

Tabled Document 2

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MRT-RRT

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Australian Government

Migration Review Tribunal • Refugee Review Tribunal

PRINCIPAL MEMBER DIRECTION 2 /2012

APPLICATIONS FOR REVIEW MADE BY OFFSHORE ENTRY PERSONS

Objectives

1. This Principal Member Direction (PMD) provides guidance on the constitution and processing of cases involving offshore entry persons.

Background

2. This PMD is made pursuant to 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 staff.
3. The Minister for Immigration and Citizenship announced on 19 March 2012 that offshore entry persons would generally be permitted to apply for a protection visa. Offshore entry persons, also referred to as irregular maritime arrivals, are prevented by section 46A of the *Migration Act 1958* from making a valid visa application unless the Minister determines it is in the public interest to permit an offshore entry person to do so.
4. The Minister announced that the new arrangements will apply to offshore entry persons who arrived in Australia on, or after, 24 March 2012 or who arrived prior to that date but had not yet had a primary assessment interview.
5. The RRT has jurisdiction to review a decision to refuse to grant a protection visa. Any offshore entry person who is the subject of such a decision and, who is physically present in Australia, may apply to the RRT for a review of that decision.
6. Offshore entry persons may be in immigration detention or living in the community on a bridging visa. Immigration detention includes being in an immigration detention facility ('held detention') or living in the community under a residence determination order ('community detention').
7. This PMD should be read in conjunction with PMD 3/2011 *Caseload and Constitution* as modified below.

Modification to priorities set out in PMD 3/2011 *Caseload and Constitution*

8. PMD 3/2011 *Caseload and Constitution* currently provides that the tribunal will be constituted for a bridging visa detention case immediately after lodgement of the application for review. All other cases involving applicants in immigration detention are to be constituted within 2 working days of lodgement of the application for review.

9. It is anticipated that the changes outlined above will lead to a significant increase in the number of cases involving applicants in immigration detention and that offshore entry persons will often be detained in places which are remote from the tribunal's premises. As such, the period within which the tribunal is to be constituted in cases (other than bridging visa cases) involving offshore entry persons in held detention, is increased to 5 working days, or such longer time as is necessary to arrange for the case to be allocated to a member who is available to conduct a hearing.
10. Cases (other than bridging visa cases) involving offshore entry persons who are living in community detention are to be constituted within 14 working days of lodgement of the application for review.
11. Protection visa cases involving offshore entry persons who are the holders of bridging visas will be given the same priority as all other protection visa cases and be actioned for constitution as soon as possible.
12. Generally, cases are to be constituted in order of date of lodgement subject to any directions of the Principal Member for batches of cases involving similar issues to be allocated to members in a targeted way. The tribunals will consider on a case by case basis whether cases involving special circumstances, for example, those involving unaccompanied minors and families, should be further expedited.

Hearings

13. Hearings are to be conducted in person on tribunal premises wherever possible. If this is not possible, hearings will be conducted by video link, wherever suitable premises and appropriate video conferencing facilities are available. If such facilities are not available, hearings may be conducted in person in other locations or by telephone. Further information on hearing arrangements is provided in PMD 2/2010 *Management of Detention Cases*.



Denis O'Brien
Principal Member

Date: 7 May 2012