

What to expect at the Tribunal

This fact sheet 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 information is for people who have received a negative decision from the Department of Immigration & Citizenship (DIBP) and who have appealed to have that decision reviewed by the Administrative Appeals Tribunal (AAT).

This Fact Sheet provides information on what a person should do before the AAT hearing and what happens during the hearing for an application for review of a DIBP decision not to grant a Protection visa.

1. What is the AAT?

The AAT is an independent statutory body set up to review decisions made by (DIBP) in relation to whether to grant a protection visa. The judges are referred to as 'members' and are appointed by the Government. Hearings are similar from court hearings, although less formal. It is not a requirement to have a legal representative for your hearing, and many applicants to the AAT do have a legal representative.

2. Review your application for a Protection visa and your DIBP decision

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. More importantly you should read your statement which explains why you fear returning to your country of origin.

You should also read your DIBP decision and write down all the reasons why you think the DIBP decision is wrong. You may want to submit this statement to the AAT before your hearing or you may want to explain your reasons at the hearing.

You have been given a copy of your DIBP interview recording. Listen to the recording before the interview so that it refreshes your memory as to what you have already said at the interview. If there are any inconsistencies or information which you said at the interview which is wrong or inaccurate, write these down and either put it in a statement to the AAT before the hearing or make sure you clarify these points at the hearing.

New information or evidence

Since your DIBP interview, changes may have occurred in your life which may be relevant to your claims for protection. For example:

- There may be changes to your personal situation in Australia (eg you have changed religions; you may have started a new relationship; you may have joined a political party or organisation);
- You may have had contact with friends or family members in your home country;
- The general situation may have changed in your home country;
- 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 DIBP*. 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 wish to make any changes to your application, try to do so before the hearing date and submit this information in writing to the Tribunal. If you are not able to do this before the hearing date, inform the AAT member at the beginning of your hearing.

It is important to be clear and consistent at the hearing so to assist, ensure 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, and *provide details*. It is important to be clear and consistent with the details written in your statement, what you have said in your DIBP interview and what you say at the hearing.

3. Will the AAT have all the information about my case?

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

The AAT may also have files which contain and previous visa applications you have made to the Department of Immigration and Citizenship.

They will also have any information you submit to them directly.

4. Do I need to bring anything to the hearing?

You may want to bring your 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 may want to have considered with the application that has not already been put on your DIBP file.

5. How do I get to the hearing?

Your hearing will be held at

The Administrative Appeals Tribunal
 Level 11
 83 Clarence St
 Sydney NSW 2000

When you get to level 11, you will need to notify the front desk that you have a hearing with the AAT at the specified time. The person at the front desk will mark your name off and give you a number and ask you to wait for your number to be called.

When the AAT is ready for you, a hearing attendant will call for your number and you will be taken to a hearing room.

6. 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 may address that person as 'Member'. They are similar to a judge in court, but the AAT is a little less formal than court.

They will need to decide whether or not you are a refugee. In doing so, they will need to consider the definition contained in the United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees and, to consider whether you are owed 'complementary protection': if there are substantial reasons for considering that you would be subjected to significant harm in your country of origin.

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

Any other person you have requested to attend the hearing with you, for example, a support person or friend. Please note, that you must inform the AAT before the hearing if you wish to bring someone.

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.

7. 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. He or she will ask you to provide your photo identification and whether or not there are other documents you would like to submit to the AAT before the hearing.

The hearing will be recorded and all proceedings 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 which is 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 have to stand up. You may sit when the Member sits down.

The hearing attendant will administer the oath or affirmation to the interpreter and then to you. He or she will check whether the recording equipment is working and then leave the room.

The Hearing

The Member will commence the hearing and explain to you the role of the AAT and 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 raise this immediately with the Member. It is important that the information you put forward is accurate and that there is a clear line of communication between you and the Member. The interpreter has no part in the decision that is made. They only act as a medium of communication.

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. The Member will ask you questions about the events which you have detailed in your statements and what you may have said at the DIBP interview and also discuss other information with you that they may have.

If you do not understand a question, say so. If you cannot remember an event very clearly, say so. Be sure of your answers before you start speaking, as you will be recorded.

The Member may tell you that he has information which does not support your claims to protection. It may seem as though 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 at the hearing or you may wish to respond at a later date in writing or at another hearing. If the issues are quite complicated, it may be best to have more time to consider your response. You must inform the Member which method of responding you would prefer. In considering your response you may want to ask the AAT member where they obtained the information from and why it is relevant to your case.

If you elect to respond in writing at a later date, the Member will assign you a date in which the response is due. If you elect 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 may have an opportunity to address them. You will then be asked if there is anything else you wish 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*. Do not leave until you feel satisfied that you have told your story in full.

If you have elected to respond to information put to you at the hearing in writing, the Member will tell you of the date which you have to respond by. The AAT will not make a decision in your case till after this date.

8. What happens once I have a decision?

Once you have had your hearing, the Member can make a decision on your case any time after the hearing. If you are going to provide more documents or evidence to the Member you should ask for a date which they are to be due so that the Member will not make a decision till then. Waiting periods for decisions vary and are influenced by a number of different factors.

The decision in 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 remit your application for review back to the DIBP for due consideration. The DIBP 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 contain 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 RACS as soon as possible for further advice, as you have only **35 days** from the date of the decision to file an application for judicial review at the Federal Circuit Court.

9. Further advice

If you need further advice you can contact the RACS Telephone Advice service between 10:00 and 12:00 on Tuesday for free telephone advice and to make a face to face appointment or for a referral to another legal service or private Migration Agent.

Please note: This factsheet contains general information only. It does not constitute legal or migration advice. If you would like more detailed information on any aspect, please refer to RACS fact sheets available at www.racs.org.au. RACS is independent of the Department of Immigration. All assistance is free. This factsheet was prepared in September 2016.