



Australian Government
Department of Home Affairs

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MEMORANDUM OF UNDERSTANDING

An arrangement between

Department of Home Affairs

(incorporating its operational arm, the Australian Border Force)

(Home Affairs) ABN 33 380 054 835

and

the Administrative Appeals Tribunal (AAT)

ABN 90 680 970 626

Version:	1.0
Date:	January 2019
Comment:	Final text for each Authorised Delegate's approval
Contact:	s. 47E(d) Legal Division

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1 INTERPRETATION AND DEFINITIONS

INTERPRETATION

In this MOU, unless the contrary intention appears:

- (a) words imparting a gender include any other gender;
- (b) words in the singular number include the plural and words in the plural number include the singular;
- (c) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (d) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (f) any attachments form part of this MOU; and
- (g) any reference to days is to business days, being any day which is not Saturday, Sunday or a public holiday in Canberra.

DEFINITIONS

Unless the contrary intention appears, a term used in this MOU has the meaning shown in the table below:

AAT	Means the Administrative Appeals Tribunal.
Annex	Means an Annex made in accordance with this MOU.
Commonwealth	Means the Commonwealth of Australia.
Confidential Information	<p>Means information that:</p> <ul style="list-style-type: none">(h) has a national security classification;(i) is by its nature confidential;(j) is designated by as confidential; or(k) the recipient knows or ought reasonably to know is confidential; but <p>does not include information which is or becomes public knowledge other than by breach of the law.</p>
The Department	Means the Department of Home Affairs.

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Document	Has the meaning given in s 28 of the <i>Acts Interpretation Act 1901</i> and includes electronic records.
IAA	Means the Immigration Assessment Authority.
Minister	Means the Minister for Home Affairs
MOU	Means this Memorandum of Understanding
MRD	Means the Migration and Refugee Division of the Administrative Appeals Tribunal.
Notice	Means any advice of variation, dispute or termination of this MOU.
Participant	Means a Participant to this MOU.
President	Means the President of the Administrative Appeals Tribunal.

2 PARTICIPANTS

- 2.1 This MOU is made between:
- (a) The Department; and
 - (b) AAT in its own right and on behalf of the IAA ;
- jointly referred to in this MOU as the Participants.

3 PURPOSE AND SCOPE OF COOPERATION

- 3.1 This MOU sets out the overarching framework within which the Participants will work together.
- 3.2 The purpose of this MOU is to facilitate a consistently collaborative, productive and collegiate working relationship between the Participants.
- 3.3 This MOU assists by supporting the mutual exchange of relevant information, documents, knowledge and views between the Participants to the extent that it is required or permitted by relevant legislation.
- 3.4 When a matter is not dealt with explicitly in this MOU, it is expected that the Participants will discuss the matter and resolve it quickly in accordance with the principles established by this MOU.

- 3.5 Unless otherwise provided or apparent from the context, references to the AAT in this document covers the work of the MRD and the IAA. The other divisions of the AAT (Freedom of Information Division, General Division, National Disability Insurance Scheme Division, Security Division, Social Services and Child Support Division, Taxation and Commercial Division, and Veterans' Appeals Division) have not been considered when drafting this agreement.

4 ROLES

- 4.1 The Department's mission is to protect Australia's border and manage the movement of people and goods across it.
- 4.2 The Department, including its operational enforcement arm, the Australian Border Force manages a system of border processes that oversee the flow of people and goods into the country.
- 4.3 The AAT provides independent reviews of a wide range of decisions made by the Australian Government. The AAT reviews decisions made under Commonwealth and Norfolk Island Laws. The AAT aims to make the review process accessible, fair, just, economical, informal and quick.
- 4.4 The IAA conducts independent merits review of decisions made by the Minister, or a delegate, to refuse to grant protection visas to fast track applicants. The IAA is established within the MRD of the AAT. The IAA consists of the President, the head of the MRD, the Senior Reviewer and other Reviewers.

5 GOVERNANCE ARRANGEMENTS

- 5.1 MOU Contacts are the persons occupying the positions below:

- (a) The Department's MOU Contact Officer is:

Director, Legal Systems and Tribunal Liaison Section
Level 4 South
6 Chan St
Belconnen Act 2616
Phone:
Email: s. 47E(d)@homeaffairs.gov.au

- (b) The AAT's MOU Contact Officer is:

AAT Departmental Liaison Officer
Level 14, 83 Clarence St
SYDNEY NSW 2000
Phone:
Email: s. 47E(d)@aat.gov.au

- 5.2 The Participants agree that notices under this MOU will be sent to the Contact Officer at the addresses specified at paragraph 5.1 as required.
- 5.3 Each Participant agrees to promptly advise the other Participant of any change in the identity or contact details of the MOU Contact Officer (or any person acting on behalf of the MOU Contact Officer).
- 5.4 Issues concerning the relationship between the Participants that are unable to be resolved informally should be addressed at quarterly and biannual liaison meetings between senior executives of the Department and the AAT.
- 5.5 The Authorised Signatories or their delegates will meet at least once every twelve months, or more frequently if there are contentious issues that warrant discussion.

6 STATUS, INTERPRETATION AND DEFINITIONS

- 6.1 Nothing in this MOU establishes binding obligations on the part of the Participants, or alters the existing legal rights and obligations of either Participant.
- 6.2 Interpretation and definitions are set out above.
- 6.3 Each Participant will ensure that its employees, contractors and all other entities acting on its behalf will comply with the requirements established by this MOU and Annexes made in accordance with it. Interpretation and definitions are set out above

7 EXCHANGE OF INFORMATION

CASE RELATED INFORMATION

- 7.1 The Participants will cooperate to ensure the timely movement of all relevant case documents and case information between the Participants during the course of AAT reviews, applications for judicial review of a decision made by the AAT, and any subsequent appellate proceedings, including meeting any agreed service standards or timeframes.
- 7.2 Recognising that digital information enables more efficient service delivery of case information and consistent with Whole-of-Government requirements for digitisation, the Participants agree to work together to achieve the objective of transmitting all case information by electronic means as a priority.
- 7.3 The Department will provide the AAT with all documents in its control or possession, including third party information, that are considered by the Secretary to be relevant to a particular review within the legislative requirements.

- 7.4 The Department undertakes to provide the documents to the AAT:
- (a) within 2 working days of being notified of an application for review of bridging visa refusals and cancellations for applicants in detention;
 - (b) within 10 working days of being notified of an application for review of any other onshore decision;
 - (c) within 21 calendar days of being notified of an application for review of an offshore decision.
- 7.5 The Department and the AAT will work cooperatively to clarify the kinds of documents that are relevant to particular decisions.
- 7.6 Requests from the AAT to the Department for all relevant case documents and case information will occur principally through the Department's Legal Systems and Tribunal Liaison Liaison Section.
- 7.7 At the conclusion of the review, the AAT will notify the Department of any review that a Tribunal member has identified for possible referral to the Minister for the Minister's consideration of the exercise of his or her public interest powers and any other cases of particular interest.

SUSPECTED FRAUD AND MISCONDUCT BY AGENTS, THIRD PARTIES AND APPLICANTS

- 7.8 The Participants will work cooperatively and exchange information to enable the Department to monitor or follow up any suspected unlawful activity by registered migration agents, lawyers or unregistered persons providing immigration assistance who are, or are likely to be, involved in cases before the AAT.
- 7.9 The AAT will give the Department information about suspected unlawful activity by applicants, employers and other sponsors to enable the Department to monitor or follow up any such activity, subject to any obligations under the *Privacy Act 1988*.

CHANGES TO LEGISLATION AND POLICY

- 7.10 The Participants will, wherever practicable, notify and consult each other and the Attorney General's Department on any proposed legislative amendments falling within their responsibility that may impact AAT review rights or review processes.
- 7.11 The Participants will, wherever practicable, notify each other in advance of relevant policy changes.

FREEDOM OF INFORMATION

- 7.12 Where the AAT receives a request under the *Freedom of Information Act 1982* for access to documents owned by the Department, it will transfer the request to the Department for processing, unless otherwise agreed.

- 7.13 The AAT will provide documents relating to freedom of information requests including partial transfer of files to the Department when requested. If the AAT holds the original Department file, it will return an electronic scanned version of the file in those instances that the AAT still requires a hard copy.

CASELOAD DATA AND TRENDS

- 7.14 The relevant officers of the Department will meet with the AAT on a regular basis to exchange information on specific caseload data trends. Requests between the Participants for caseload statistical information will be responded to within seven business days where possible, subject to the complexity of the request, other priorities and available resources.

DISCLOSURE OF INFORMATION

- 7.15 Information provided by one of the Participants to the other in accordance with this MOU will only be used or disclosed for the purpose for which it was provided, or for another purpose agreed to by the Participants, or as required or authorised by or under law.
- 7.16 The Participants will comply with relevant legislation and policy requirements in relation to information disclosure and ensure their officers, employees, consultants and contractors are fully aware of their obligations.
- 7.17 Liaison arrangements for information sharing, notification and consultation should be negotiated and agreed upon at the relevant operational level wherever possible.

8 COUNTRY OF ORIGIN INFORMATION

- 8.1 The Department will provide an efficient and effective country of origin information service to the AAT, with the objective that the AAT will have seamless access to high quality and current country information.

9 INVESTIGATIONS

- 9.1 Where requesting that the Department arrange for the making of any investigation, or any medical examination, that the AAT thinks necessary with respect to the conduct of a review pursuant to s. 363(1)(d) or 427(1)(d) of the Act, including investigating the authenticity of documents or obtaining information from overseas posts, the AAT will send the request to the Department's Tribunal Liaison Mailbox.
- 9.2 The Department will comply with these requests as soon as practicable, having regard to the urgency of the request.

10 HEARING ARRANGEMENTS FOR DETAINEES AND PEOPLE OF CONCERN

- 10.1 The Participants will cooperate to facilitate hearing arrangements for applicants who are in immigration detention, and/or for whom there are health, well-being, security or safety concerns.
- 10.2 Where required, the Department will transport applicants in detention to the AAT's premises or make available video conference facilities in detention centres. Costs incurred for video hearings in detention centres and transport will be covered by the Department.

11 LITIGATION

- 11.1 The Department will notify the AAT of all new applications for judicial review of a decision made by the AAT or the IAA and subsequent appellate proceedings (including applications for extensions of time and leave to appeal), and forward to the AAT a copy of the court application.
- 11.2 Where a party other than the Minister seeks judicial review of a decision made by the MRD or IAA, the solicitors engaged by the Minister will arrange for the AAT or IAA's submitting appearance at first instance and in any subsequent appellate proceedings, in accordance with standing instructions given by the AAT. Where a party other than the Minister seeks judicial review of a decision made by the General Division, or the Minister seeks judicial review of a decision by the AAT or the IAA, the AAT or IAA will arrange its own submitting appearance in the litigation proceedings at first instance and in any subsequent appellate proceedings.
- 11.3 The Department will notify the AAT as early as is practicable when it becomes aware that litigation proceedings to which the AAT or the IAA is a party raise a significant issue of AAT or IAA powers or procedures, or in which one of the parties seeks remedies other than the usual judicial review remedies (e.g., seeking compensation), to enable the AAT or the IAA to consider whether an appearance other than a submitting appearance is appropriate or if other action is required.
- 11.4 The AAT will cooperate with the Department in providing affidavit evidence from a Tribunal officer that is essential to litigation.
- 11.5 Where a court remits a matter to the AAT for reconsideration, the Department or its representative will give to the AAT the department file (or a copy) as soon as reasonably practicable and within 21 days, unless the matter was remitted by judgment and the Minister is appealing the judgment. If the Minister decides not to appeal a judgment remitting a matter to the AAT or the IAA, the Department will inform the AAT of this as soon as is practicable.
- 11.6 The Department will notify the AAT of all Tribunal-related litigation outcomes in the weekly, fortnightly or monthly litigation update, provided electronically. This will include where a court upholds a decision by the AAT or the IAA.

12 FINANCIAL ARRANGEMENTS

- 12.1 Financial arrangements will be separately negotiated between the AAT and the Department and documented in a subsidiary arrangement as provided for in Section 14 of this MOU.

13 COSTS

- 13.1 Except where otherwise expressly provided for in this MOU or through a separate written arrangement, each participant will bear their own cost in fulfilling their commitments under this MOU.

14 SUBSIDIARY ARRANGEMENTS AND PROTOCOLS

- 14.1 The Participants may enter into Subsidiary Arrangements under the MOU that specify any activities to be undertaken to support the objectives of this MOU.
- 14.2 Each Subsidiary Arrangement will deal with a specific mutually agreed issue and set out an approach for the most effective working relationship required to manage the issue.
- 14.3 In accordance with this MOU, a Subsidiary Arrangement is:
- (a) made under this MOU if it is agreed by the Registrar and General Counsel, and
 - (b) commences, unless specified, on:
 - (i) the date it is signed by both Participants or
 - (ii) the date the last Participant signs, where the Participants do not sign it on the same day.
- 14.4 Once a Subsidiary Arrangement has been made, it may be modified or terminated by a written understanding signed by the Registrar and General Counsel.
- 14.5 Unless specified, a modification or termination:
- (a) takes effect from the date the last Participant signs the modification or termination, and
 - (b) has no effect unless endorsed in accordance with this MOU.
- 14.6 The Participants may also enter into a protocol framework where protocols are developed covering operational issues of mutual significance such as Digital File Exchange.

15 DISPUTE RESOLUTION

- 15.1 The Participants recognise that it is in their mutual interest to express issues of concern to each other in a professional manner as a method of improving cooperation between them.
- 15.2 If any dispute arises between the Participants in relation to this MOU the Participants will initially seek to negotiate a resolution reasonably, expeditiously and amicably, at the operational level in which the dispute arose.
- 15.3 In the event that negotiations at the operational level fail to resolve any dispute or issue, the Participants will seek to resolve it at quarterly or biannual liaisons between senior executives of the Department and the AAT referred to at paragraph 5.4 of this document.
- 15.4 If discussions undertaken at the relevant operational level and higher levels of management fail to resolve the dispute, the dispute will be referred to the Authorised Signatories for further direction or final resolution.
- 15.5 Despite the existence of a dispute, the Participants will continue to perform their roles under this MOU unless requested not to do so by the other Participant.
- 15.6 Disputes will not be referred to any third party.

16 AUTHORISED SIGNATORIES

- 16.1 The Authorised Signatories for this MOU are the persons occupying the positions below:

(a) The Department's Authorised Signatory is:
Secretary
PO Box 25,
BELCONNEN, ACT 2616
Phone: (02) 6264 1111

(b) AAT's Authorised Signatory is:
President
GPO Box 9955
SYDNEY NSW 2001
Phone: s. 47E(d)

17 COMMENCEMENT, DURATION AND TERMINATION

- 17.1 This MOU commences on:
- (a) the date it is signed by both Participants; or
 - (b) the date the last Participant signs, where the Participants do not sign the MOU on the same day.
- 17.2 This MOU remains in effect until it is terminated in accordance with this MOU.

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- 17.3 Either Participant may terminate this MOU by providing the other Participant with at least 30 days notice in writing of their intention to terminate.
- 17.4 Any termination may only occur by the Authorised Signatories of the Participants.
- 17.5 Prior to written notification of termination, the Participants mutually consent to:
- (a) draw to the attention of the relevant Participant, any issue(s) which led to the belief that termination action may be necessary;
 - (b) provide opportunities for consultation to take place on those issue(s); and
 - (c) consider the results of any consultation.
- 17.6 This MOU will expire after a period of three (3) years from the date of signing of both Participants unless terminated earlier.

18 VARIATION

- 18.1 Each Participant may seek to amend the terms of this MOU as circumstances require, following consultation with the other participant.
- 18.2 Where the Participants agree to vary or amend this MOU, any variation or amendment will be given effect by an exchange of letters between the Authorised Signatories of the Department and the AAT, and will take effect on a date to be mutually determined by the participants.

19 REVIEWS

- 19.1 The Participants will review this MOU twelve (12) months from the date on which it commences or within such other period as mutually determined.

20 SIGNATURES

SIGNED at Canberra for and on behalf
of the **Department of Home Affairs,**

Mr Michael Pezzullo
Secretary

s. 22(1)(a)(ii)

signature

5 Feb 2019

date

SIGNED at C for and on behalf of the
Administrative Appeals Tribunal by

The Hon Justice David Thomas
President

s. 22(1)(a)(ii)

signature

12 Feb 2019

date