

## What to expect at the Tribunal?

This factsheet is for people who have the right to a merits review hearing with the Administrative Appeals Tribunal (AAT). This is mainly people who arrived by plane, although it can include some people who arrived by boat to Australia.

This factsheet is for people who have received a negative decision from the Department of Home Affairs (the 'Department') and who have appealed to have that decision reviewed by the AAT.

### What is the AAT?

The AAT is an independent statutory body set up to review decisions made by the Department about whether to grant a Protection Visa.

The people who make decisions in the AAT are called 'members' and are similar to judges. Members are appointed by the Government.

Hearings are similar to court hearings but are more informal. You are not required to have a lawyer or other legal representative at your hearing. Many applicants at the AAT do not have lawyers with them.

### Review

Generally speaking, the AAT hearing is your last chance to present your case for protection to the Australian government.

Read over your application for a Protection Visa very carefully.

It is very important that you read over your statement that explains why you fear returning to your country of origin.

You should also read the Department decision for your case and write down all the reasons why you think the Department decision is wrong.

You may want to submit the statement of your reasons to the AAT before your hearing or you may want to explain your reasons at the hearing.

You should have been given a copy of your Department interview recording. Listen to the recording before the interview so that it refreshes your memory about what you have already said at the interview.

If there is anything said at the interview which is wrong or inaccurate, or any inconsistencies, write these down. You can either put this in a statement to the AAT before the hearing or tell the AAT at the hearing itself. It is important that the AAT knows about any information that is inaccurate or inconsistent and why.

### New information or evidence

Since your Department interview took place, changes might have happened in your life which are relevant to your claims for protection.

For example:

- Changes to your personal situation in Australia (you may have changed religions; you may have started a new relationship; you may have joined a political party or organisation);
- Contact with friends or family members in your home country;
- The general situation may have changed in your home country;

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- You may have obtained new documents or evidence to support your case.

The AAT is able to consider any new information or evidence that you submit, even if this was not seen previously by the Department. This is because the AAT is making a fresh decision about your case.

If you do have new information to add to your case, or if you want to make any changes to your application, try to do so before the hearing date and submit this information in writing to the AAT.

If you are not able to do this before the hearing date, tell the AAT member at the start of your hearing.

It is important to be clear and consistent at the hearing. Make sure that you have clearly thought about what has happened and when.

At the hearing you will be asked for details of events that you have described in your statement. Try to answer their questions as directly and comprehensively as possible.

It is important to be clear and consistent. This includes what you have written in your statement, what you said in your Department interview and what you will say at the hearing.

### Will the AAT have all the information about my case?

The AAT will have the Department file containing your application for a Protection Visa, your Department interview record and all other information or evidence you have submitted to the Department.

The AAT may also have files which contain any previous visa applications you have made to the Department. They will also have any information you submit to the AAT directly.

### Do I need to bring anything to the hearing?

You may want to bring the letter inviting you to the hearing. You will also need to bring your photo identification. This is usually your passport or your national ID card from your country of origin.

You may also want to bring any original documents you want to give to the AAT that is not already in your Department file.

### Who will be at the hearing?

The person interviewing you will be an AAT Member and he or she will be making the decision in your case.

You can address that person as 'Member'. They will need to decide whether or not you are a refugee.

In making this decision, they will need to consider:

- The definition in the United Nations 1951 Convention; and
- The definition in the 1967 Protocol Relating to the Status of Refugees; and
- Consider whether you are owed 'complementary protection'. This means they will consider whether there are substantial reasons to think that you would be subjected to significant harm in your country of origin.

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There may also be an interpreter if you have requested one.

You can also request to have another person at the hearing. For example a support person or friend. You must tell the AAT before the hearing if you want to bring someone else with you to the hearing.

The hearing attendant will go through with you the formalities before the Member is brought into the room. The hearing attendant leaves the room once the hearing starts and does not take part in the proceedings.

### What happens during the hearing?

#### **Before the Hearing**

Before the hearing starts, the hearing attendant will confirm who you are and explain to you the process.

The hearing attendant will ask you for your photo identification and will ask whether or not there are other documents you would like to submit to the AAT before the hearing.

The hearing will be recorded but it will be kept private and confidential.

The hearing attendant will ask you whether or not you would like to take an oath on a holy book or an affirmation (a promise to tell the truth). The interpreter will also be asked this as well.

The hearing attendant will leave the room to go and get the Member.

When the Member enters the room, you and the interpreter must stand up. You may sit down again when the Member sits down.

The hearing attendant will administer the oath or affirmation to the interpreter and then to you.

The hearing attendant will then check whether the recording equipment is working and then leave the room.

#### **The Hearing**

The Member will start the hearing and explain to you the role of the AAT, the interpreter and grounds for protection in Australia.

The issue the AAT must consider is whether or not you are owed protection obligations by Australia.

If there are problems with the interpreter during the course of the hearing you should tell the Member immediately.

It is important that the information you give or tell the Member is accurate. It is also important that you are able to understand the Member and that the Member can understand you.

The interpreter has no part in the decision that is made. They are only there to help with communication between yourself and the Member.

If there is nothing else you would like to add before the hearing starts, the Member will ask you some questions about why you fear returning to your country of origin.

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The Member will ask you questions about:

- The events which you have included in your statements;
- What you may have said at the Department interview; and
- Talk to you about other information that they may have.

If you do not understand a question, it is important that you tell the Member that you do not understand. If you cannot remember an event very clearly, tell the Member.

Be sure of your answers before you start speaking, as you will be recorded.

The Member may tell you that he or she has information that does not support your claims to protection.

It may seem like the Member does not believe your evidence, but this is not necessarily the case. The Member is raising these issues with you to be fair and to allow you to respond to the information.

You may respond to this information at the hearing but you may want to respond at a later date in writing. If the issues are quite complicated, it may be best to have more time to think about your response. You must tell the Member which method of responding you would prefer.

In considering your response you may want to ask the member where they obtained the information from and why it is relevant to your case.

If you decide to respond in writing at a later date, the Member will assign you a date by which your response is due. The AAT will not make a decision in your case till after this date. If you decide to have another hearing, the AAT will send you another invitation for hearing.

### **End of the Hearing**

At the end of the hearing, you should ask the Member what issues arise in your case so that you have an opportunity to address them. You will then be asked if there is anything else you want to add.

It is very important that you have put all of the important parts of your case to the Member, even if they have not asked you about certain things.

Do not leave until you feel satisfied that you have told your story in full.

If you are going to provide more documents or evidence to the Member later, you should ask for the due date for these documents. This is so the Member does not make a decision until after the due date.

### **What happens once I have a decision?**

Once you have had your hearing, the Member will make a decision on your case any time after the hearing. Waiting periods for decisions vary and are influenced by a number of different factors.

The decision about your case will be sent to you in a letter.

If it is a positive decision, the decision record will say that the AAT will send ('remit') your application for

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review back to the Department for due consideration.

The Department is responsible for granting the Protection Visa once all character and health requirements have been met.

If it is a negative decision, the letter will include the reasons for the AAT's decision as to why you are not a refugee.

If you have come to this stage, we suggest that you contact Legal Aid ACT as soon as possible for further advice. You only have **35 days** from the date of the decision to file an application for judicial review at the Federal Circuit Court.

*This factsheet was originally developed by the Refugee Advice & Casework Service Sydney (RACS) ([www.racs.org.au](http://www.racs.org.au)).*

*This factsheet is a guide only and is not legal advice. While due care has been taken to ensure the accuracy of the material contained in this factsheet, Legal Aid ACT and the Refugee Advice & Casework Service Sydney cannot take responsibility for any errors or omissions.*

## Useful Contacts

### Legal Aid ACT

9.00am-4.00pm Monday-Friday

[www.legalaidact.org.au](http://www.legalaidact.org.au)

Phone: **1300 654 314**

### Migration Agents Registration Authority (MARA)

[www.mara.gov.au](http://www.mara.gov.au)

### Migration Clinic – Legal Aid ACT

[www.legalaidact.org.au](http://www.legalaidact.org.au)

Phone: **1300 654 314**

Email: [migration@legalaidact.org.au](mailto:migration@legalaidact.org.au)