



Australian Government
Refugee Review Tribunal

PRINCIPAL MEMBER DIRECTION – 1/2012

[Date of issue: 6/02/2012]

Principal Member Direction 1/2012 (as amended 15 March 2012).

This is a Principal Member Direction made under section 420A of the *Migration Act 1958* (the Act). This Direction applies to the Refugee Review Tribunal.

COMPLEMENTARY PROTECTION

Definitions

the Act means the *Migration Act 1958*

the RRT means the Refugee Review Tribunal

1. This Direction provides guidance to members dealing with RRT cases in relation to the commencement of the new complementary protection criteria in s.36(2)(aa) and related provisions. The new criteria will commence on a day fixed by proclamation or 6 months after Royal Assent (that is, by 14 April 2012).

Deciding protection visa reviews

2. The anticipated introduction of complementary protection criteria into the Act is not a reason in itself to delay making a decision on a protection visa review. To the contrary, RRT cases that can be decided before the commencement date should be decided before that date.

Raising the issue of complementary protection

3. Members should take care in deciding whether or not to raise issues relating other than to the criterion in s.36(2)(a) concerning protection obligations under the Refugees Convention with an applicant before the commencement date. If such issues are raised, members should convey to the applicant whether it is in the context of considering a referral to the Department for consideration under Ministerial intervention guidelines or consideration of the complementary protection criteria on or after the commencement date.
4. If a case can be decided before the commencement date, there is no obligation on the RRT to explain the changes to the applicant.
5. Any case that is unresolved on or after the commencement date will be subject to the new complementary protection criterion in s.36(2)(aa). The RRT must, if satisfied that the applicant is not owed protection obligations as a refugee under s.36(2)(a), consider

whether the applicant meets the complementary protection criterion in s.36(2)(aa).

6. If it is anticipated that an RRT case will not be finalised by the commencement date or when it is known that a case cannot be decided by that date, the need to deal with complementary protection as an alternate criteria should be a consideration in the conduct of the review.
7. If it appears that a case will not be finalised by the commencement date and the evidence before the tribunal suggests that issues relevant to the complementary protection criterion may arise, then the member may, prior to that date, invite the applicant to address issues relating to complementary protection at hearing or invite an applicant to comment on or respond to adverse information which relates to the complementary protection criterion. However, members should make clear to applicants that these are matters that will only apply if the member has not made a decision by the commencement date.

The need for a further hearing

8. In cases where the tribunal has already conducted a hearing and that matter is unresolved on the commencement date, if there is evidence before the tribunal which indicates that a complementary protection claim may be raised, a further hearing may need to be held to ensure that the applicant has an opportunity to give evidence and present arguments relating to any issue that may be raised in relation to the new complementary protection criteria.

Referral of cases to the Department for Ministerial intervention

9. Any unique or exceptional circumstance that warrants referral of a case to the Department for consideration under ministerial intervention guidelines should continue to be referred in the usual way.

Information about complementary protection issues

10. Members should refer to the *Complementary Protection Training Manual* for information about the new complementary protection criteria.



Denis O'Brien
Principal Member

Date 6 February 2012