



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

PRINCIPAL MEMBER DIRECTION – 2/2009

[Date of issue: 24 November 2009]

Principal Member Direction 2/2009 [in effect from 24 November 2009, replacing Principal Member Direction 3/2007].

This is a Principal Member Direction made under sections 353A and 420A of the *Migration Act 1958* (the Act) to provide guidance on amendments made by the *Migration Amendment (Review Provisions) Act 2007*. These amendments apply to applications for review made to the Migration Review Tribunal and the Refugee Review Tribunal (the tribunals) on or after 29 June 2007.

PUTTING ADVERSE INFORMATION ORALLY TO APPLICANTS

1. This Direction provides guidance to members of the tribunals about the putting of adverse information orally to applicants.

Requirement to act in a way that is fair and just

2. In reviewing a decision a member is required to act according to substantial justice and the merits of the case (sections 353 and 420 of the Act). The Act also requires that, in applying the procedures set out in the Act for the conduct of a review, members must act in a way that is fair and just (sections 357A and 422B). The requirement to act in a way that is fair and just in conducting a review should be considered when deciding what course or steps to take in the conduct of a review.
3. In the conduct of hearings, members are to comply fully with procedural fairness requirements. Hearings must be conducted courteously, in an informal way, and must provide a genuine opportunity for the applicant to present his or her case and to address all issues relevant to the assessment of the review application.

Statutory obligation to put adverse information to an applicant

4. Each tribunal has a statutory obligation to put to an applicant information which the tribunal considers would be the reason or part of the reason for affirming the decision under review, unless the information falls within an exception in section 359A(4) or 424A(3).
5. The information may be put to the applicant in writing in accordance with the requirements of section 359A or 424A or orally at a hearing in accordance with the requirements of section 359AA or 424AA.

Putting information orally

6. If you decide to put the information orally to the applicant, you must comply with the procedure in section 359AA or 424AA. If you do not comply with all the requirements of section 359AA or 424AA, section 359A(3) or 424A(2A) will not be engaged and you will be obliged to put the information to the applicant in writing in accordance with the requirements of section 359A(1) or

424A(1).

7. If you decide to put the information orally to the applicant, you need to give the applicant sufficient details of the information, explain the relevance of the information sufficiently well for the applicant to understand it and explain the consequences of the information for the applicant's case. You must also orally invite the applicant to comment on or respond to the information and advise the applicant that he or she may seek additional time to comment or respond.

Adjournment of the review

8. If the applicant seeks additional time to comment on or respond to information you have put to the applicant, you must adjourn the review if you consider that the applicant would reasonably need that additional time.
9. Sections 359AA and 424AA do not provide a minimum or maximum period for adjournment. In the light of the requirement that the tribunal act in a way that is fair and just in applying the respective Divisions, members should allow a minimum period that is reasonable in the circumstances of the particular case, bearing in mind that they first have to be of the view that the request for more time is reasonable.
10. In considering whether a request for additional time is reasonable, you should take into account a range of factors, including the applicant's interests, capacity and particular circumstances; the nature and complexities of the case; whether the information that the applicant requests more time to comment on or respond to is information that he or she should have been prepared to deal with in the first place; whether or not the applicant has a representative or assistant; what additional time is sought; what difficulty there may be for the applicant in obtaining evidence or information to enable comment on or a response to the information; whether the comment or response is to be made orally or in writing; the particular circumstances of the case; and the requirement to act in a way that is fair and just.
11. If you consider that it is not reasonable to give the applicant additional time to comment or respond, you should explain in your decision why an adjournment was not granted.
12. If additional time for comment or response is granted, the applicant may, at his or her option, choose to comment or respond orally or in writing. If the comment or response is to be given orally, a further hearing time will need to be arranged for you to receive the response. The applicant may indicate that he or she does not wish to be heard further but requires the additional time to provide you with further documents. If this is the case, you should still formally adjourn the review. Following the adjournment you should write to the applicant confirming arrangements for the provision of the applicant's comment or response.

Combined applications

13. When conducting hearings involving applications for review that are combined under the Migration Regulations, you must ensure that you meet the above procedural fairness requirements in relation to each applicant for review. If you exercise the power under section 359AA or 424AA, an individual invitation must be issued orally to all review applicants who attend the hearing. If a review applicant does not attend the hearing, you should issue a section 359A or 424A letter to that applicant in relation to information covered by those sections.



Denis O'Brien
Principal Member

24 November 2009