



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

PRINCIPAL MEMBER DIRECTION – 1/2007

[Date of issue: 31 January 2007]

Principal Member Direction 1/2007 (in effect from 31/01/2007).

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

MANAGEMENT OF DETENTION CASES

Definitions

the Act means the *Migration Act 1958*

the ASA means the Agency Security Advisor

bridging visa (detention) means an application for review of a decision to refuse to grant a bridging visa, or of a decision to cancel a bridging visa, where a person is in immigration detention because of that refusal or cancellation.

the Department means the Department of Immigration and Citizenship

Detention Service Provider means the service provider contracted by the Department to deliver detention services.

immigration detention is defined in Section 5 of the Act and extends to persons covered by *residence determinations* (see s.197AC)

the MRT means the Migration Review Tribunal

the Regulations means the Migration Regulations 1994

the RRT means the Refugee Review Tribunal

the Tribunals means the Migration Review Tribunal and the Refugee Review Tribunal

Introduction

1. The purpose of this Direction is to encourage Members and staff to take all reasonable steps to finalise detention cases at the earliest possible time. This document also provides guidance on the identification of issues relevant to detention cases and sets out the arrangements that the Tribunals have in place to minimise the risk of security incidents.
2. The Tribunals give the highest priority (Priority 1) to cases involving a person being held in immigration detention.
3. Applicants in an alternative place of detention under s.5(b)(v) of the Act, such as in an approved residential housing project, hospital/nursing home or a hotel/motel, and applicants under residence determination arrangements (under s.197AB of the Act) residing at a specified place, are legally regarded as being in immigration detention.
4. The Tribunals make every effort to ensure that applicants for review are not disadvantaged in their capacity to participate in the review process by virtue of the fact

that they are in immigration detention.

5. Members and staff are to be mindful of the impact detention may have on individuals and their families, and endeavour to finalise reviews relating to persons in immigration detention without delay, subject to compliance with procedural fairness requirements.
6. The Tribunals are committed to providing a safe and secure environment for Members and staff and for applicants and visitors to the Tribunals.

Expediting review of detention cases

7. All detention cases must be initiated in the Tribunals' Case Management System, CaseMate, on the same day the application is received or on the following working day if the application was received via facsimile on a weekend or after close of business. Once a case is progressed past the 'Case Initiation' stage in CaseMate, the Department is automatically notified of the lodgement (and this also generates a file request within the Department). The agreed time-standard for the receipt of the Departmental file is 2 working days.
8. While Departmental files relating to persons in immigration detention are requested automatically, in order to facilitate the prompt receipt of files the Tribunals will send an email advising receipt of the application, to the Compliance Section of the Department, which is copied to the delegate concerned. The Tribunals will proactively contact relevant areas within the Department to follow-up outstanding file requests until the matter is resolved.
9. Pending the arrival of the Departmental files, constitution of the Tribunal will be arranged, and a case team allocated. In bridging visa (detention) cases, the case team will contact the Member to settle a hearing date, schedule the hearing in CaseMate, advise the applicant, the Department and the Detention Service Provider of the hearing date, and arrange an interpreter if required.
10. The Act and Regulations contain express provisions which promote expeditious reviews relating to persons in immigration detention. These include:
 - prescribed periods to comment or give additional information;
 - prescribed periods relating to the period of notice that must be given if the applicant is invited to appear before the Tribunal;
 - prescribed periods for deciding the review of bridging visa (detention) cases.
11. The Regulations also make special provision in regulation 5.02 for the service of documents on persons in immigration detention. Under this provision, any document to be served on a person in immigration detention may be served by giving it to the person himself or herself, or to another person authorised by the person in detention to receive documents on his or her behalf. In practice the Tribunals sends documents to the relevant immigration detention centre or facility by electronic communication and an officer at the centre or facility arranges for the document to be handed to the person in detention.
12. Where the person in detention has appointed an authorised recipient, the Tribunals will send the correspondence to the authorised recipient as well as arranging for a copy to be handed to the applicant. Wherever possible, correspondence is sent by facsimile (see PMD 2/2005 – 'Efficient Conduct of MRT Reviews' and PMD 3/2005 – 'Efficient

Conduct of RRT Reviews’).

13. To facilitate the finalisation of bridging visa (detention) cases as quickly as possible within the statutory time frame, Registry staff may provide greater administrative assistance to Members than that provided in standard cases. Registry staff will generally prepare a decision template for the consideration of the Member.

Security arrangements

14. The Tribunals’ security policies and procedures are set out in the ‘Emergency & Security’ page which can be accessed via a prominent link on the homepage of *express*. This includes a general description of security arrangements, which as at the date of issue of this PMD, provided as follows:

General Security Arrangements

Members and staff should be acquainted with the Tribunals’ *Security Plan 2005* and related security policies and procedures (available from this page).

All Members and staff have a responsibility to report security incidents and risks. It is important that reporting occurs even if the immediate incident is quickly resolved, as it is important to collect information on all incidents so that assessments of risks, threats and vulnerabilities can be updated, and so that procedures are reviewed and training needs identified. Security incidents include medical emergencies; building emergencies; threats or violence; aggressive or threatening behaviour; damage or theft to property; unauthorised access to premises or to confidential information; alarms; loss or theft of passwords, codes, keys or access cards; unlocked or faulty security doors.

The Tribunals recognise that stress related to the migration process, being in immigration detention or other factors may result in occasional incidents on the Tribunals’ premises such as threats to the safety and well being of Members and staff or the general public; self harm; or attempted escapes. Although the likelihood of serious threat has been assessed as generally low, it is important that the Tribunals have security arrangements in place which are not compromised by complacency.

The Tribunals use access control systems, have surveillance cameras in public areas and network storage areas, and have duress alarms fitted in reception areas and in hearing rooms. The duress alarms are tested regularly and Members and staff using public areas should be familiar with the correct operation of the duress alarms.

All Members and staff are asked to be vigilant. Any concerns about a person who does not appear to have a reason for being on the Tribunals’ premises should be reported to a supervisor or manager who will then decide on the appropriate course of action. Reception staff offer assistance to persons who do not report to reception, so as to increase awareness of who is in the public areas.

Members and staff who become aware of evidence of any psychological, behavioural or health issues of an applicant or other person which may impact on security or the safety of that person or others on the Tribunals’ premises, must bring the information to the attention of a Senior Member or senior manager as soon as possible.

Where an immediate or significant incident or risk is identified, it should be reported in person to the manager who is responsible for the particular area of work where the incident occurred or the risk was identified. If that person is unavailable, or where the seriousness of the incident or potential risk warrants it, the matter should be reported to the Registrar, Deputy Registrar, District Registrar, Senior Member and/or ASA. Members and staff should not hesitate to call ‘000’ in an emergency.

Whenever an incident occurs it should be recorded on a *Security Incident and Risk Report* which is to be submitted to the ASA.

All Members and staff should be mindful of OH&S issues and their personal safety and the safety of others. Members and staff are required to report any OH&S incident and/or injury in writing. An 'OH&S Incident Form' is available for this purpose.

The Safety and Rehabilitation Co-ordinator in Human Resources provides information and assists with health and safety issues. The Tribunals also provide access to an employee assistance program (Access EAP) to all Members and staff of the Tribunals which can be accessed to provide counselling and support following an incident.

The Business Services Section has responsibilities in relation to security issues, including maintaining information and records.

Specific security arrangements for persons in immigration detention

15. Every effort should be made to schedule a hearing for a person in immigration detention in a designated hearing room at a non-peak time.
16. The Tribunals receive weekly reports detailing any concerns about persons expected to appear before the Tribunals in the following week. Any concerns or special requirements will be discussed, as appropriate, with the Member, the relevant Senior Member, senior staff and the ASA.
17. The Tribunals aim to conduct face-to-face hearings on the Tribunals' premises wherever possible in cases where the person is in detention in Sydney or Melbourne. However, it may be appropriate in some circumstances, such as in instances where the Detention Service Provider and the Department indicate that security considerations warrant it, to consider whether a hearing should be held by video or by telephone, or in the detention centre or at some other location. Where the person is in detention outside Sydney or Melbourne, the hearing will generally be conducted by video-link.
18. The direct responsibility for the care and security for persons in immigration detention who are on the Tribunals' premises, rests at all times with the Department and the Detention Service Provider.
19. The Detention Service Provider has procedures for maintaining security and custody of all persons in immigration detention appearing at the Tribunals. Security guards will wait with applicants in designated waiting areas and ensure that applicants are kept in close proximity at all times and that any contact with other persons is adequately supervised. Applicants may have representatives or friends and family present, and there may be a need to request the assistance of the interpreter booked for the hearing to assist with communication.
20. Security guards provided by the Detention Service Provider accompany all persons in immigration detention who appear before the Tribunals. The security guard(s) will normally be in the hearing room for MRT hearings. In the case of RRT hearings, the security guards will be present during the opening of a hearing, but will wait immediately outside the hearing room during the hearing, and return at the closing of the hearing, and on any occasion where the Member calls an adjournment. The security guards have an access card to open hearing room doors where a room is locked for a private hearing.

21. In some RRT cases the Member may decide that it is appropriate for a security guard to remain in the hearing room while an applicant is giving evidence. In some MRT cases the Member may decide it is not appropriate for a security guard to be present in the hearing room while an applicant is giving evidence. The Member should weigh up the desirability of persons being able to give evidence (confidentially and privately) against any perceived risk to the Member, staff or the general public.

Steve Karas
Principal Member

Date 31 January 2007