tribunals aim to decide at least 70% of cases within these time standards. This recognises that some cases will be unable to be decided within the standards. For example, more than one hearing may be required; hearings may need to be rescheduled for reasons beyond the Tribunal's control; the applicant may request further time to obtain evidence or make a submission; new information may become available; or another body or agency may be required to provide a report or assessment.

### **Reporting and record keeping**

48. The Caseload Strategy Section is to maintain copies of all constitution schedules.
49. The Caseload Strategy Section is to provide high level strategic analysis and reports on national caseload issues to the Board on a monthly basis.

This Direction replaces Principal Member Direction 1/2009 with effect from 15 July 2010.

A handwritten signature in black ink, appearing to read 'Denis O'Brien', written in a cursive style.

Denis O'Brien  
Principal Member  
15 July 2010

**Bandwidth of cases to be allocated annually depending on proportion of MRT and RRT cases**

