



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

PRINCIPAL MEMBER DIRECTION – 3/2011

[Date of issue: 28 July 2011]

Principal Member Direction 3/2011 (in effect from 28 July 2011)

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

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 Direction 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. 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 are required 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. There was a significant increase in lodgements in 2010-11. RRT lodgements (2,966) were 31% higher than in 2009-10 and MRT lodgements (10,314) were 24% higher than in 2009-10. The tribunals started the 2011-12 financial year with 1,100 RRT cases on hand and 10,786 MRT cases on hand.
6. The tribunals expect to receive over 3,000 RRT lodgements and over 10,000 MRT lodgements in 2011-12. The major challenge for the tribunals in the next few years will be to reduce the number of MRT cases on hand while continuing to meet the requirement to decide RRT cases within 90 days whenever possible. This Direction sets out the arrangements for the constitution of the tribunals and the allocation of cases to members. The Direction is based on the tribunals achieving the following objectives:

- giving priority to cases in accordance with the legislation and if individual circumstances warrant;
 - delivering quality outcomes in relation to both decision-making and the timeliness of reviews;
 - maintaining independence and impartiality in decision-making;
 - deciding at least 11,500 cases in 2011-12.
7. Achievement of these objectives requires:
- members conducting both MRT and RRT reviews as required;
 - experienced members aiming to make decisions around the mid-point of the bandwidth for the member's case mix.

Priorities

8. The following cases have priority for constitution:
- cases involving persons being held in immigration detention;
 - all protection visa cases;
 - all visa cancellation cases (including non-revocation student cancellation cases);
 - close family 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;
 - 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.
9. 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 batches of cases involving similar issues to be allocated to members in a targeted way on the basis of the members' knowledge and experience of particular issues or countries. Batching enables members to work more efficiently and allows the tribunals to deal with a greater volume of cases.
10. Registry staff will identify all cases which fall into the priority categories listed in paragraph 8. 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.
11. All bridging visa (detention) cases are to be constituted immediately after lodgement of the application for review.
12. All other cases from applicants in immigration detention are to be constituted within two working days of the lodgement of the application for review, including cases where the department's documents have not yet been received.
13. All other priority cases are to be actioned for constitution as soon as possible.
14. 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.

15. 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).
16. Members and staff 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

17. 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.
18. 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).
19. 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. A constitution minute is to be placed on file as a record of the constitution.
20. 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.
21. 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.
22. A member may be constituted a particular range of cases based on a member's knowledge and experience e.g. cases involving a particular visa subclass or issues. While cases will be allocated based on MRT and RRT operational requirements, member preferences will be taken into account as far as possible. Generally, the more complex and sensitive cases are to be constituted to the Principal Member, the Deputy Principal Member or a Senior Member.
23. Subject to the availability of members and the caseload in each location, cases are to be constituted to a member in the location most convenient for the conduct of the review.
24. 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.
25. The RRT may only be constituted by one member. The MRT will be constituted by one member, unless otherwise directed by the Principal Member. If the MRT is constituted by two or three members, the presiding member will be identified pursuant to section 357.

The reconstitution of the tribunal

26. 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).
27. 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.

28. 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.
29. 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.
30. The reasons for reconstituting the tribunal in relation to a particular case will be included in the case record.

Preparation of constitution schedules

31. 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.
32. 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.
33. While constitutions will be conducted regularly, constitutions in respect of detention cases will be considered as soon as possible.
34. 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

35. To ensure that 11,500 decisions are made in 2011-12, the tribunals need to decide on average 960 cases each month.
36. All members are expected to perform at their highest possible level. Members are to negotiate an agreed decision level for the year with their Senior Member. Members who have been with the tribunals for more than 12 months should aim to decide annually the number of cases that is equivalent to the number represented by the mid-point relevant to their case mix of the bandwidth range set out in the attached chart.
37. For 2011-12 the bandwidth has been adjusted to reflect an increase in the time required to deal with RRT cases and the increased proportion of student cases in the MRT caseload. The number of RRT reviews to be finalised annually at the mid-point of the bandwidth by an experienced member with all RRT cases has reduced from 128 to 120, while the number of MRT reviews to be finalised annually at the mid-point of the bandwidth by an experienced member with all MRT cases has increased from 178 to 188 (see Table 1).

Table 1: Mid-point of decision bandwidth for experienced members based on case mix

	Bandwidth mid-point based on proportion of MRT and RRT cases				
	100% MRT	75% MRT 25% RRT	50% MRT 50% RRT	25% MRT 75% RRT	100% RRT
Full-time member	188	171	154	137	120
Part-time member (4 days/week)	150	137	123	110	96
Part-time member (3 days / week)	113	103	92	82	72
Part-time member (2 days/week)	75	68	62	55	48

38. In their first 12 months, new members should aim to decide about 70% of an experienced member's target.
39. Senior Members provide guidance and assistance to their members and manage their performance in terms of case management and decision output.
40. Senior Members manage the following in relation to the members in their teams:
- the total number of days a part-time member will work over the year, and his or her general pattern of attendance;
 - case mix and decision targets;
 - the number of active cases which can be allocated to a member; this must be consistent with their annual decision target;
 - any conflicts of interest which may affect the allocation of cases;
 - any particular types of cases a member can deal with expeditiously, or in which he or she has particular knowledge and experience.
41. 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.

Time standards

42. 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).

43. 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, a backlog of cases may prevent a standard being met, 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

44. The Caseload Strategy section is to maintain copies of all constitution schedules.
45. The Caseload Strategy section is to provide high level strategic analysis on national caseload issues to the Board on a monthly basis.

This Direction replaces Principal Member Direction 1/2010 with effect from 28 July 2011.



Denis O'Brien
Principal Member

28 July 2011

**Decision bandwidths for members
depending on days per week and proportion of MRT and RRT cases**

