



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

PRINCIPAL MEMBER DIRECTION – 2/2010

[Date of issue: 23/12/ 2010]¹

Principal Member Direction 2/2010 (in effect from 23 December 2010).

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

This Principal Member Direction is made pursuant to sections 353A and 420A of the *Migration Act 1958*. This direction replaces PMD 1/2007, Management of Detention Cases, dated 31 January 2007.

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 remind 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 to cases involving a person being held in immigration detention.
3. Applicants in another place of detention as approved by the Minister under paragraph (b)(v) of the definition of *immigration detention* in 5(1) of the Act, such as an approved residential housing project, hospital/nursing home or a hotel/motel, and applicants

¹ Updated as of 30 August 2011 to provide reference to new Principal Member Directions 1/2011 and 2/2011.

under residence determination arrangements (under section 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 on a weekend or after close of business. Once the 'Case Initiation' workstep is completed in CaseMate, the department is automatically notified of the lodgement and a request for documents is generated. The agreed time-standard for the receipt of the departmental file is 2 working days.
8. Departmental documents relating to persons in immigration detention are requested automatically. In addition, to facilitate the prompt receipt of the department's documents, the tribunals will send an email advising receipt of the application, to the Compliance/Case Resolution section in the department office where the primary decision was made with a copy to the delegate concerned. The tribunals will contact the Compliance/Case Resolution Manager in the department office where the primary decision was made to follow up outstanding requests until the matter is resolved.
9. Pending the arrival of the departmental documents, the tribunal will be constituted 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.
 - The Regulations also make special provision in regulation 5.02 for the service of documents on persons in immigration detention – 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.

The process for corresponding with and/or notifying applicants in detention will vary depending on the location of the applicant and the type of facility in which the applicant resides (ie. Immigration detention centre or an alternative place of detention) and whether there are compliance/case resolution staff on hand.

For example, for applicants residing at the Villawood Immigration Detention Centre, the tribunals send documents to the detention centre by email and an officer at the centre arranges for the document to be handed to the person in the immigration detention centre or alternative place of detention as per the 'Correspondence and notification procedures for applicants in detention in NSW' procedure.

If there are no department compliance/case resolution staff located at the immigration detention centre or facility, such as at the Maribyrnong and Perth Immigration Detention Centres or if the applicant is in an alternative place of detention in Victoria or Western Australia please refer to procedures for 'Correspondence and notification procedures for applicants in detention in Victoria or Western Australia.

11. If a 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 1/2011 – 'Efficient Conduct of MRT Reviews' and PMD 2/2011 – 'Efficient Conduct of RRT Reviews').
12. 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

13. The tribunals' security policies and procedures are set out in the 'Emergency & Security' intranet page which members and staff may access via a prominent link on the intranet homepage. 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. The tribunals use access control systems, have surveillance cameras in public areas and network storage areas, and duress alarms are fitted in reception areas and in hearing rooms. The duress systems are tested regularly and members and staff using public areas should be familiar with the correct operation of the duress alarms.

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 security arrangements in place are not compromised by complacency.

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 are expected to offer assistance to persons who do not report to reception, thereby increasing 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 incident or risk is identified, it should be reported orally 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, immediate guidance from the Registrar, Deputy Registrar, District Registrar, Senior Member and/or ASA should be sought. Members and staff should:

- not hesitate to call '000' in an emergency
- alert immediate managers and colleagues of any current incident or issue where assistance is needed or which could impact on health and safety of Members, staff and clients
- alert the Registrar, Deputy Registrar, Assistant Director, Business Services and the responsible District Registrar of incidents as soon as practical

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.

Specific security arrangements for persons in immigration detention

14. Every effort should be made to schedule a hearing for a person in immigration detention in an appropriate hearing room at a non-peak time.
15. A security assessment report must be requested and obtained from the Immigration Detention Centre in advance of any hearing involving a detainee.
16. Any concerns or special requirements arising from the security assessment report may be discussed with the member, the relevant Senior Member, senior staff and the ASA. This includes arrangements for all applicants who have a detention centre risk assessment of “high” or “extreme”. The type of arrangements will depend upon the nature of the risk and whether or not the hearing is in person or via video conference. Special arrangements may include:-
 - hiring a private security guard to be present for the duration of the hearing;
 - notifying the applicant that they may bring a support person to sit in the hearing with him or her;

- giving careful consideration to the selection of hearing attendant and interpreter;
 - holding a pre-hearing briefing with staff selected to provide support during the hearing;
 - placing a first aid officer on standby; and
 - requesting that the hearing attendant remain in the hearing room for the duration of the hearing.
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.
 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. Detention Service officers 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. Staff of the Detention Service Provider accompany all persons in immigration detention who appear before the tribunals. Subject to the member's wishes, the Detention Service officer/s will be in the hearing room 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 Detention Service officers have an access card, issued on arrival, to open hearing room doors where a room is locked for a private hearing.
 21. In some cases the member may decide that it is appropriate for a Detention Service officer to remain in the hearing room while an applicant is giving evidence. In some cases the member may decide it is not appropriate for a Detention Service officer to be present in the hearing room while an applicant is giving evidence. The member should weigh up the need for persons to be in an environment where they are able to give evidence about sensitive personal matters and or about events which if disclosed could result in harm to the applicant or other persons against any risk to the member, staff or the general public.
 22. Where a person is in detention outside Sydney or Melbourne, the hearing will generally be conducted by video-conference. The arrangements for such hearings should ensure that there is capacity to respond to an emergency. Local staff and Detention Service officers should be advised of the availability of duress alarms or other local emergency

arrangements. Preferably, at least one Detention Service Officer should be present during the hearing, or keeping the room under observation if a viewing panel is available. If the member considers that it is not appropriate for a Detention Service officer to be present, the member should discuss arrangements with his or her Senior Member, the District Registrar and the ASA. Options include establishing contact arrangements so that mobile phone contact can be made with Detention Service officers, or the tribunals engaging a security guard who is not connected with the detention centre.

Denis O'Brien
Principal Member

Date 23 December 2010