

Administrative Review Tribunal (Guidance and Appeals Panel) Practice Direction 2024

I, the Hon Justice Emilius Kyrou AO, President of the Administrative Review Tribunal, make the following Practice Direction.

Dated 14 October 2024

THE HON JUSTICE EMILIOS KYROU AO
President, Administrative Review Tribunal

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Part 1. Preliminary

Scope and structure

- 1.1 This Practice Direction is made under section 36(1) of the *Administrative Review Tribunal Act 2024* (Act).
- 1.2 This Practice Direction is arranged in 7 Parts:
 - (a) Part 1 – Preliminary;
 - (b) Part 2 – First instance referrals;
 - (c) Part 3 – Second instance referrals;
 - (d) Part 4 – Requests for interlocutory and ancillary orders;
 - (e) Part 5 – Discretionary considerations;
 - (f) Part 6 – Decisions regarding referral; and
 - (g) Part 7 – General.
- 1.3 This Practice Direction commences on 14 October 2024 and has effect from that date and remains in effect until it is superseded or revoked.
- 1.4 The purpose of this Practice Direction is to make directions about the practices and procedures applicable to referral of matters to the guidance and appeals panel (GAP) established by Part 5 of the Act.
- 1.5 This Practice Direction does not apply to the extent it is inconsistent with:
 - (a) a provision of the Act or another Act or instrument under which the Tribunal has powers to review decisions;
 - (b) a provision of a regulation made under the Act; or
 - (c) a provision of a rule made under the Act.
- 1.6 This Practice Direction should be read in conjunction with the following practice directions made under section 36 of the Act:
 - (a) *Administrative Review Tribunal (Common Procedures) Practice Direction 2024*;
 - (b) *Administrative Review Tribunal (Migration, Protection and Character) Practice Direction 2024*;

- (c) *Administrative Review Tribunal (Child Support) Practice Direction 2024*; and
 - (d) *Administrative Review Tribunal (Freedom of Information) Practice Direction 2024*.
- 1.7 Where the terms of this Practice Direction are inconsistent with the terms of another practice direction, the terms of this Practice Direction apply.
- 1.8 A failure by the Tribunal to comply with this Practice Direction does not affect the validity of anything done by the Tribunal.

Circumstances where matters referred to GAP

- 1.9 The Act confers a discretion on the President to refer certain matters for hearing and determination by the GAP in three circumstances:
- (a) referral under section 122(1) of the Act – where there is no existing Tribunal decision on an application for review and the President is satisfied that the application for review raises an issue of significance to administrative decision making and the referral is appropriate in the interests of justice. (***first instance referral***)
 - (b) referral under section 128(2)(a) of the Act – where there is an existing Tribunal decision on an application for review and the President is satisfied that the Tribunal decision raises an issue of significance to administrative decision making. (***second instance referral based on administrative significance***)
 - (c) referral under section 128(2)(b) of the Act – where there is an existing Tribunal decision on an application for review and the President is satisfied that the Tribunal decision may contain an error of fact or law materially affecting the Tribunal decision. (***second instance referral based on a possible error of fact or law***)
- Note:** In relation to second instance referrals, it is possible for a referral to include either circumstance (b) or circumstance (c) or both of them in relation to a Tribunal decision.
- 1.10 For second instance referrals, in accordance with section 130(2) of the Act, the Tribunal decision that is reviewed by the GAP is:
- (a) if the Tribunal decision affirmed the original decision-maker’s decision or sets it aside and remits it for reconsideration by the original decision-maker — the original decision-maker’s decision;
 - (b) if the Tribunal decision varied the original decision-maker’s decision — the varied decision; or

- (c) if the Tribunal decision substituted a new decision for the original decision-maker's decision — the substituted decision.

Definitions

1.11 In this Practice Direction:

applicant for review means a party applying to the Tribunal for review of a reviewable decision.

Act means the *Administrative Review Tribunal Act 2024*.

conferring legislation means an Act or other legislative instrument conferring jurisdiction on the Tribunal to review particular matters.

decision-maker has the same meaning as under the Act.

earlier Tribunal proceeding means the proceeding in which the Tribunal decision was made.

fee payable means a fee payable under the rules for making a referral application.

first instance referral has the meaning in paragraph 1.9(a) of this Practice Direction.

GAP means the guidance and appeals panel.

GAP applicant means a party who applies to the President to refer a Tribunal decision to the GAP for fresh review in accordance with section 123 of the Act.

guidance and appeals panel has the same meaning as under the Act.

ineligible matter means a matter which under the Act, conferring legislation or the rules cannot be referred to the GAP.

Note: Some ineligible matters are referred to in the Note to paragraph 2.1 and in Note 1 to paragraph 3.1 of this Practice Direction.

non-participating party has the same meaning as under the Act.

party means a party to an application for review before the Tribunal.

President means the President of the Tribunal and includes a person who has delegated authority from the President in relation to the matter set out in this Practice Direction.

referral application means an application to refer a Tribunal decision to the GAP pursuant to section 123 of the Act.

referral decision means a decision by the President to refer or refuse to refer a matter to the GAP.

referral request means a request to refer an application for review to the GAP pursuant to section 122 of the Act.

responding party means the party responding to the referral request or the referral application.

reviewable decision has the same meaning as under the Act.

rules has the same meaning as under the Act.

second instance referral based on administrative significance has the meaning in paragraph 1.9(b) of this Practice Direction.

second instance referral based on a possible error of fact or law has the meaning in paragraph 1.9(c) of this Practice Direction.

stay order means an order affecting the operation or implementation of a Tribunal decision made under section 127 of the Act.

Tribunal means the Administrative Review Tribunal.

Tribunal case event has the same meaning as under the Act.

Tribunal decision means a decision of the Tribunal, other than as constituted by the GAP, made in relation to a reviewable decision in accordance with section 105 of the Act.

Tribunal guidance decision has the same meaning as under the Act.

Objectives and general principles

- 1.12 The objectives of this Practice Direction include to ensure that:
 - (a) matters referred to the GAP and pathways for potential referral proceed expeditiously and efficiently; and
 - (b) matters of significance to administrative decision making which are the subject of a first instance referral to the GAP are identified and referred as early as possible.
- 1.13 The Tribunal expects parties and their representatives to use their best endeavours to assist the Tribunal to achieve its objective under section 9 of the Act, including by:

- (a) clearly setting out in writing why a matter should or should not be referred to the GAP and providing all documentary evidence relied upon and any written submissions, in accordance with this Practice Direction; and
- (b) ensuring that their written submissions clearly and concisely address the matters the GAP is asked to determine.

1.14 The Tribunal aims to reduce cost and delay by:

- (a) requiring timely information from parties about the basis for a referral to the GAP prior to a decision being made whether a matter is to be referred;
- (b) limiting factual investigation to what is required to resolve the matters the Tribunal is asked to determine;
- (c) accessing documents and records from the earlier Tribunal proceeding that are relevant and have already been given to the Tribunal by the parties;
- (d) holding Tribunal case events only where necessary; and
- (e) deciding referral requests and referral applications without requiring an oral hearing, except where, upon request by a party, the Tribunal determines that an oral hearing is necessary in the interests of justice.

Part 2. First Instance Referrals

First instance referral on the President's own initiative

2.1 A first instance referral of an application for review to the Tribunal can be made by the President on the President's own initiative or on the request of a party.

Note: Some applications for review are ineligible matters in respect of a first instance referral to the GAP. They include:

- (a) applications for review of decisions made under the *Freedom of Information Act 1982*; and
- (b) applications for review in the Intelligence and Security jurisdictional area.

2.2 Having regard to:

- (a) the Tribunal's objective in paragraph 9(d) of the Act to improve the transparency and quality of government decision-making; and

- (b) the functions of the President under section 193(i) to inform Ministers, relevant Commonwealth entities and the Administrative Review Council of any systemic issues related to the making of reviewable decisions that have been identified in the caseload of the Tribunal,

members and staff of the Tribunal will inform the President of any application for review that may warrant consideration of whether it is appropriate for first instance referral to the GAP.

- 2.3 Where the President considers that an application for review may be appropriate for first instance referral, the President will usually seek written submissions from the parties on whether the application for review should be referred to the GAP.

Note: The notice from the President may require the parties to comply with Part 3 of this Practice Direction with appropriate modifications.

- 2.4 A decision by the President whether to refer the application for review to the GAP will be made without an oral hearing and will have regard to any submissions made by the parties.

First instance referral on request of a party

- 2.5 A party to an application for review (***requesting party***), other than one involving an ineligible matter, may request that the President refer the application for review to the GAP for hearing and determination.

Making the referral request

- 2.6 A referral request should be made as soon as possible to enable efficient management of the proceeding. Accordingly:
 - (a) where the requesting party is the applicant for review – the referral request should be made at the same time as the application for review; or
 - (b) where the requesting party is a respondent to an application for review – the referral request should be made as soon as possible after that party receives the application for review.
- 2.7 A referral request must be made in writing by completing the *GAP Referral Request* form available at www.art.gov.au. The request must:
 - (a) clearly and concisely set out why:
 - (i) the application for review raises an issue of significance to administrative decision-making; and

- (ii) it is appropriate in the interests of justice that the matter be referred to the GAP;
- (b) set out the circumstances, if any, of the parties to the application for review that the requesting party contends are relevant to the referral request;
- (c) identify and explain any discretionary factors favouring the granting of the referral request;
 - Note:** Part 5 of this Practice Direction identifies some discretionary factors that may be relevant to a determination of a referral request.
- (d) state whether the requesting party has consulted the other party or parties in relation to the referral request and the response (if any) of the other party or parties;
- (e) provide an estimate of the duration of the hearing if the matter is referred to the GAP;
- (f) not exceed 5 A4 pages unless the Tribunal otherwise directs;
- (g) be accompanied by or include:
 - (i) any document not already provided to the Tribunal which is relevant to whether the matter is of significance to administrative decision-making or whether it is appropriate in the interests of justice that the matter be referred to the GAP; or
 - (ii) information identifying any relevant documents which have already been lodged with the Tribunal; and
- (h) to the extent possible – be made using the Tribunal online system accessible via the Tribunal website with copies provided to the other parties, including any non-participating party, at the same time.

Response to the referral request

- 2.8 The other parties to the application for review must provide to the Tribunal and every other party a written response to the referral request within 21 days of receiving the referral request.
- 2.9 A response to the referral request must be in writing by completing the *Response to GAP Referral Request* form available at www.art.gov.au.
- 2.10 The party making the response (*the responding party*) must:
 - (a) state whether the party supports or opposes the referral request; and

- (b) provide an estimate of the duration of the hearing if the matter is referred to the GAP.

2.11 If the responding party supports the referral request, its response must clearly and concisely:

- (a) set out why the application for review raises an issue of significance to administrative decision-making and why it is appropriate in the interests of justice that the matter be referred to the GAP; and
- (b) identify and explain any discretionary factors favouring the granting of the referral request,

but only insofar as the reasons differ from those set out in the referral request.

Note: Part 5 of this Practice Direction identifies some discretionary factors that may be relevant to a determination of a referral request.

2.12 If the responding party contends that the circumstances of any of the parties to the application for review are relevant to the referral request, its response must state those circumstances.

2.13 If the responding party opposes the referral request, its response must clearly and concisely:

- (a) set out why the matter is not of significance to administrative decision-making or why it is not appropriate in the interests of justice that the matter be referred to the GAP; and
- (b) identify and explain any discretionary factors against the granting of the referral request.

Note: Part 5 of this Practice Direction identifies some discretionary factors that may be relevant to a determination of a referral request.

2.14 The completed *Response to GAP Referral Request* form must:

- (a) not exceed 5 A4 pages unless the Tribunal otherwise directs;
- (b) be accompanied by or include:
 - (i) any document not already provided to the Tribunal which is relevant to whether the matter is of significance to administrative decision making or whether it is appropriate in the interests of justice that the matter be referred to the GAP; or
 - (ii) information identifying any relevant documents, but only to the extent that the documents do not accompany the referral request or are not identified in the referral request; and

- (c) to the extent possible – be made in writing using the Tribunal online system accessible via the Tribunal website with copies provided to the other parties, including any non-participating party, at the same time.

Reply to response opposing referral

- 2.15 The party requesting referral and any responding party who supports the referral request may provide a written reply to any party’s response which opposes the referral request. The reply must be provided to the Tribunal and every other party within 7 days of receiving the response which opposes the referral request.
- 2.16 A reply to a response opposing the referral request must be made in writing by completing the *Reply to Response to GAP Referral Request* form available from the Tribunal’s website at www.art.gov.au.
- 2.17 The party making the reply must clearly and concisely reply to a response opposing the referral request but only to the extent that the reply deals with matters which have not already been dealt with by the party providing the reply;
- 2.18 The reply must:
 - (a) not exceed 3 A4 pages unless the Tribunal otherwise directs;
 - (b) be accompanied by any document which is relevant to whether:
 - (i) the matter is of significance to administrative decision making; and
 - (ii) it is appropriate in the interests of justice that the matter be referred to the GAP,if those documents have not already been provided to the Tribunal, or if those documents have already been provided to the Tribunal, identify any such documents; and
 - (c) to the extent possible – be made using the Tribunal online system accessible via the Tribunal website with copies provided by the party making the reply to the other parties at the same time.

Determination by the President

- 2.19 The President will determine whether to grant or refuse a referral request on the basis of the information provided without conducting an oral hearing, except where a party seeks an oral hearing and the President determines that an oral hearing is necessary in the interests of justice.

Note 1: Where an oral hearing is sought, the parties must comply with paragraph 4.13 of this Practice Direction.

Note 2: The President retains the discretion to conduct an oral hearing if the President is satisfied that it is in the interests of justice to do so even if no party requested an oral hearing.

- 2.20 The Tribunal will notify the parties of the outcome of the referral request. If the referral request is granted, the Tribunal will advise the parties of further procedures to be followed in relation to the proceeding.
- 2.21 A decision to refer or refuse to refer a matter to the GAP is not a ‘decision of the Tribunal’ and is not subject to the obligation to provide a statement of reasons in sections 111 or 112 of the Act.
- 2.22 The making of a referral request will not affect the usual practices and procedures of the Tribunal relating to the progress of the application for review, pending the President’s determination whether to grant or refuse the request.

Part 3. Second Instance Referrals

Application to refer a Tribunal decision to the GAP

- 3.1 A party to a Tribunal decision, other than a Tribunal decision involving an ineligible matter, may apply to the President to refer the Tribunal decision to the GAP for fresh review.

Note 1: Some ineligible matters are set out in [section 123 of the Act](#) and [section 15 of the rules](#).

Note 2: Although a review by the GAP of a Tribunal decision involves a fresh review of the matter referred to the GAP, factual or legal issues which have been determined by the Tribunal decision and which are no longer in contention should not be repeated or re-agitated in a referral application. Rather, the primary focus of a referral application should be on why the Tribunal decision raises an issue of significance to administrative decision-making or on the alleged errors of fact or law materially affecting the Tribunal decision. Under section 131 of the Act, the GAP may have regard to evidence and documents in the earlier Tribunal proceeding, the record of that proceeding and any order or recommendation of the Tribunal in that proceeding.

- 3.2 A referral application must be made in writing using the *GAP Referral Application* form available from the Tribunal website at www.art.gov.au. The application must:
- (a) identify the Tribunal decision, including:

- (i) the parties to the proceeding in which the Tribunal decision was made (whether or not a party was a non-participating party);
 - (ii) the Tribunal file number of that proceeding;
 - (iii) the member who made the decision; and
 - (iv) the date of the decision;
- (b) where the referral application contends that the Tribunal decision raises one or more issues of significance to administrative decision-making – clearly and concisely identify those issues and set out why the decision raises those issues;
- (c) where the referral application contends that the Tribunal decision contains one or more errors of fact or law materially affecting that decision – clearly and concisely set out:
- (i) the contended errors of fact or law;
 - (ii) the grounds on which it is contended that the Tribunal decision contains those errors; and
 - (iii) how the error(s) materially affected the Tribunal decision;
- Note:** Refer to the additional requirements in paragraph 3.3 of this Practice Direction.
- (d) where the GAP applicant contends that the circumstances of any of the parties to the previous Tribunal proceeding are relevant to the referral application – state those circumstances;
- (e) be accompanied by a list of documents from the earlier Tribunal proceeding which the GAP applicant contends are relevant to the issues raised in the referral application and set out how those documents are relevant to those issues;
- Note:** The GAP applicant does not need to provide documents as part of the referral application if they were given to the Tribunal during the earlier Tribunal proceeding or formed part of the orders or decision of the Tribunal. It is sufficient to identify the parts of the documents which are relied upon.
- (f) be accompanied by any additional documents which the GAP applicant contends are relevant to the issues raised in the referral application and which have not already been provided to the Tribunal and set out how those documents are relevant to those issues;
- (g) state whether an extension of time is requested to make the referral application;

Note: A referral application must be made by a party within 28 days after the Tribunal gives to the party a statement of reasons for the Tribunal decision, unless the President, in special circumstances, allows a longer period. Extension of time requests must comply with paragraph 4.2 of this Practice Direction.

- (h) state whether payment of a concessional fee is requested;

Note: Such requests must comply with paragraph 4.6 of this Practice Direction. The rules set out circumstances in which concessional fees are payable.

- (i) state whether an order affecting the operation or implementation of the Tribunal decision (stay order) is requested while a referral application to the GAP is being considered;

Note: Stay order requests must comply with paragraph 4.9 of this Practice Direction.

- (j) state whether an oral hearing is sought;

Note: Where an oral hearing is sought, the parties must comply with paragraph 4.13 of this Practice Direction.

- (k) where the GAP applicant contends that there are discretionary factors favouring the granting of the referral application – identify and explain those discretionary factors;

Note: Part 5 of this Practice Direction identifies some discretionary factors that may be relevant to a determination of a referral application.

- (l) provide an estimate of the duration of the hearing if the matter is referred to the GAP;

- (m) not exceed 10 A4 pages unless the Tribunal otherwise directs; and

- (n) to the extent possible – be made using the Tribunal online system accessible via the Tribunal website with copies provided by the applicant to the other parties, including any non-participating party, at the same time.

3.3 For the purposes of paragraph 3.2(c), the *GAP Referral Application* form must:

- (a) in relation to a contention that the Tribunal decision contains errors of fact — identify the paragraphs of the reasons for the Tribunal decision which are said to contain the errors and explain those errors, including by reference to the evidence and other material before the Tribunal in the earlier Tribunal proceeding;
- (b) in relation to a contention that the Tribunal decision contains an error of law — identify the paragraphs of the reasons for the Tribunal decision

which are said to contain the errors and explain those errors, including by reference to any applicable legislation and case law. Any references to legislation must be to specific provisions of the legislation relied upon and any reference to case law must be to specific parts of any cases;

- (c) in relation to a contention that the errors of fact or law materially affected the Tribunal decision — identify the paragraphs of the reasons for the Tribunal decision which are said to demonstrate that the errors are material, and explain how they are material, including by reference to the evidence and other material in the earlier Tribunal proceeding.

3.4 The Tribunal will not accept a referral application if:

- (a) the Tribunal decision constitutes an ineligible matter; or
- (b) the application is made outside the permitted timeframe without an accompanying request for an extension of time that complies with paragraph 4.2 of this Practice Direction.

3.5 The Tribunal may not accept a referral application if it does not include information required by paragraphs 3.2 to 3.3 of this Practice Direction.

3.6 The Tribunal will inform the GAP applicant in writing if it considers that a referral application does not meet the requirements for making a valid application.

3.7 In accordance with [section 128\(3\)\(a\) of the Act](#) the President will not refer a Tribunal decision to the GAP if a fee payable in relation to the referral application is not paid by the time prescribed by the rules.

Note: [Section 28\(1\)](#) of the rules provides that, if an application is not accompanied by the prescribed fee, the President is not required to deal with the application unless and until the fee is paid. [Section 28\(2\)](#) provides that, for the purposes of [section 128\(3\)\(a\) of the Act](#), the time by which the fee must be paid is the end of the 28 days starting on the day the application is made (or such longer period as the President, in special circumstances, allows).

Response to referral application

3.8 The other parties to the proceeding in which the Tribunal decision was made must provide to the Tribunal, and every other party, a written response to the referral application within 21 days of receiving the referral application.

3.9 A response to the referral application must be made in writing using the *Response to GAP Referral Application* form available from the Tribunal website at www.art.gov.au.

3.10 The party making the response (*responding party*) must:

- (a) state whether the responding party supports or opposes the referral application;
- (b) if the responding party supports the referral application – clearly and concisely set out (as relevant):
 - (i) why the Tribunal decision raises one or more issues of significance to administrative decision-making, but only insofar as their reasons differ from those set out in the referral application; or
 - (ii) why the Tribunal decision contains one or more errors of fact or law materially affecting the Tribunal decision, but only insofar as their reasons differ from those set out in the referral application;
- (c) if the responding party opposes the referral application – clearly and concisely set out (as relevant):
 - (i) why the Tribunal decision does not raise any issue of significance to administrative decision-making; or
 - (ii) why the Tribunal decision does not contain any error of fact or law materially affecting the Tribunal decision;

Note: Refer to the additional requirements in paragraph 3.11 of this Practice Direction.

- (d) where the responding party contends that the circumstances of any of the parties to the previous Tribunal proceeding are relevant to the referral application – state those circumstances;
- (e) be accompanied by:
 - (i) a list of documents from the earlier Tribunal proceeding which the responding party contends are relevant and were not included in the list of documents provided by the GAP applicant; and
 - (ii) an explanation of how those documents or the documents in the list provided by the GAP applicant are relevant to those issues;

Note: The responding party does not need to provide documents as part of the response if they were given to the Tribunal during the earlier Tribunal proceeding or provided by the GAP applicant, or formed part of the orders or decision of the Tribunal. It is sufficient to identify the parts of the documents which are relied upon.

- (f) where the *GAP Referral Application* form states that an extension of time is requested to make the referral application – state whether the request will be consented to or opposed.

Note: If an extension of time is opposed, the responding party must comply with paragraph 4.3 of this Practice Direction.

- (g) where the *GAP Referral Application* form states that a stay order is requested while the referral application to the GAP is being considered – state whether a stay order will be consented to or opposed.

Note: If a stay order is opposed, the responding parties must comply with paragraph 4.10 of this Practice Direction.

- (h) state whether an oral hearing is sought;

Note: Where an oral hearing is sought, the parties must comply with paragraph 4.13 of this Practice Direction.

- (i) where the responding party contends that there are discretionary factors against the granting of the referral application – identify and explain those discretionary factors;

Note: Part 5 of this Practice Direction identifies some discretionary factors that may be relevant to a determination of a referral application.

- (j) provide an estimate of the duration of the hearing if the matter is referred to the GAP;
- (k) not exceed 10 A4 pages unless the Tribunal otherwise directs;
- (l) to the extent possible – be made using the Tribunal online system accessible via the Tribunal website with copies provided by the responding party to the other parties, including any non-participating party, at the same time.

3.11 For the purposes of paragraph 3.10(c), the *Response to GAP Referral Application* form must:

- (a) include a response to the contentions in the *GAP Referral Application* form;
- (b) identify paragraphs of the reasons of the Tribunal decision which are relevant to any contention in the *Response to GAP Referral Application* form;
- (c) where relevant to any contention in the *Response to GAP Referral Application* form:
 - (i) refer to the evidence and other material before the Tribunal in the earlier Tribunal proceeding; and
 - (ii) refer to any applicable legislation and case law.

Note: References to legislation must be to specific provisions of the legislation relied upon and references to case law must be to specific parts of any cases relied upon.

Reply to response opposing referral application

- 3.12 The GAP applicant and any other party who supports the referral application may provide a written reply to any responding party's response which opposes the referral application. The reply must be provided to the Tribunal and every other party within 7 days of receiving the response opposing the referral application.
- 3.13 A reply to a response opposing the referral application must be in writing using the *Reply to Response to GAP Referral Application* form. The party making the reply (***replying party***) must:
- (a) clearly and concisely reply to a response opposing the referral application. The reply should only deal with matters which have not already addressed by the replying party;
 - (b) include:
 - (i) a list of documents from the earlier Tribunal proceeding which the replying party contends are relevant to the issues raised in the reply and have not previously been included in a list of documents already provided by the replying party or the responding party; and
 - (ii) an explanation of how those documents or any other documents already identified by a party are relevant to those issues;
 - (c) be accompanied by any additional documents which the replying party contends are relevant to the issues raised in the response opposing the referral application and which have not already been provided to the Tribunal, and set out how those documents are relevant to those issues;
 - (d) not exceed 5 A4 pages unless the Tribunal otherwise directs; and
 - (e) to the extent possible – be made using the Tribunal online system accessible via the Tribunal website with copies provided by the replying party to the other parties at the same time.

Part 4. Requests for Interlocutory and Ancillary Orders

Request for extension of time

- 4.1 A referral application must be made by a party within 28 days after the Tribunal gives to the party a statement of reasons for the Tribunal decision, unless the President in special circumstances allows a longer period.
- 4.2 A request for an extension of time to make a referral application must be made at the same time as the referral application and must:
- (a) be included in the *GAP Referral Application* form;
 - (b) explain why the application was not made within the prescribed period;
 - (c) identify any prejudice the GAP applicant may suffer if an extension of time is not granted;
 - (d) identify any special circumstances warranting an extension of time; and
 - (e) be accompanied by any document relevant to the question of special circumstances.
- Note:** Where a request for an extension of time is included in the *GAP Referral Application* form, the page limit for the form is increased by 5 pages.
- 4.3 If a party opposes the request for an extension of time, that party must include an explanation as to why the request is opposed in the *Response to GAP Referral Application* form. That explanation must:
- (a) respond to the contentions in the request for an extension of time; and
 - (b) include an explanation of any prejudice that the party opposing the request for an extension will suffer if an extension is granted.
- Note:** Where a *Response to the GAP Referral Application* form includes an explanation as to why a request for an extension of time is opposed, the page limit for the form is increased by 5 pages.
- 4.4 A decision by the President whether to grant an extension of time will ordinarily be made without an oral hearing.
- 4.5 The President will consider the referral application only if an extension of time is granted.

Request for payment of a concessional fee

- 4.6 A request for payment of a concessional fee must be made to the Tribunal at the same time as the referral application, by submitting the *Request for concessional fee* form available on the Tribunal website at www.art.gov.au.

Note: The GAP applicant is not required to provide a copy of the request for payment of a concessional fee to the other parties to the proceeding.

- 4.7 Requests for payment of a concessional fee will be determined without an oral hearing and in accordance with the rules.

Request for stay order affecting Tribunal decision

- 4.8 The making of a referral application to the GAP does not affect the operation of the Tribunal decision that is the subject of the referral application. However, a party to the proceeding may apply to the Tribunal for a stay order. The Tribunal may make a stay order if it considers that it is desirable to do so for the purpose of ensuring the effectiveness of the referral application, and may include conditions in such an order.

- 4.9 A request for a stay order must be made at the same time as the referral application and must:

- (a) be included in the *GAP Referral Application* form;
- (b) explain why the Tribunal should make a stay order for the purpose of ensuring the effectiveness of the referral application, including why the effectiveness of the referral application will be adversely affected if a stay order is not granted;
- (c) identify any prejudice that the GAP applicant will suffer if a stay order is not granted;
- (d) be accompanied by any document relevant to whether a stay order should be made;
- (e) specify the period of the stay if it is different from the period specified in section 127(4) of the Act, and explain why the period should differ;
- (f) specify any conditions to be included in the stay order, and explain why they should be included; and
- (g) specify whether any person may be affected by the Tribunal decision and the proposed stay order, and how they may be affected.

Note: Where a request for a stay order is included in the *GAP Referral Application* form, the page limit for the form is increased by 5 pages.

- 4.10 If a party opposes the request for a stay order, that party must, in the *Response to GAP Referral Application* form:
- (a) explain why the request is opposed, including:
 - (i) why it is not desirable for the Tribunal to make a stay order or why such an order is not necessary for the purpose of ensuring the effectiveness of the referral application;
 - (ii) any prejudice that the party opposing the request for stay order will suffer if a stay order is made;
 - (b) respond to the contentions in the *GAP Referral Application* form in support of the request for a stay order;
 - (c) include any document not previously provided that is relevant to whether a stay order should be made;
 - (d) where relevant – specify the period of the stay if it is different from the period specified in the *GAP Referral Application* form;
 - (e) where relevant – specify any conditions to be included in the stay order, if they differ from the conditions specified in the *GAP Referral Application* form; and
 - (f) where relevant – specify whether any person may be affected by the Tribunal decision and the proposed stay order.

Note: Where a *Response to GAP Referral Application* form includes an explanation of why a request for a stay order is opposed, the page limit for the form is increased by 5 pages.

- 4.11 If the GAP applicant does not request a stay order and another party to the proceeding wishes to request a stay order, that request must be included in that party's *Response to GAP Referral Application* form. In such a case:

- (a) paragraph 4.9 applies as if a reference to the *GAP Referral Application* form were to that party's *Response to GAP Referral Application* form; and
- (b) any party that wishes to oppose the request for a stay order may provide to the Tribunal and to all other parties to the proceeding a reply which complies with paragraph 4.10 as if a reference to a *Response to GAP Application Form* in that paragraph were to such a reply.

Note: Where a party provides a *Reply to Response to GAP Application* form in accordance with paragraphs 3.12 to 3.13 of this Practice Direction, the reference to a reply in paragraph 4.11 is to the *Reply to Response to GAP Application* form.

- 4.12 A decision by the Tribunal whether to grant a stay order will ordinarily be made without an oral hearing.

Request for oral hearing

- 4.13 Where a party states that an oral hearing is sought, that party must also specify in the *GAP Referral Application* form or *Response to GAP Referral Application* form, as relevant:

- (a) whether an oral hearing is sought for:
 - (i) the referral application;
 - (ii) an extension of time request (where relevant);
 - (iii) a stay order request (where relevant); or
 - (iv) some or all of the above.
- (b) the reasons why an oral hearing is necessary in the interests of justice; and
- (c) what prejudice the party will suffer if an oral hearing is not conducted.

Note: See further paragraph 6.2 of this Practice Direction.

Part 5. Discretionary Considerations

General discretionary considerations

- 5.1 Paragraphs 2.7(c), 2.11(b), 2.13(b), 3.2(k) and 3.10(i) of this Practice Direction require the parties to identify any discretionary factors that they contend should be taken into account by the President in determining whether to refer, or refuse to refer, a matter to the GAP.

Discretionary considerations – first instance referrals

- 5.2 The President is not required to refer any application for review to the GAP. In considering whether to make a first instance referral, the President will consider the circumstances of the parties to the proceeding, including whether a referral is likely to disadvantage a party unfairly or cause an unacceptable delay in reaching an outcome.

- 5.3 In addition, the President may consider whether the proceeding is likely to have a broader impact on persons beyond the parties to the proceeding or is likely to improve administrative decision-making.
- 5.4 Proceedings that raise an issue of significance to administrative decision-making may include matters that are novel, complex, could potentially affect large numbers of individuals, or involve significant systemic issues that require guidance. For example, matters that:
- (a) raise issues concerning the legality of an agency's practice, procedure or policy;
 - (b) impact or alter an agency's existing policy or practice across similar types of matters;
 - (c) involve inconsistent or contrary outcomes to recent decisions on matters that are substantively similar in issue and fact;
 - (d) involve a pattern of decision-making that affects significant numbers of people; or
 - (e) involve consideration of a new, complex or untested legislative provision;
 - (f) raise issues of complexity or controversy warranting the making of a Tribunal guidance decision.
- 5.5 Other discretionary factors may also be relevant. Examples of discretionary factors that may justify refusal of a referral request include:
- (a) the stage in the progress of the Tribunal proceeding at which a referral request is made. For example, the closer to a scheduled hearing of the proceeding the application is made, the stronger the discretionary factors in favour of refusing the request may be; and
 - (b) where a referral to the GAP would hinder the Tribunal's ability to effectively pursue the objective in section 9 of the Act.

Discretionary considerations – second instance referrals

- 5.6 The President is not required to refer any decision of the Tribunal to the GAP.
- 5.7 In considering whether to make a second instance referral, the President will consider the circumstances of the parties. These may include (but are not limited to):
- (a) the financial burden on a party to have a matter heard by the GAP;

- (b) the risk of trauma that further proceedings may have on a party;
 - (c) whether parties have adequate representation; and
 - (d) concerns over the safety, health or confidentiality of a party, and any other concern.
- 5.8 In determining whether to refer a Tribunal decision that may contain a material error of fact or law, other relevant considerations may include:
- (a) the likelihood that the error occurred, and its significance to the Tribunal's decision on review;
 - (b) whether the error is one that is likely to be repeated if not identified and resolved;
 - (c) whether the error involves a matter of law that is better left to the courts to determine;
 - (d) the impact on the resources of the Tribunal and parties to the review of conducting a further review into the matter; and
 - (e) any other factor the President considers relevant.
- 5.9 In determining whether to refer a Tribunal decision that may raise an issue of significance to administrative decision making, relevant considerations may include those specified at paragraph 5.4 of this Practice Direction.
- 5.10 Other discretionary factors may also be relevant. Examples of discretionary factors that may justify refusal of a referral application include:
- (a) where there may be an error of fact or law which may have materially affected a Tribunal decision but the error involved a very small monetary amount;
 - (b) where, after a Tribunal decision was made, one of the parties to the earlier Tribunal proceeding offered to place the GAP applicant in the position the GAP applicant would have been in if the Tribunal decision had been entirely in favour of the GAP applicant, but the GAP applicant unreasonably refused the offer;
 - (c) where one of the parties has appealed to the Federal Court, on a question of law, from the Tribunal decision; and
 - (d) where a referral to the GAP would hinder the Tribunal's ability to effectively pursue the objective in section 9 of the Act.

Part 6. Decisions Regarding Referral

Referral decisions usually made without oral hearing

- 6.1 The Tribunal aims to determine requests for first instance referral and second instance referral as quickly as the circumstances of the case permit.
- 6.2 The President will determine whether to grant or refuse a referral request, extension of time or stay application on the basis of the request, any response and any reply, without conducting an oral hearing except where a party seeks an oral hearing and the President determines an oral hearing is necessary in the interests of justice.

Note: The President retains the discretion to conduct an oral hearing if the President is satisfied that it is in the interests of justice to do so even if no party requested an oral hearing.

Notification of decision to parties

- 6.3 The Tribunal will notify parties of the outcome of any request for an extension of time, any request for a stay order and the referral application in writing. Ordinarily, a request for an extension of time and a request for a stay will be determined prior to the determination of a referral application. If an extension of time is refused, no determination will be made on the referral application because that application will not be validly made.
- 6.4 A decision of the President whether to refer a Tribunal decision to the GAP is not a decision finalising a proceeding in the Tribunal and is not subject to the obligation to provide a statement of reasons in sections 111 or 112 of the Act.
- 6.5 Where a Tribunal decision is referred to the GAP, the Tribunal will advise the parties of further procedures to be followed in relation to the proceeding.

Part 7. General

Once a matter is referred

- 7.1 In general, once matters have been referred to the GAP, the Tribunal will manage those matters in accordance with the *Administrative Review Tribunal (Common Procedures) Practice Direction 2024* (subject to the

qualifications contained in this Practice Direction) unless another practice direction is more appropriate having regard to the nature of the matter.

Note: For example, the *Administrative Review Tribunal (Child Support) Practice Direction 2024* may apply where a child support matter is referred to the GAP.

- 7.2 In general, within two weeks of the President deciding to refer a matter to the GAP, the Tribunal will convene a directions hearing to discuss the conduct of the GAP hearing and make orders. Directions hearings will be held before a member or a registrar and, unless ordered otherwise, are not confidential.
- 7.3 Where a party is represented, the representative must attend the directions hearing and must be prepared to address the issues raised including:
- (a) the filing of any evidence and documents that are supplementary to the evidence and documents already filed with the Tribunal;
 - (b) the filing of any written submissions, supplementary to the written submissions already filed with the Tribunal as part of the application or request that the proceeding be referred to the GAP;
 - (c) the parties' estimate of the length of the hearing before the GAP;
 - (d) the filing of hearing certificates, if required; and
 - (e) the filing of an agreed statement of facts.
- 7.4 The Tribunal may list additional directions hearings, either of its own initiative or at the request of one or more parties.

If parties reach agreement

- 7.5 If a matter has been referred to the GAP and the parties:
- (a) reach an agreement and ask the Tribunal to make a decision in accordance with section 103 of the Act; or
 - (b) ask the Tribunal to make an order by consent,
- the Tribunal may request submissions (either written or oral) from the parties as to why the Tribunal should:
- (c) make the decision in the terms agreed between the parties; or
 - (d) make the order by consent.

Note: [Section 96 of the Act](#) deals with dismissal of an application made to the Tribunal if the parties consent.