



INFORMATION ABOUT HEARINGS

What is a hearing?

The hearing is an opportunity for you to present your case, make submissions and give evidence relating to the issues arising in your matter. We may also take evidence from other persons.

Hearings are conducted by a Member allocated to your case. Our procedures are relatively informal, and the Department of Home Affairs (the department) is usually not represented. The Member will guide the proceedings to suit the circumstances of the case, will ask questions and will provide you with an opportunity to make a statement or present arguments.

The hearing may be conducted in person, by video conference or by telephone. Hearings in person may be conducted at an Administrative Review Tribunal (ART) office or in another suitable location. Hearings by video will usually be conducted by Microsoft Teams and hearings by telephone will usually be conducted by standard telephone conferencing facilities (e.g. your own home telephone or mobile telephone device).

Your hearing will be conducted in the way considered suitable by the Presiding Member. Your hearing notice states the way the hearing will be conducted. You can respond or make any comment about the way your hearing will be conducted in the 'Response to hearing notice' form.

Can I have another person participate in the hearing?

You may have another person present at the hearing to assist you. This may be your representative, if you have appointed a representative, or your sponsor or a family member. A person assisting you can give you support and may be invited or permitted by the Member to present arguments or comment on specific matters.

Can my representative appear on my behalf?

Yes, however your representative will not be able to give evidence on matters of which only you have personal knowledge. In most cases, the Member will want to talk to you about your case and take evidence from you. Therefore, unless we tell you otherwise, you should attend your hearing personally, even if your representative is also planning to attend.

How can I submit documents?

If you wish to provide documents to the Tribunal including any further evidence or submissions in support of your case, you can do so by:

- submitting them using the Tribunal online system accessible via the Tribunal's online portal (www.art.gov.au – 'Manage your case');
- emailing them to reviews@art.gov.au, quoting your case number; or
- sending them to the Tribunal by post. Address details can be found on our website (www.art.gov.au).

Can I ask the ART to obtain evidence?

You should use the 'Response to hearing notice' form to nominate persons you want us to take oral evidence from. If any person is in immigration or criminal detention, you should advise us immediately. You will need to arrange for any persons you nominate, who are not in immigration or criminal detention, to be available to give evidence.

We will consider your request to take evidence from other persons but may decide not to do so. For example, we may be satisfied on a particular point, or may not consider the evidence to be relevant to your case.

For a **Bridging Visa (Detention) case**, you were provided with an opportunity in your review application, to nominate any persons from whom you wished the Member to obtain oral evidence. Please arrange for any persons nominated in your application to participate in the hearing. The Member will take evidence from them, if necessary.

Can the ART issue a summons?

We have the power to formally summons a person to appear to give evidence or to produce documents. This power is generally only used in circumstances where a person may otherwise be unwilling or unable to attend the hearing or provide a document.

You can request us to issue a summons. The request must be in writing. If the Member decides to issue a summons at your request, you are liable to pay the costs.

Am I required to take an oath or make an affirmation?

We generally require that all persons giving oral evidence will take an oath or make an affirmation to tell the truth. If an interpreter is assisting at the hearing, the interpreter may be required to take an oath or make an affirmation that he or she will interpret to the best of his or her skills and abilities. If the hearing takes place by phone or video, persons giving evidence will only be able to make an affirmation.

How long does a hearing take?

The average length of a hearing is two hours. Some hearings are shorter and some are much longer. The Member may adjourn a hearing to allow for a break. You may ask for a short break if you need one at any time during the hearing.

Is the hearing held in private?

Hearings are generally open to the public except in protection visa matters. This means that family members or friends may observe the hearing, and there may be other persons present. For hearings in person, seating is limited and any person present must not interrupt or disturb the hearing. For hearings by phone or video, we may allow members of the public to also observe the hearing by phone or video.

If the Member considers it is appropriate to do so, the Member may direct that part or all of the hearing is held in private. The Member may also give directions in relation to the persons who may be present. You may ask the Member to consider holding the hearing in private either before or during the hearing.

Hearings in **protection visa matters** are held in private. A friend or relative may be able to be with you during the hearing. However, the Member may direct the person or persons to leave the hearing room for part of the hearing if they are also going to give evidence on your behalf or to protect your privacy.

Is the hearing recorded?

All hearings are audio recorded. You may ask us for a copy of the recording at the end of the hearing.

Will an interpreter be provided at the hearing?

If you require an interpreter and your hearing notice does not say that an interpreter will be at your hearing, please notify the ART immediately so arrangements can be made.

The interpreter will be a qualified interpreter from an interpreter service - it is our policy not to use family members, friends or representatives as an interpreter. If you are not satisfied with the interpreting before or during the hearing, it is important that you tell the Member or the hearing attendant as soon as possible.

What happens on the day of the hearing?

What happens on the day of the hearing depends upon the place and type of hearing you have been invited to appear by.

All hearings will generally involve a hearing attendant who will introduce themselves to you, confirm with you who will be attending the hearing and explain the hearing procedures. The Presiding Member will join the hearing once it is ready to commence and will administer an oath or affirmation to any person giving evidence and to the interpreter.

If your hearing is by video or telephone, you may be contacted prior to your hearing in order for us to test your video or telephone conferencing facilities.

If appearing at an ART office

If the hearing is at an ART office, you should arrive at that place at least 15 minutes before the start of the hearing. You may either be requested to go to the reception counter for further instructions or you may be told your hearing room and requested to go straight there.

This fact sheet provides general information only. It is not legal advice about your case. If you have a question about the law or how it applies to your case, you should seek legal advice.

If appearing by video or telephone

If the hearing is by video or telephone, your hearing notice may contain specific instructions about how you will appear and from where. You must follow all instructions given in your hearing notice. Unless you were invited to appear by video from an ART office, you should appear from a quiet and private place where you will not be disturbed (e.g. from your own home). If your review relates to a protection visa, it must also be a place where you cannot be overheard.

If you are invited to appear by video conferencing technology, such as Microsoft Teams, you should ensure you have access to a suitable device (e.g. a P.C., smart phone or tablet) with the necessary software and data or internet connection.

You will be able to see and hear the Member on the video screen or your video conferencing device. If you are having difficulty with hearing or seeing the Member, or hearing the interpreter, you should inform the Member or the hearing attendant as soon as possible.

If you are invited to appear by telephone, we will contact you on the telephone number you provided in connection with the review. If you have not provided a telephone number in connection with the review, we may give you a unique telephone number for you to call for your hearing. If at any time you have difficulty hearing the Member, the interpreter or the hearing attendant, you should inform the Member or hearing attendant as soon as possible.

What do I call the Member?

The Member may be addressed by name (e.g. 'Ms Smith') or referred to as 'Member' or by their specific title as advised at the hearing.

When will I get a decision?

As each case is different, it is difficult to say how long it will take for us to make a decision in your case. In some cases, the Member may announce the decision at the end of the hearing. However, in most cases a decision will not be made at the end of the hearing but will be given to you at a later date.

What if I cannot attend the scheduled hearing?

If you are not able to attend the scheduled hearing, or you would prefer that the hearing take place in a different way (e.g. at an ART office instead of by video or telephone), you must advise us of this as soon as possible. Please note that we will only make changes if we are satisfied that there are good reasons for doing so. An adjournment sought on the day of the hearing will not be granted unless there are exceptional reasons.

If you do not appear at the scheduled hearing, we may dismiss your application or make a decision on your application after considering any documents and any other information or evidence given to the Tribunal and without holding the hearing. Not appearing at the scheduled hearing means:

- if you were invited to appear at an ART office (including by video from an ART office), you do not attend the ART office at the scheduled time;

This fact sheet provides general information only. It is not legal advice about your case. If you have a question about the law or how it applies to your case, you should seek legal advice.

- if you were invited to appear by video conference using Microsoft Teams, you do not appear via Microsoft Teams at the scheduled time;
- if you were invited to appear by video conference at a specified place, you do not attend the place at the scheduled time; or
- if you were invited to appear by telephone, you do not answer our phone call to you at the scheduled time or you do not call us on the number we provided to you at the scheduled time.

If you seek to adjourn your hearing for a medical reason, you must provide a doctor's certificate that states you are not able to attend the scheduled hearing. If you cannot provide a medical certificate you must provide a convincing reason for this. The Member will consider the request and advise you of the outcome. If we do not advise you that an adjournment has been granted, you must assume that the hearing will go ahead.

If you are seeking more time to present information after the hearing you should advise the Member at the hearing and provide strong reasons.

What happens if an application is dismissed?

If we dismiss your application because you did not appear at the scheduled hearing, a written statement of the dismissal decision will be given to you. Within 28 days after receiving notice of the dismissal decision you may apply for reinstatement of the application.

On receiving an application for reinstatement, we may reinstate the application for review if we consider it appropriate to do so. If we reinstate the application, the application is taken never to have been dismissed and we will conduct (or continue to conduct) the review accordingly.

If we decide not to reinstate the application, or if you fail to apply for reinstatement within the 28-day period, we must confirm the decision to dismiss the application. If we confirm the decision to dismiss the application, the decision under review is taken to be affirmed. The effect of this is that the department's decision remains in force.

A written statement of our decision to reinstate the application or to confirm the dismissal of the application will be given to you.

What if I want the Tribunal to make a decision without holding a hearing?

You can write to the Tribunal to request the Tribunal make a decision without a hearing. However, you may still be required to attend the hearing if the Tribunal is unable to determine the issues in your absence. If you request the Tribunal to make a decision without a hearing, and we still require you to attend, we will inform you of this.

Please note that if you request the Tribunal to make a decision without a hearing, and the Tribunal proceeds to make a decision because it considers the issues can

be determined in your absence based on the information before it, this does not guarantee you will receive a favourable decision.

In making a decision the Tribunal may consider issues that were not considered by the departmental decision maker and may decide your case on a different basis to the department's decision. This may include affirming the decision to refuse your visa application or cancel your visa.

What if I want to make a comment or a complaint?

You can help us by telling us what you like about your dealings with us or where you think we can improve. If you wish to provide us with feedback you can tell the officer who is dealing with your case. Alternatively, you can provide feedback on our website (www.art.gov.au), or forward a written complaint marked 'confidential' to us at GPO Box 9955, Sydney NSW 2001.

Where can I find more information?

A wide range of information about our operations is available on our website at www.art.gov.au.

When this Fact Sheet refers to "You" it means the applicant, and includes their nominee, representative or support person. When it refers to "We" or "Us" it means the ART.