

FAST TRACK PROCESS / IMMIGRATION ASSESSMENT AUTHORITY

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Overview

This paper seeks to provide a broad overview of the legal, policy and procedural frameworks governing:

- The Fast Track Assessment (**FTA**) process; and
- The Immigration Assessment Authority (**IAA**).

Background

No advantage principle

On 13 August 2012 the government-appointed Expert Panel on Asylum Seekers released its report.¹ Among the many recommendations made to deter asylum seekers from travelling to Australia by boat, the government adopted the Expert Panel recommended that those who arrived in Australia by sea and without visas should not be advantaged ‘to ensure that no benefit is gained through circumventing regular migration arrangements’. This has been commonly referred to as the ‘no advantage’ principle.

Following this, consistent with the ‘no advantage’ principle, the then Labor government opted not to undertake processing of protection claims for persons who arrived in Australia by boat without a visa on or after 13 August 2012. This was to withhold any purported advantage they might otherwise receive over persons who were being processed by UNHCR in third countries.

The government estimates that there are approximately 24,000 clients in this category.

Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014

In late 2014 Parliament passed the government sponsored Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. The majority of amendments made to the *Migration Act 1958* (**the Act**) by the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (**the RALC Act**) commenced on 16 December 2014.²

The RALC Act made extensive amendments to the statutory framework governing the processing of protection claims in Australia. Among other legislative reforms, this amending Act inserted a new statutory process for the processing of protection claims for persons deemed to be *fast track applicants*³, established a new merits review framework for selected fast track applicant (IAA),⁴ inserted a new codified definition of refugee,⁵ introduced Temporary Protection visas and Safe Haven Enterprise visas (two new categories of protection visa)⁶ and provided for a new duty to remove persons from Australia irrespective of whether it would be in breach of Australia’s international *non-refoulement* obligations.⁷

¹ Report of the Expert Panel on Asylum Seekers (August 2012) – available at: http://apo.org.au/files/Resource/expert_panel_on_asylum_seekers_full_report_0.pdf [accessed 29/02/2016]

² Act no: 135 of 2014

³ As defined in s.5(1) of the Act

⁴ Part 7AA of the Act

⁵ s.5H

⁶ s.35A

⁷ s.197C

Relevantly, the RALC Act created the statutory frameworks governing the FTA process and IAA. These particular amendments commenced on 18 April 2015.

FTA statutory framework

The FTA process is a separate statutory framework established for considering protection visa applications for the following persons:

- those who arrived in Australia by boat without a visa between 13 August 2012 and 1 January 2014 who have not been transferred to a regional processing country (Nauru/Papua New Guinea); and
- any other classes specified by the Minister (currently – but may be some in near future).⁸

The FTA statutory process does not apply to any other protection visa applicants, including non-immigration cleared plane arrivals or persons who arrived by boat outside of these dates (but who are also barred from applying for a Permanent Protection visa).

Critically, unlike other protection visa applicants, FTA applicants are not able to access merits review by the Administrative Appeals Tribunal (**AAT**). Instead, selected FTA applicants can only access a limited form of merits review by the IAA.

The Government has stated that the intent of the FTA process is to allow the Department of Immigration and Border Protection (**the Department**) to process claims for protection quicker and more efficiently.

Key aspects of the FTA process:

The FTA process can be summarised in general terms as follows:

- The Minister will exercise his/her personal non-compellable discretion in s.46A(2) to lift the relevant statutory bar(s) and invite FTA clients to lodge a valid application for a Temporary Protection visa (**TPV**) or Safe haven Enterprise Visa (**SHEV**);
- The Department's primary decision process will generally mirror that for other protection visa applicants (interview, requests for information etc) – however, prescribed time periods to respond are shorter;
- FTA applicants who have their TPV/SHEV applications refused at the primary stage are not eligible to apply to the AAT for review of adverse decisions by the Department;
- Selected FTA unsuccessful applications will be referred to the IAA to provide a limited form of merits review (essentially a review on the papers);
- Unsuccessful applicants excluded from accessing the IAA will have no access to merits review (only option is judicial review); and
- Clients may apply for judicial review of the following decisions:
 - decision by the IAA to affirm a primary decision (to refuse a TPV or SHEV application);

⁸ See: definition of *fast track applicant* in s.5(1)

- decision by the delegate to refuse to approve a TPV or SHEV application where the applicant is excluded from merits view by the IAA; and
- decision by a delegate to exclude a FTA applicant from the IAA.

TPVs and SHEVs

The Act provides that a person in Australia considered to be an *unauthorised maritime arrival*⁹ is legally barred from applying for visas in Australia unless the Minister personally exercises his/her non-compellable discretion to invite him or her to apply for a specified visa or visas.¹⁰

As a matter of policy, FTA clients are only invited by the Minister to apply for a TPV or SHEV (no other visas). The Minister's invitation for these clients is generally to apply for a TPV *or* SHEV (must choose) and the statutory bar lift only permits one valid application. A FTA client's date of arrival in Australia will generally determine when he or she is invited to apply.

FTA decision-making process (primary stage)

The administrative and legal procedural frameworks governing the primary stage¹¹ of processing of FTA protection visas will generally mirror that for other protection visa applicants. The only significant difference is that the time periods specified in the legislation for clients to provide information and attend interviews are noticeably shorter for FTA clients.

Regulation 2.15 in the Migration Regulations 1994 (**the Regulations**) prescribes the time periods for FTA applicants to respond to invitations to provide further information or comment on adverse information in writing or at an interview.¹²

Documentary evidence of identity

Requests for documentary evidence of identity

Under s.91W delegates can request protection visa applicants provide documentary evidence of his or her identity, nationality or citizenship. If the applicant refuses, fails to comply, or produces a bogus document in response, and does not have a reasonable explanation for doing so, then the delegate, IAA and/or AAT *must* refuse to grant the protection visa. This mandatory refusal provision applies to all protection visa applicants (not just FTA applicants).

Although the IAA does not have the power to issue a s.91W request the mandatory refusal obligation nonetheless applies if the statutory conditions are met.

Provision of bogus documents / destroying of identity documents

Section 91WA provides that delegates, the IAA and/or the AAT *must* refuse to grant a protection visa if that decision-maker is satisfied that the applicant:

⁹ As defined in s.5AA

¹⁰ ss 46A(1) and 46A(2)

¹¹ that is, the first decision-making process where a delegate of the Minister decides whether to grant or refuse the visa application.

¹² r.2.15: FTA applicant in immigration detention: 3 working days from notification; FTA applicant not in immigration detention: if the invitation is given at an interview or by telephone: 7 calendar days after the interview; or if the invitation is given in writing or by other means: 14 calendar days from notification.

- provided a bogus document as evidence of the applicant’s identity, nationality or citizenship; OR
- has destroyed or disposed of documentary evidence of the applicant’s identity, nationality or citizenship; OR
- has caused such documentary evidence to be destroyed or disposed of.

The only exception to this is if the decision-maker is satisfied that the visa applicant:

- has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; AND
- either:
 - provides documentary evidence of his or her identity, nationality or citizenship; OR
 - has taken reasonable steps to provide such evidence.

FTA decision notification

Like other protection visa decisions, FTA applicants must be notified of the decision in writing in accordance with s.66 (statement of reasons etc). In addition, for FTA applicants the written notification must state whether the decision has or has not been referred to the IAA.

Immigration Assessment Authority (IAA)

Unlike for other protection visa refusal decision under the Act, the AAT does not have jurisdiction to review a decisions by a delegate to refuse to grant a TPV or SHEV where that applicant is a Fast Track applicant. The RALC Act inserted new Part 7AA in the Act which provides for the IAA’s exclusive merits review jurisdiction for Fast Track primary decisions (other than for *excluded Fast Track review applicants*¹³).

If the delegate who refused the FTA applicant’s visa application does not exclude him or her from accessing the IAA, their visa application will be automatically referred to the IAA¹⁴ (no requirement for the applicant to lodge an application with the IAA).

IAA reviewers are employees of the Australian Public Service (not statutory appointments unlike Tribunal members for the AAT).

The Immigration Assessment Authority consists of the President of the AAT, the head of the Migration and Refugee Division of the Tribunal, the Senior Reviewer and other Reviewers. The Senior Reviewer is appointed by the President or that Division head. The Senior Reviewers and other Reviewers are engaged under the *Public Service Act 1999*.

IAA excluded applicants

FTA applicants will be excluded from accessing the IAA as an *excluded fast track review applicant*¹⁵ if they fall into one or more of the following categories:

¹³ As defined in s.5(1)

¹⁴ s.473CA

¹⁵ As defined in s.5(1)

- is a national of two or more countries;
- previously applied for a protection visa in Australia and that application was refused or withdrawn;
- previously applied for protection in another country and was not successful;
- previously been found not to be refugee by the United Nations High Commissioner for Refugees (UNHCR);
- without reasonable explanation provides/causes to provide a bogus document in support of his or her application;
- makes a manifestly unfounded claim for protection; and
- is included in a class of persons specified by the Minister in an legislative instrument.

The Department has previously advised that the same decision-maker making the primary decision to refuse/approve the visa application will be delegated decision-making responsibility for assessing whether the FTA applicant is an *excluded fast track review applicant*.

Persons found to be an *excluded fast track review applicant* can apply for judicial review of both the decision to exclude them from the IAA, and also the decision by the delegate to refuse to approve his or her application for a TPV/SHEV.

IAA review jurisdiction

Section 473CC provides that the IAA must review a fast track reviewable decision that has been referred to it. The IAA review/decision-making powers and procedures much more limited than AAT and focused on expedited decision-making.¹⁶ Reviews by the IAA will use the same information provided to the Department and under s.473DD it is prohibited from considering any new information unless it can establish exceptional circumstances and other strict criteria are met.

The Explanatory Memorandum to the RALC Act advised that this review process is intended only to take into account the material provided to the IAA by the secretary of the Department. It further stated that an applicant coming before the review process will have had “an ample opportunity to present their claims and supporting evidence to justify their claim for international protection throughout the decision making process and before a primary decision is made on their application”.

The IAA has inquisitorial powers to obtain information but before it can consider any such further material that information must first satisfy the strict exceptional circumstances test in s.473DD. Similarly, under s.473DE the IAA has a statutory obligation to put adverse information to Fast Track review applicants (again, subject to the prohibition in s.473DD).

The IAA has advised that, currently, Fast Track review applicant before the IAA are not generally entitled to an oral hearing before the reviewer to explain their case. It further advised that in the very rare instances where oral evidence is required it will be done by telephone (and any new information provided must then meet the exceptional circumstances test in s.473DD).

For clients unsuccessful at the IAA, and also those excluded from accessing the IAA, the only avenue

¹⁶ Section 473FA provides that the IAA, in carrying out its functions under this Act, is to pursue the objective of providing a mechanism of limited review that is efficient, quick, free of bias and consistent with Division 3 (conduct of review).

of appeal is judicial review.

The President of the AAT has power to make Practice directions¹⁷ and Guidance decisions¹⁸ binding on applicants, representatives and IAA reviewers.

New information – IAA

Under s.473DD the IAA is prohibited under law from considering any new information provided to it by the applicant unless *both* of the following requirements are met:

- the IAA is satisfied that there are exceptional circumstances to justify considering the new information; AND
- The applicant satisfies the IAA that the new information:
 - was not, and could not have been, provided to the delegate before the primary refusal decision was made; OR
 - is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant’s claims.

Powers to obtain information – IAA

Under s.473DC the IAA has the power to obtain any documents or information that were not before the delegate when the refusal decision was made and the IAA considers that information may be relevant.

Under this provision the IAA has the power to invite a person, orally or in writing, to give new information in writing or at an interview, whether conducted in person, by telephone or in any other way.

Before the IAA can consider any new information obtained under s.473DC, that information would have to comply with s.473DD (exceptional circumstances test).

Adverse information – IAA

Under s.473DE the IAA must put any adverse information to the applicant that it considers would be the reason, or a part of the reason, for affirming the delegate’s decision.¹⁹ This information can be put to the applicant in writing, orally at interview, or “in any other way”. In doing so, the IAA must explain to the applicant why the new information is relevant to the review, and it must invite the applicant to give those comments in writing; or at an interview (in person, by telephone etc).

The obligation on the IAA to put adverse information to the applicant for comment does not apply to the following:

- information that is not eligible “new information” for the purposes of s.473DD (i.e. does not meet the exceptional circumstances test);
- information not specifically about the referred applicant and is just about a class of persons of

¹⁷ s.473FB

¹⁸ s.473FC

¹⁹ This provision mirrors the corresponding adverse information obligations for the Department in s.57 and AAT (MR Division) in s.424A [protection visa decisions] and 359A [migration decisions].

which the referred applicant is a member (such as country information);

- non disclosable information; and
- information prescribed in the Regulations (r.4.41 currently prescribes information provided to the IAA by the applicant or representative).

IAA time periods

Time periods for giving information or comments in response to an invitation by the IAA is as follows:

- FTA applicant in immigration detention: 3 working days from notification; and
- FTA applicant not in immigration detention:
 - For oral invitation to give information /comments in writing: 7 calendar days from notification;
 - For oral invitation to give information/comments at an interview: 14 calendar days from notification; and
 - For written invitation to give information/comments in writing or at an interview: 14 calendar days from notification.

Failure to comply

Where an IAA applicant is invited to provide information (s.473DC) or comment on adverse information (s.473DE) but fails to do so within prescribed time, the IAA has discretion to make a decision without taking any further action (s.473DF(4)).

IAA Guidance Decisions

Section 473FC provides that the President of the AAT may direct that a decision (a ‘Guidance Decision’) of the IAA or AAT is to be complied with by the IAA in reaching a decision on a IAA review. The IAA must comply with the Guidance Decision unless the IAA reviewer is satisfied that the facts or circumstances are clearly distinguishable from those of the guidance decision. Currently no Guidance Decisions specified.

IAA Practice Directions

Section 473FB provides that the President of the AAT may make Practice Directions, not inconstant with the Act or Regulations, in relation to: the operations of the IAA; and the conduct of reviews by the IAA.

Section 473FB also provides that the IAA is not required to accept new information or documents from a person; or hear or continue to hear a person at an interview; if the person fails to comply with an IAA Practice Direction that applies to them.

Currently there are two Practice Directions provided for under the Act:

- Practice Direction 1: Practice Direction for Applicants, Representatives and Authorised

Recipients;²⁰ and

- Practice Direction 2: The giving of country information to the IAA by the Secretary.²¹

Practice Direction 1: Practice Direction for Applicants, Representatives and Authorised Recipients

Practice Direction 1 specifies, among other things, that IAA applicants are permitted to provide written submissions to the IAA on the following:

- why they disagree with the delegate's decision; and
- any claim or matter presented to the Department that was overlooked;

The Direction further relevantly provides:

21. Any submission must be concise. It should identify and address the issues you want us to consider in our review. Your submission should be no longer than 5 pages and should be provided to us within 21 days of your case being referred to us by the Department. We may return longer submissions. If we return your submission we will give you a short deadline by which to provide a revised submission that complies with this direction. If you do not comply with that deadline we will make our decision without the benefit of your submissions.

*22. We can only consider new information (information that was not before the Department) in very limited circumstances as set out in section 473DD of the Migration Act. We must be satisfied that there are exceptional circumstances to justify considering the new information provided by either you or the Department.*²² [emphasis added]

The IAA has previously advised that the IAA will generally seek to complete its reviews within six weeks of the referral from the Department (but no such time is prescribed in the legislation).

Notification of IAA decisions

IAA must notify applicants of its decision by providing a written statement of reasons within 14 days of its decision (s.473EB)

Publishing of IAA decisions

Similar to the AAT, the Act provides that the IAA may publish decisions that the President of the AAT thinks are of particular interest.

Judicial review

Unsuccessful FTA applicants at the IAA and at the primary stage (if excluded from IAA review) may apply for judicial review of those decisions.

Applicants have 35 days to apply - from the date of the decision (i.e., not from when they are taken to have been notified of it). Need leave of the court to apply outside of the 35 days.

To be successful on judicial review need to establish that the decision-maker committed a

²⁰ Available at: <http://www.iaa.gov.au/guidance-forms/practice-directions> [accessed 06/03/2016]

²¹ Available at: <http://www.iaa.gov.au/guidance-forms/practice-directions> [accessed 06/03/2016]

²² Immigration Assessment Authority, Practice Direction given under s.473FB of the Act, *Practice Direction 1: Practice Direction for Applicants, Representatives and Authorised Recipients* (16 September 2015) - available at: <http://www.iaa.gov.au/guidance-forms/practice-directions> [accessed 29/02/2016]

jurisdictional error (and also that the court's relief would not be futile). If successful on judicial review, the court will generally order the following relief:

- a writ of certiorari issue directed to the IAA/Department quashing the decision; and
- a writ of mandamus issue directed to the IAA/Department requiring it to determine the review application (IAA) or visa application (Department) according to law.

Grounds for judicial review

The following new issues associated with the statutory framework governing the IAA may be relevant for grounds for judicial review (in addition to existing recognised basis for jurisdictional error).

IAA decisions

1. Tension between the obligation on the IAA under Part 7AA of the Act to 'review' the primary decision and statutory limits on its ability to do so – not *de novo* review.
2. What if there are procedural errors at the primary stage (such as interpreting errors regarding material items of evidence/claims, or no real and meaningful opportunity to give evidence on material issues, or other non-compliance with the statutory code of procedure in Subdiv AB, Div 3, Part 2 of the Act) – would these then infect the IAA review in the absence of an oral/interview to cure those defects?
3. Where credibility of claims are material issues in dispute at primary stage, including such findings based on demeanour/responses at interview – how can the IAA reach a similar finding? Would it be sufficient for it to listen to interview with delegate and adopt same findings – or would it need to have an oral interview/hearing to determine for itself?
4. If it is alleged by the applicant at the IAA that the delegate's decision was affected by jurisdictional error due to a procedural error (e.g., failure to comply with statutory code of procedure) – is there an obligation on the IAA to turn its mind to this issue?
5. Application of new information / exceptional circumstances test
 - a. What is information – whole document or particular 'item'?
 - b. What does "credible personal" actually mean in relation to information?
 - c. Relative to what do the circumstances need to be exceptional?
 - d. What if an applicant provides lengthy written submissions to IAA, would the IAA have to turn its mind to the test and apply individually to all instances of new information or could it treat the written submissions as one item of new information?

Primary decision to exclude from IAA review

1. Would appear that the principles of common law procedural fairness would apply a decision by a delegate that a person is an *excluded fast track review applicant*. Real and meaningful opportunity to comment on the substantive issues on which the adverse decision was made – hearing rule etc?
2. FCCA has jurisdiction – or need to lodge in High Court?
3. For the bogus documents exclusion criterion ("without *reasonable explanation* provides/causes to provide a bogus document in support of his or her application"), if the

client is refused on s.91W or s.91WA due to provision of bogus documents – then before the delegate can make decision to exclude from IAA do they need to consider if they are owed protection – a relevant consideration? [this decision-making pathway looks like it might not be uncommon – have already seen a couple of these cases]

Other new issues

1. Application of mandatory refusal obligations for delegate and IAA in s.91W (requests for identity docs) and s.91WA (providing bogus docs and destroying identity docs).
 - a. When considering whether the applicant has provided a reasonably explanation, does the decision-maker first have to make a finding that they are owed protection as a relevant consideration in determining whether they had a reasonable explanation?
2. Practice Direction
 - a. Whether direction to applicants and representatives go behind scope of power in Act (primarily, the purported restriction on length of written submissions provided to IAA; time limits etc)
3. Guidance Decisions [nil currently specified]
 - a. Extent to which they can bind a IAA reviewer and whether it may be inconsistent with obligation to ‘review’ the primary decision etc
4. New definition of refugee

Resources

Department of Immigration & Border Protection (DIBP)

- PAM3: Refugee and Humanitarian - Protection visas - Temporary Protection and Fast Track Assessment Process
- PAM3: Refugee and Humanitarian - Protection visas – Refugee Law Guidelines
- PAM3: Refugee and Humanitarian - Protection visas - Complementary Protection Guidelines
- PAM3: Refugee and Humanitarian - Protection Visa Procedures Advice Manual

Immigration Assessment Authority (IAA)

- www.iaa.gov.au
- Guidance Decisions (Note: nil currently in effect as at 06/03/2016)
- Practice Direction 1: Practice Direction for Applicants, Representatives and Authorised Recipients

Administrative Appeals Tribunal (AAT)

- AAT’s *Guide to Refugee Law in Australia*

Legislation

- *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy*

Caseload) Act 2014

- Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014; Explanatory memorandum; Supplementary explanatory memoranda; and Second Reading Speech
- *Migration Act 1958; Migration Regulations 1994*; relevant legislative instruments.

Relevant legislation

Part 7AA—Fast track review process in relation to certain protection visa decisions

Division 1—Introduction

473BA Simplified outline of this Part

This Part provides a limited form of review of certain decisions (*fast track decisions*) to refuse protection visas to some applicants, including unauthorised maritime arrivals who entered Australia on or after 13 August 2012, but before 1 January 2014, and who have not been taken to a regional processing country. These applicants are known as *fast track review applicants* and decisions to refuse to grant them protection visas are known as *fast track reviewable decisions*.

Fast track decisions made in relation to some applicants are excluded from the fast track review process. These applicants are known as *excluded fast track review applicants*.

Fast track review applicants and excluded fast track review applicants are collectively known as *fast track applicants*.

Fast track reviewable decisions must be referred by the Minister to the Immigration Assessment Authority as soon as reasonably practicable after a decision is made. A person cannot make an application for review directly to the Immigration Assessment Authority.

Decisions to refuse to grant protection visas to fast track applicants are generally not otherwise reviewable under this Act, although some decisions are reviewable by the Administrative Appeals Tribunal.

The Immigration Assessment Authority consists of the President of the Administrative Appeals Tribunal, the head of the Migration and Refugee Division of the Tribunal, the Senior Reviewer and other Reviewers. The President and that Division head are responsible for the overall administration and operation of the Immigration Assessment Authority. The Senior Reviewer is appointed by the President or that Division head. The Senior Reviewers and other Reviewers are engaged under the *Public Service Act 1999*.

In reviewing fast track reviewable decisions, the Immigration Assessment Authority is required to pursue the objective of providing a mechanism of limited review that is efficient, quick, free of bias and consistent with Division 3 (conduct of review).

The Immigration Assessment Authority does not hold hearings and is required to review decisions on the papers that are provided to it when decisions are referred to it. However, in exceptional circumstances the Immigration Assessment Authority may consider new material and may invite referred applicants to provide, or comment on, new information at an interview or in writing.

The Immigration Assessment Authority may affirm a referred decision or may remit the decision for reconsideration in accordance with directions.

The Immigration Assessment Authority may give directions restricting the disclosure of information. There are also specific requirements for the giving and receiving of documents.

473BB Definitions

In this Part:

Division head means the head of the Migration and Refugee Division of the Tribunal.

fast track reviewable decision means:

- (a) a fast track decision in relation to a fast track review applicant; or
- (b) a fast track decision determined under section 473BC;

but does not include a fast track decision in relation to which the Minister has issued a conclusive certificate under section 473BD.

Note: **Fast track decisions** are decisions (subject to some exceptions) to refuse to grant protection visas to certain applicants, known as **fast track applicants**. Some specified fast track applicants are known as **excluded fast track review applicants**; all others are known as **fast track review applicants**. The highlighted terms are defined in subsection 5(1).

new information has the meaning given by subsection 473DC(1).

President means the President of the Tribunal.

referred applicant means an applicant for a protection visa in respect of whom a fast track reviewable decision is referred under section 473CA.

Reviewer means a Reviewer engaged in accordance with Division 8, and includes the Senior Reviewer.

review material has the meaning given by section 473CB.

Senior Reviewer means the Senior Reviewer appointed under section 473JC.

Note: “Tribunal” means the Administrative Appeals Tribunal. See the definition in subsection 5(1).

[...]

Division 2—Referral of fast track reviewable decisions to Immigration Assessment Authority

473CA Referral of fast track reviewable decisions

The Minister must refer a fast track reviewable decision to the Immigration Assessment Authority as soon as reasonably practicable after the decision is made.

473CB Material to be provided to Immigration Assessment Authority

- (1) The Secretary must give to the Immigration Assessment Authority the following material (**review material**) in respect of each fast track reviewable decision referred to the Authority under section 473CA:
 - (a) a statement that:
 - (i) sets out the findings of fact made by the person who made the decision; and
 - (ii) refers to the evidence on which those findings were based; and

- (iii) gives the reasons for the decision;
- (b) material provided by the referred applicant to the person making the decision before the decision was made;
- (c) any other material that is in the Secretary's possession or control and is considered by the Secretary (at the time the decision is referred to the Authority) to be relevant to the review;
- (d) the following details:
 - (i) the last address for service provided to the Minister by the referred applicant for the purposes of receiving documents;
 - (ii) the last residential or business address provided to the Minister by the referred applicant for the purposes of receiving documents;
 - (iii) the last fax number, email address or other electronic address provided to the Minister by the referred applicant for the purposes of receiving documents;
 - (iv) if an address or fax number mentioned in subparagraph (i), (ii) or (iii) has not been provided to the Minister by the referred applicant, or if the Minister reasonably believes that the last such address or number provided to the Minister is no longer correct—such an address or number (if any) that the Minister reasonably believes to be correct at the time the decision is referred to the Authority;
 - (v) if the referred applicant is a minor—the last address or fax number of a kind mentioned in subparagraph (i), (ii), (iii) or (iv) (if any) for a carer of the minor.
- (2) The Secretary must give the review material to the Immigration Assessment Authority at the same time as, or as soon as reasonably practicable after, the decision is referred to the Authority.

473CC Review of decision

- (1) The Immigration Assessment Authority must review a fast track reviewable decision referred to the Authority under section 473CA.
- (2) The Immigration Assessment Authority may:
 - (a) affirm the fast track reviewable decision; or
 - (b) remit the decision for reconsideration in accordance with such directions or recommendations of the Authority as are permitted by regulation.

Division 3—Conduct of review

Subdivision A—Natural justice requirements

473DA Exhaustive statement of natural justice hearing rule

- (1) This Division, together with sections 473GA and 473GB, is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to reviews conducted by the Immigration Assessment Authority.
- (2) To avoid doubt, nothing in this Part requires the Immigration Assessment Authority to give to a referred applicant any material that was before the Minister when the Minister made the decision under section 65.

Subdivision B—Review on the papers

473DB Immigration Assessment Authority to review decisions on the papers

- (1) Subject to this Part, the Immigration Assessment Authority must review a fast track reviewable decision referred to it under section 473CA by considering the review material provided to the Authority under section 473CB:
 - (a) without accepting or requesting new information; and
 - (b) without interviewing the referred applicant.
- (2) Subject to this Part, the Immigration Assessment Authority may make a decision on a fast track reviewable decision at any time after the decision has been referred to the Authority.

Note: Some decisions to refuse to grant a protection visa to fast track applicants are not reviewable by the Immigration Assessment Authority (see paragraphs (a) and (b) of the definition of *fast track decision* in subsection 5(1)).

Subdivision C—Additional information

473DC Getting new information

- (1) Subject to this Part, the Immigration Assessment Authority may, in relation to a fast track decision, get any documents or information (*new information*) that:
 - (a) were not before the Minister when the Minister made the decision under section 65; and
 - (b) the Authority considers may be relevant.
- (2) The Immigration Assessment Authority does not have a duty to get, request or accept, any new information whether the Authority is requested to do so by a referred applicant or by any other person, or in any other circumstances.
- (3) Without limiting subsection (1), the Immigration Assessment Authority may invite a person, orally or in writing, to give new information:
 - (a) in writing; or
 - (b) at an interview, whether conducted in person, by telephone or in any other way.

473DD Considering new information in exceptional circumstances

For the purposes of making a decision in relation to a fast track reviewable decision, the Immigration Assessment Authority must not consider any new information unless:

- (a) the Authority is satisfied that there are exceptional circumstances to justify considering the new information; and
- (b) the referred applicant satisfies the Authority that, in relation to any new information given, or proposed to be given, to the Authority by the referred applicant, the new information:
 - (i) was not, and could not have been, provided to the Minister before the Minister made the decision under section 65; or
 - (ii) is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims.

473DE Certain new information must be given to referred applicant

- (1) The Immigration Assessment Authority must, in relation to a fast track reviewable decision:
 - (a) give to the referred applicant particulars of any new information, but only if the new information:
 - (i) has been, or is to be, considered by the Authority under section 473DD; and

- (ii) would be the reason, or a part of the reason, for affirming the fast track reviewable decision; and
 - (b) explain to the referred applicant why the new information is relevant to the review; and
 - (c) invite the referred applicant, orally or in writing, to give comments on the new information:
 - (i) in writing; or
 - (ii) at an interview, whether conducted in person, by telephone or in any other way.
- (2) The Immigration Assessment Authority may give the particulars mentioned in paragraph (1)(a) in the way that the Authority thinks appropriate in the circumstances.
- (3) Subsection (1) does not apply to new information that:
- (a) is not specifically about the referred applicant and is just about a class of persons of which the referred applicant is a member; or
 - (b) is non-disclosable information; or
 - (c) is prescribed by regulation for the purposes of this paragraph.

Note: Under subsection 473DA(2) the Immigration Assessment Authority is not required to give to a referred applicant any material that was before the Minister when the Minister made the decision under section 65.

473DF Invitation to give new information or comments in writing or at interview

- (1) This section applies if a referred applicant is:
- (a) invited under section 473DC to give new information in writing or at an interview; or
 - (b) invited under section 473DE to give comments on new information in writing or at an interview.
- (2) The information or comments are to be given within a period that is prescribed by regulation and specified in the invitation.
- (3) The Immigration Assessment Authority may determine the manner in which, and the place and time at which, an interview is to be conducted.
- (4) If the referred applicant does not give the new information or comments in accordance with the invitation, the Immigration Assessment Authority may make a decision on the review:
- (a) without taking any further action to get the information or the referred applicant's comments on the information; or
 - (b) without taking any further action to allow or enable the referred applicant to take part in a further interview.

Division 4—Decisions of Immigration Assessment Authority

473EA Immigration Assessment Authority's decision and written statement

Written statement of decision

- (1) If the Immigration Assessment Authority makes a decision on a review under this Part, the Authority must make a written statement that:
- (a) sets out the decision of the Authority on the review; and
 - (b) sets out the reasons for the decision; and
 - (c) records the day and time the statement is made.

How and when written decisions are taken to be made

- (2) A decision on a review is taken to have been made:
 - (a) by the making of the written statement; and
 - (b) on the day, and at the time, the written statement is made.
- (3) The Immigration Assessment Authority has no power to vary or revoke a decision to which subsection (2) applies after the day and time the written statement is made.

Return of documents etc.

- (4) After the Immigration Assessment Authority makes the written statement, the Authority must:
 - (a) return to the Secretary any document that the Secretary has provided in relation to the review; and
 - (b) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

Validity etc. not affected by procedural irregularities

- (5) The validity of a decision on a review, and the operation of subsection (3), are not affected by:
 - (a) a failure to record, under paragraph (1)(c), the day and time when the written statement was made; or
 - (b) a failure to comply with subsection (4).

473EB Notification of Immigration Assessment Authority's decision

- (1) The Immigration Assessment Authority must notify the referred applicant of a decision on a review by giving the referred applicant a copy of the written statement prepared under subsection 473EA(1). The copy must be given to the applicant:
 - (a) within 14 days after the day on which the decision is taken to have been made; and
 - (b) by one of the methods specified in section 473HB.
- (2) A copy of that statement must also be given to the Secretary:
 - (a) within 14 days after the day on which the decision is taken to have been made; and
 - (b) by one of the methods specified in section 473HC.
- (3) A failure to comply with this section in relation to a decision on a review does not affect the validity of the decision.

473EC Certain decisions of the Immigration Assessment Authority to be published

- (1) Subject to subsection (2), and to any direction under section 473GD, the Immigration Assessment Authority may publish any statements prepared under subsection 473EA(1) that the President thinks are of particular interest.
- (2) The Immigration Assessment Authority must not publish any statement which may identify a referred applicant or any relative or other dependent of a referred applicant.

Note: Section 5G may be relevant for determining relationships for the purposes of subsection (2).

Division 5—Exercise of powers and functions by Immigration Assessment Authority

473FA How Immigration Assessment Authority is to exercise its functions

- (1) The Immigration Assessment Authority, in carrying out its functions under this Act, is to pursue the objective of providing a mechanism of limited review that is efficient, quick, free of bias and consistent with Division 3 (conduct of review).

Note: Under section 473DB the Immigration Assessment Authority is generally required to undertake a review on the papers.

- (2) The Immigration Assessment Authority, in reviewing a decision, is not bound by technicalities, legal forms or rules of evidence.

473FB Practice directions

- (1) The President may, in writing, issue directions, not inconsistent with this Act or the regulations as to:
 - (a) the operations of the Immigration Assessment Authority; and
 - (b) the conduct of reviews by the Authority.
- (2) Without limiting subsection (1), the directions may:
 - (a) relate to the application of efficient processing practices in the conduct of reviews by the Immigration Assessment Authority; or
 - (b) set out procedures to be followed by persons giving new information to the Authority in writing or at interview.
- (3) The Immigration Assessment Authority must, as far as practicable, comply with the directions. However, non-compliance with any direction does not mean that the Authority's decision on a review is an invalid decision.
- (4) If the Immigration Assessment Authority deals with a review of a decision in a way that complies with the directions, the Authority is not required to take any other action in dealing with the review.
- (5) The Immigration Assessment Authority is not required to accept new information or documents from a person, or to hear or continue to hear a person at an interview, if the person fails to comply with a relevant direction that applies to the person.

473FC Guidance decisions

- (1) The President may, in writing, direct that a decision (the *guidance decision*) of the Tribunal, the Immigration Assessment Authority or the former Refugee Review Tribunal specified in the direction is to be complied with by the Authority in reaching a decision on a review of a fast track reviewable decision of a kind specified in the direction.
- (2) In reaching a decision on a review of a decision of that kind, the Immigration Assessment Authority must comply with the guidance decision unless the Authority is satisfied that the facts or circumstances of the decision under review are clearly distinguishable from the facts or circumstances of the guidance decision.
- (3) However, non-compliance by the Immigration Assessment Authority with a guidance decision does not mean that the Authority's decision on a review is an invalid decision.

Division 6—Disclosure of information

[...]

Division 7—Giving and receiving review documents etc.

[...]

Division 8—The Immigration Assessment Authority

473JA The Immigration Assessment Authority

- (1) The Immigration Assessment Authority is established within the Migration and Refugee Division of the Tribunal.
- (2) The Immigration Assessment Authority consists of the following persons:
 - (a) the President;
 - (aa) the Division head;
 - (b) the Senior Reviewer and other Reviewers.
- (3) The President, the Division head, the Senior Reviewer and the other Reviewers are to exercise the powers, and perform the functions, of the Immigration Assessment Authority under this Part.