

Migration Review Tribunal and Refugee Review Tribunal Interpreters' Handbook

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The design of the cover of the Interpreters' Handbook is taken from an information sheet provided to applicants with letters sent by the tribunals. The text reads: This letter is important and requires your urgent attention. If you do not understand this letter please call the Translating & Interpreting Service (TIS) on 131 450 so they can help you to contact the tribunals.

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Contacts for this Handbook

The Interpreters' Handbook is available on the tribunals' website: www.mrt-rrt.gov.au. For enquiries, please contact the Policy and Coordination Section, Migration Review Tribunal and Refugee Review Tribunal, GPO Box 1333, Sydney, NSW 2001.

National telephone enquiry number

The tribunals' national enquiry line is 1300 361 969. Local call charges apply from anywhere within Australia.

Email

enquiries@mrt-rrt.gov.au

Foreword

The Migration Review Tribunal and the Refugee Review Tribunal (the tribunals) are committed to providing a service to applicants that is open, accessible, and sensitive to their needs. The provision of professional interpreting services greatly assists the tribunals in both delivering such a service and meeting overall objectives of providing a mechanism of review which is fair, just, economical, informal and quick.

Interpreters play a critical role in the review process in terms of ensuring that an applicant is given an effective opportunity to appear before the tribunals to present arguments and to give evidence. Interpreting that is accurate, impartial and professional is essential for the tribunals to gain a full understanding of an applicant's claims and evidence.

The Interpreters' Handbook (the handbook) sets out the tribunals' requirements and information about the specialised nature of the tribunals' work. The handbook covers the procedural aspects of the hearing and describes the roles and responsibilities of interpreters.

The handbook has been developed primarily as guidance for interpreters who provide, or intend to provide, interpreting services to the tribunals. It is hoped that it will also be of interest and useful to the wider community.

This is the second edition of the handbook. I thank all those who contributed to its development.



Denis O'Brien
Principal Member

30 September 2011

Contents

PART 1: ABOUT THE TRIBUNALS	3
Overview	3
Merits review	3
Vision, purpose and values	3
Matters reviewed by the MRT	4
Matters reviewed by the RRT.....	4
Applying for review	4
Applicants for review	5
The conduct of a review	5
Interpreter Advisory Group	7
PART 2: THE HEARING	8
The use of interpreters at hearings	8
Scheduling and booking arrangements	8
Parties to the hearing	9
Oaths and affirmations	10
Conduct of the hearing.....	10
The hearing	11
After the hearing.....	13
Seeking assistance	13
Hearing by videoconference or teleconference	13
Security and first aid.....	13
PART 3: THE ROLE AND RESPONSIBILITIES OF INTERPRETERS	14
Professional standards.....	14
Preparing for a hearing	14
Interpreting at a hearing	15
Confidential information	17
Conflict of interest and bias	17
Complaints	18
APPENDIX A	19
APPENDIX B	20
APPENDIX C	25
APPENDIX D	26
APPENDIX E	28

PART 1: ABOUT THE TRIBUNALS

Overview

The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) are statutory bodies which provide a final independent merits review of visa and visa-related decisions made by the Minister for Immigration and Citizenship (the Minister) or by officers of the Department of Immigration and Citizenship (the department) acting as delegates of the Minister.

The tribunals are established under the *Migration Act 1958* (the Migration Act). The tribunals' jurisdictions, powers and procedures are set out in the Migration Act and in the Migration Regulations 1994 (the Migration Regulations). The tribunals comprise members (appointed under the Migration Act) and staff (appointed under the Migration Act and employed under the *Public Service Act 1999*). Members are appointed by the Governor-General for fixed terms.

The MRT reviews a wide range of decisions in relation to visas other than protection visas. The RRT reviews decisions in relation to protection visas. A visa is required by anyone who is not an Australian citizen and who wishes to travel to, and remain lawfully in, Australia.

The Migration Act and the Migration Regulations set out the criteria for visas. There are usually criteria specific to a visa, as well as general criteria including health and other public interest criteria.

A visa must be refused if a decision-maker is not satisfied that a person meets the criteria for a visa. A visa may be cancelled if, for example, it was obtained by making false statements, or if the visa holder has not abided by the conditions of the visa.

Merits review

Merits review is an administrative reconsideration of a case. The principal objective of merits review is to ensure that the correct or preferable decision is reached: correct in the sense that the decision made is consistent with the law, and preferable in the sense that, if there is an area of discretion in making a correct decision, the decision made is the most appropriate in the circumstances. The decision and reasons of a merits review body improve the general quality and consistency of decision-making and enhance openness and accountability.

The tribunals reconsider each case in light of all the relevant information, the law and government policy and may substitute a new decision in place of the primary decision. The tribunals consider the material that relates to the decision under review, including the documents provided by the department, and any submissions or evidence from the applicant or other persons. The tribunals may obtain information from other sources or conduct further investigations. The review process provides an applicant with opportunities to give further information supporting his or her case and to comment on information which could form the basis for an adverse decision.

Vision, purpose and values

The tribunals exist to provide an independent and final merits review of decisions using a mechanism of review that is fair, just, economical, informal and quick. Members and staff are aware of the importance of treating those with whom we deal with courtesy, respect and dignity.

The Tribunals' Plan, Member Code of Conduct, Service Charter and Interpreters' Handbook promote and uphold these values. All of these documents are available on the tribunals' website. Staff are also bound by the Australian Public Service Values and Code of Conduct, as set out in the Public Service Act.

Matters reviewed by the MRT

The MRT can review decisions relating to a wide range of visas. Reviewable decisions include decisions to refuse to grant visas, to cancel visas, to refuse to approve sponsors, and to refuse to approve a nominated position or business activity.

Bridging visas are granted to provide temporary lawful status to non-citizens in Australia; for example, while a temporary entrant is awaiting the outcome of an application for permanent residence. Visitor visas are granted to tourists and to persons visiting relatives in Australia. Student visas are granted to persons enrolled at schools, colleges and universities in Australia. Temporary business visas can be granted to persons whose proposed employment or business activities will contribute to the creation or maintenance of employment within Australia, the expansion of Australian trade, an improvement in links with international markets, and/or greater competitiveness in the economy.

Permanent business visas are granted to successful business people who obtain a substantial ownership interest in a new or existing business in Australia or actively participate in that business at a senior management level. Skilled visas are granted to persons in skilled occupations who have the education, skills and employability to contribute to the Australian economy.

Partner visas are granted to partners of Australian citizens or permanent residents. Family visas are granted to children, parents, remaining relatives (persons living overseas who have limited family contacts other than relatives living in Australia), aged dependent relatives (elderly overseas relatives with little or no support in their home country who have been financially supported by a close Australian relative for a reasonable period) and carers (persons who are able and willing to provide assistance needed by a relative in Australia).

Further information on the various visa types can be obtained from fact sheets and other material available on the department's website at www.immi.gov.au.

Matters reviewed by the RRT

The RRT reviews decisions to refuse to grant or to cancel protection visas within Australia. The review of these decisions usually involves a consideration of whether or not the applicant is a person to whom Australia has protection obligations. This includes consideration of whether he or she is a 'refugee' within the meaning of the 1951 United Nations Convention Relating to the Status of Refugees (as amended by the 1967 UN Protocol Relating to the Status of Refugees) (the Convention).

Further information on seeking asylum and humanitarian visas can be obtained from fact sheets and other material available on the department's website at www.immi.gov.au.

Applying for review

The Migration Act and the Migration Regulations specify which decisions the tribunals can review, who may seek review of a decision, how an application for review must be made, the time limits within which applications for review must be lodged, and whether an application fee is payable.

The tribunals cannot review an application lodged outside the relevant time limit or an application lodged by a person who is not entitled to apply for review. Depending on the decision under review, the person applying for review must be the visa applicant, the former visa holder, the sponsor or a close relative.

MRT and RRT application forms contain detailed information about lodging an application for review, who can apply for review, and the time limits. These are available from the tribunals' website at www.mrt-rrt.gov.au or from any registry of the tribunals.

Applicants for review

Applicants for review may include:

- people who are in Australia and have had an application for protection as a refugee refused; or
- people who are in Australia and have had a general migration visa refused; or
- people who are in Australia and have had a visa cancelled; or
- people who have sponsored an overseas family member for a visa and that visa has been refused; or
- employers who have sought to sponsor a person to work for their business.

Many applicants are from non-English speaking backgrounds and may require the assistance of an interpreter to present their claims to the tribunals at a hearing.

The tribunals may also take evidence during a hearing from an overseas visa applicant, family members and other persons.

The conduct of a review

The tribunals' procedures are designed to provide a review process which is fair, just, economical, informal and quick, and to ensure that an applicant can fully put his or her case to the tribunals. The tribunals are committed to ensuring that outcomes do not depend on whether applicants have obtained professional advice or assistance. A significant proportion of cases involve applicants who are not represented and the tribunals have developed procedures and practices, and make information available, aimed at assisting applicants who proceed without representation.

An applicant is entitled to:

- be informed of, and be given an opportunity to comment upon, information that might lead to an adverse outcome;
- appear before the tribunals to give oral evidence and present arguments;
- make written submissions or provide documentary evidence;
- ask the tribunals to take oral evidence from other persons; and
- be provided with a written statement of reasons for the decision.

An applicant may appoint a representative (with very limited exceptions, a representative must be a registered migration agent). A representative can forward written submissions and written evidence to the tribunals, contact the tribunals on the applicant's behalf, and accompany the applicant to any meeting or hearing arranged by the tribunals.

An applicant may have another person present to assist him or her when appearing before the tribunals. Generally, this would be the applicant's representative if a representative has

been appointed. A member may consider it appropriate in the circumstances of a particular case to permit a person assisting the applicant to present arguments or to address the tribunals.

Whether or not the member decides it is appropriate to permit a person assisting the applicant to present arguments or address the tribunals, a person assisting the applicant may assist with the identification of relevant documents, respond to specific questions, request an adjournment, raise a concern about the quality of interpreting and discuss the timeframe for the provision of further comments, responses or information. Participation of this kind is not regarded as presenting arguments or addressing the tribunals as a representative.

An applicant may seek advice from a person assisting during the course of a hearing and may request an adjournment of a hearing to discuss the case with the person assisting. The tribunals will grant such an adjournment to the extent that this is consistent with the effective conduct of the hearing.

The tribunals are usually constituted by a single member. Occasionally, the MRT is constituted by two or three members.

Unless a favourable decision can be made on the papers, an applicant is normally invited to a hearing.

Hearings are held in Sydney, Melbourne, Brisbane, Adelaide and Perth. Applicants and persons located in other parts of Australia or overseas may participate in a hearing by videoconference or by teleconference. All persons giving evidence, and any interpreters, are asked to take an oath or make an affirmation.

At the hearing, the member will ask the applicant questions about his or her circumstances and invite the applicant to comment on relevant information. The member may take oral evidence from witnesses, including from persons living overseas. RRT applicants in particular may be asked in the hearing to recall very sensitive and emotional periods in their lives which they may find difficult to discuss. Oral submissions can play a very important part in the decision making process. Some applicants will not have detailed their claims in writing due to their limited literacy skills and/or reluctance to record sensitive/emotional material in writing. Interpreters play an important role in assisting the tribunals to ascertain the exact nature of the applicant's claims.

The Minister or the department are not represented in hearings. The Migration Act requires that hearings of the MRT be generally open to the public. The Migration Act requires that all hearings of the RRT are held in private. All hearings are audio-recorded.

Once the member has considered all of the evidence, the member will make a decision. The decision may be given orally at the end of the hearing or, more usually, be given to the applicant in writing at a later date. If the member makes an oral decision at the end of the hearing, the applicant will be given a letter advising him or her of the decision and a full statement of reasons will be sent to the applicant within 14 days. If the decision is made after the hearing, a decision notification letter and the reasons for the decision (referred to as the Statement of Decision and Reasons) is sent within 14 days after the day on which the decision is made. The date of the decision appears on the front page of the Statement of Decision and Reasons.

In reviews of decisions to refuse to grant a visa, the tribunals generally either affirm the decision or remit the application for a visa to the department for reconsideration with the direction that the applicant satisfies specified criteria. When a matter is remitted for reconsideration in this way, the department will proceed to assess any remaining criteria (e.g. health, character and security criteria) prior to making a decision on whether a visa can be granted.

Interpreter Advisory Group

The tribunals have an Interpreter Advisory Group (IAG), which has the overall objective of ensuring, as far as possible, that the tribunals maintain access to a high standard of interpreters. The IAG has a national membership comprising both members and tribunal officers. The IAG monitors developments in the use of interpreters and makes recommendations to the Management Board and the Member Professional Development Committees. The IAG also arranges or conducts training for both new and existing members.

PART 2: THE HEARING

The use of interpreters at hearings

The tribunals must appoint an interpreter if an applicant is not sufficiently proficient in English to participate effectively in a hearing. The tribunals may also appoint an interpreter if the applicant is deaf, hearing impaired or speech impaired.

Whenever possible, the tribunals will arrange for an interpreter of a particular gender, dialect, ethnicity, or religion if such a request is made by the applicant or where the tribunals consider it appropriate. For example, the use of a female interpreter is regarded as particularly important where claims relate to a traumatic experience by a female applicant such as rape or physical abuse.

While the obligation for the tribunals to provide an interpreter is statutorily based, interpreters also assist the tribunals to implement the principles of the government's Access and Equity Strategy.

In some instances, an applicant may indicate that he or she does not wish to have an interpreter present. In such cases, the member may request an interpreter to be on 'stand-by'. That is, the member may request that an interpreter be present at the hearing to interpret if the member considers that the applicant is not sufficiently proficient in English.

Where an applicant's command of English is good, the member may decide to conduct the hearing entirely in English with the interpreter assisting if the applicant has difficulty understanding certain terms or expressions. The member will generally seek to avoid conducting the hearing partly in English and partly in the applicant's language as this may lead to confusion.

It is not the role of the interpreter to translate documents at the hearing. However, a member may occasionally request an interpreter who is also an accredited translator to make a sight translation of a minor part (e.g. a date or name) of a document submitted by an applicant at hearing. Where the interpreter is not an accredited translator, the interpreter is asked to make a professional judgement on the difficulty of the relevant parts of the document for him or her to sight translate.

Scheduling and booking arrangements

The tribunals book interpreters in advance of the hearing through preferred service providers.

Applicants and representatives are asked to submit a completed 'Response to Hearing Invitation' form indicating whether an interpreter is required in order to enable the tribunals to make appropriate interpreter arrangements.

Where possible, the tribunals endeavour to provide the main hearing topic or the context of the hearing (e.g. 'China – Falun Gong' or 'India – same sex relationships'), and if applicable the applicant's dialect, when requesting an interpreter to facilitate the booking of the most appropriate interpreter.

Confirmation of the booking is sought as far in advance as possible; however, changes in circumstances may result in the tribunals booking or cancelling an interpreter at short notice.

The tribunals book interpreters for the estimated length of the hearing but it is difficult to predict how long each hearing will take. Interpreters must be prepared to stay at the tribunals for the full period of the booking. A hearing cannot be interrupted to meet car parking constraints or other appointments.

There are occasions when a hearing may take longer than initially expected. In these situations, the tribunals appreciate the interpreter remaining beyond the time booked if at all possible.

Parties to the hearing

Some or all of the following parties will be present at the hearing:

Member	The person who makes the decision of the tribunal. The member is the person who runs the hearing, asks the applicant(s) and any witness(es) questions, and makes the final decision. There is usually only one member at a hearing.
Visa applicant(s)	A person who has applied for a visa. Depending on the type of case, a visa applicant may also be the review applicant.
Review applicant(s)	The person or persons who are seeking review of the department's decision. Depending on the type of case, the review applicant may be the visa applicant, the visa applicant's sponsor or a relative named in the visa application, or the person whose visa has been cancelled.
Representative	A person who is assisting the applicant at the hearing. This may be the applicant's representative or another person who attends the hearing to assist the applicant. A representative is usually a registered migration agent. A representative usually has a limited role in the hearing, unless a member considers it appropriate in the circumstances of a particular case to permit a representative to present arguments or to address the tribunal. Not all applicants have a representative.
Witness	A person who is called by the applicant or by the relevant tribunal to give evidence at the hearing. In some hearings, there may be no witnesses.
Support person	The applicant may be accompanied by a friend or other person for support who is someone other than a representative or an assistant. This person does not play an active role in the hearing.
Hearing officer	The officer of the tribunals who assists the member in the hearing (sometimes also referred to as the 'hearing attendant'). The officer will usually be present at the start and end of the hearing and may be called in to give assistance during the course of the hearing.
Observer	Hearings of the MRT are generally open to the public. Hearings of the RRT are closed to the public but on occasion there may be an observer, such as a new member or a new member of staff. Observers do not participate in the hearing.

Oaths and affirmations

Applicants, witnesses and interpreters appearing before the tribunals are generally requested to take an oath or make an affirmation before giving evidence or providing interpreting services. Applicants and witnesses are requested to take an oath or make an affirmation that the evidence they give will be true. Interpreters are requested to take an oath or make an affirmation that they will interpret what is said to the best of their ability; and that they will not record, divulge or communicate any information or document that they become aware of in the proceedings other than as required by law. The standard oaths and affirmations used by the tribunals are listed in Appendix E.

A person who is taking an oath or making an affirmation is expected to stand. The interpreter should also stand when interpreting an oath or affirmation for an applicant or witness.

Requesting witnesses and interpreters to take an oath or make an affirmation reflects the significance and seriousness of the oral evidence provided and the matters to be decided as well as the important role of interpreters. A refusal to take an oath or make an affirmation when required to do so is an offence under the Migration Act.

An oath is a promise based on religious belief. There is no requirement to use a religious text when taking an oath, but one may be used. If a witness or interpreter does not wish to take an oath, he or she may make an affirmation, which is a promise. By law, an affirmation has the same effect as an oath.

Conduct of the hearing

Arrival at the hearing

The interpreter should arrive on time (15 minutes before the hearing start time) and promptly advise reception of his or her arrival. Neat and appropriate presentation is required. The interpreter will be asked to provide the relevant tribunal case number given to the interpreter by the interpreting agency. Prior to the hearing, the interpreter should wait in the interpreter's waiting room and must not engage in discussion with the applicant or other parties unless requested to do so by a member or officer.

Preparing for the start of the hearing

A hearing officer will greet the parties and ensure everyone has arrived. Mobile telephones and pagers must now be turned off. Interpreters who have not interpreted previously for the tribunals will be asked to show a TIS card, a NAATI card, or a service provider identification card. The hearing officer will require interpreting assistance when explaining hearing procedures to the applicant. The hearing officer may also require assistance from the interpreter should the applicant ask any questions prior to the start of the hearing. The hearing officer will verify that the applicant and interpreter are able to understand each other and can communicate effectively.

The interpreter may ask the hearing officer for clarification of procedures before the hearing. (NB: The interpreter may also clarify matters with the member during the hearing. Generally there is no contact between members and interpreters outside the hearing room).

The hearing officer will take the parties into the hearing room and all will be seated at a large table. Every effort is made to seat the interpreter in a neutral position (i.e. on the side of the table halfway between the member and applicant) so as not to create an impression that



A typical hearing room

the interpreter is on the side of the applicant or member. However, due to space limitations achieving such a layout is not always possible.

The hearing officer will briefly explain the hearing process (a more detailed explanation will be provided by the member at the commencement of the hearing) and ask the interpreter, applicant(s), and any witness(es) whether they would prefer to take an oath or make an affirmation. The hearing officer will advise the name of the member.

The interpreter may address the member by name (e.g. ‘Mr/Mrs/Ms Smith’) or as ‘Member’ or as ‘the Tribunal’. Members and staff will usually address the interpreter as ‘Mr/Mrs/Ms Interpreter’.

If the start of the hearing is delayed, the interpreter may choose to wait outside the hearing room once the preliminaries are complete. In such circumstances, the interpreter is asked to advise the hearing officer before leaving the hearing room. The interpreter will be collected once the member is ready to begin the hearing.

The hearing officer will invite everyone to stand as the member enters the room. The audio-recording will then be started.

The hearing

After welcoming everyone the member invites all parties to be seated.

The hearing officer will announce the case, saying: “The Member has entered the hearing room and the tribunal is now in session. This is a hearing of an application by (applicant’s name/s), file number (file number) held on (date). The tribunal is constituted by Member (member’s name). The hearing commences at (time).” The interpreter should interpret this announcement.

The hearing officer will read out the oath/affirmation for the applicant(s), any witnesses, and the interpreter. When the hearing officer reads out the oath/affirmation for the applicant(s)

and any witnesses, the interpreter should interpret the oath/affirmation for the applicant/witness. When the applicant/witness responds 'yes', the interpreter should interpret this into English.

The member will then explain to the applicant(s) and any witnesses the purpose of the hearing and how the hearing will be conducted, including the role of the interpreter.

After the member has made any introductory comments, the member will generally ask the witnesses to wait outside the hearing room. This is done to ensure that evidence given by a witness is not influenced by the evidence of other witnesses or the applicant.

The hearing officer is generally only present during the opening and closing of the hearing and during an adjournment, if any.

The tribunals are not bound by formal procedures and rules of evidence so a hearing is far less formal than a court of law. However, there is still a level of formality in a hearing as members must follow certain requirements contained in the Migration Act. The member will ask the applicant and witnesses questions and may want to clarify certain points. The applicant will also be given an opportunity to make a statement or present arguments. The tribunals are aware that a hearing can seem daunting and the member will try to make the atmosphere of a hearing as relaxed and informal as possible.

The member will take particular care when conducting a hearing that involves a vulnerable applicant or witness such as a child, or a person who claims to have suffered torture or trauma. It is important for the member and interpreter to work together to create a setting that will allow the applicant or witness to explain their story with the least difficulty possible. The tribunals' Guidance on Vulnerable Persons is published on the tribunals' website at www.mrt-rrt.gov.au.

The applicant may bring documents to the hearing. If the member wants to see a document, the hearing officer will take it and date stamp it and then give it to the member. If the document is not in English, the member will ask the applicant for a summary of the contents of the document. The member will then decide whether some or all of the document should be translated into English. Generally, this will be done after the hearing by an accredited translator. However, there may be situations where it is appropriate to have the applicant identify the relevant part(s) of untranslated documents on which the applicant relies and have those parts read by the interpreter if the interpreter is also an accredited translator. The member will also have brought documents into the hearing room. Some of these documents will contain evidence that the applicant has previously provided to the department or the tribunals. The member may ask the applicant questions based on these documents.

For the purpose of the recording, the member may refer aloud to what is happening during the hearing (e.g. "The applicant is now handing the hearing officer a copy of a letter", or "I am now reading the submission which the applicant's representative has just presented to the Tribunal"). The interpreter must interpret these statements.

Decisions regarding breaks (adjournments) are generally a matter for the member. In most cases, the member will adjourn the hearing for a short break after 90 minutes to 2 hours. If the hearing is less than 90 minutes long, there may not be a break.

The tribunals are aware that the interpreter's job is intellectually demanding and members are encouraged to provide regular breaks for interpreters. An interpreter is entitled to an adjournment on request. If a short break is needed from interpreting during the hearing, the

interpreter should not hesitate to advise the member. The member should then adjourn the hearing as soon as practicable. If the member adjourns the hearing for a short break, the hearing room is usually vacated. The interpreter must be ready to resume the hearing at the time directed by the member (the interpreter should wait in the interpreters' waiting room until collected by the hearing officer).

In some circumstances, a hearing may be adjourned to enable an applicant and his/her representative to consult and the member may leave the hearing room for the use of the parties. On occasion, a member may request the interpreter to assist the applicant communicate with his or her representative during a break in proceedings. If the interpreter assists in this way, the interpreter should ensure that he or she still has an appropriate break from interpreting.

The member may make a decision on the review and notify the applicant of that decision at the end of the hearing. Usually, however, the decision is made after the hearing.

After the hearing

After the hearing, the member leaves the room and the hearing officer escorts the parties out of the room. The hearing officer may require interpreting assistance after the hearing (e.g. to ask the applicant whether he or she wishes to have a copy of the hearing recording, to return documents to the applicant, or to answer questions from the applicant). The hearing officer asks the interpreter to sign a receipt for services, which is also signed by the hearing officer. Interpreters should not leave the tribunals until the hearing officer has said that they are no longer required.

Seeking assistance

The sensitive and sometimes traumatic nature of information that may be discussed during hearings, particularly in the RRT, may in some cases lead an interpreter to feel distressed.

If an interpreter feels so distressed that they are temporarily unable to interpret, he or she should request a brief break. If the interpreter is still unable to continue, he or she should immediately advise the hearing attendant or member and his or her agency.

Interpreters are encouraged to seek counselling through their agency if required, taking into account their confidentiality obligations (see Appendix D).

Hearing by videoconference or teleconference

A hearing can also be held by videoconference or teleconference. A videoconference would generally be arranged where it is not reasonably practicable for the applicant to travel to the tribunal office where the member is located. In this circumstance the applicant would be invited to a convenient location that has videoconference facilities. For both videoconference and teleconference hearings, the interpreter will usually be in the same location as the member. All hearings are audio recorded. Videoconference hearings are not video recorded.

Security and first aid

The tribunals' hearing rooms are fitted with duress alarms that can be activated by the member or hearing officer should an emergency arise. The tribunals have trained first aid officers and emergency wardens (the latter give instructions about safely evacuating the hearing room or building should a fire or other emergency occur). Emergency services will be called should the need arise.

PART 3: THE ROLE AND RESPONSIBILITIES OF INTERPRETERS

Professional standards

The tribunals' statutory obligations will only be met if the interpreting service provided by the tribunals is adequate and competent in all of the circumstances. Interpreters therefore play a critical role in providing an effective opportunity for an applicant to appear before the tribunals. Accurate and competent interpreting is essential for the tribunals to gain a full understanding of an applicant's claims. For this reason:

- The tribunals expect all interpreters to abide by the Australian Institute of Interpreters and Translators' (AUSIT) Code of Ethics (see Appendix A). The full Code is available at www.ausit.org.
- The tribunals prefer to use interpreters accredited at Interpreter level or above with the National Accreditation Authority for Translators and Interpreters (NAATI).

Members are encouraged to provide feedback to tribunal staff responsible for booking interpreters on the quality of service provided by interpreters. Such comments will usually be conveyed to the service provider through whom the interpreter was booked.

Preparing for a hearing

Interpreters should understand the role of the tribunals and understand key terms used in the migration context. While certain terms may have a usual meaning, they may have a more refined legal meaning in the context of Australian migration law. Some of the terms frequently used at tribunal hearings can be found at Appendix B. For RRT cases, interpreters should understand and confidently interpret the definition of 'refugee' in the Refugees Convention (see Appendix C) (Note: translations of the 'refugee' definition in several commonly used languages are available in a folder in the hearing room for the reference of applicants and interpreters).

The tribunals recognise that interpreters may wish to prepare for an interpreting assignment by conducting background research. The tribunals publish a wide range of information about their operations that is available on the tribunals' website at www.mrt-rrt.gov.au, including:

- Principal Member Directions
- Guidance on Vulnerable Persons
- Guidelines on Expert Opinion Evidence
- Guideline on Referrals for Ministerial Intervention
- Gender Guidelines
- Guideline on Attendees at Hearings
- Service Charter
- Member Code of Conduct
- Fact sheets
- Guide to Refugee Law in Australia
- Extensive country research information
- Précis – a monthly legal bulletin which summarises selected tribunal decisions and court judgements.

In addition, a broad cross-section (at least 40%) of the tribunals' decisions are published on the Australasian Legal Information Institute (Austlii) website at www.austlii.edu.au.

Interpreting at a hearing

The role of the interpreter is to accurately, directly and fully interpret what is said during the course of the hearing. The interpreter must not:

- explain procedures to applicants, unless interpreting on behalf of a member or hearing officer;
- advise an applicant how to answer or supply him or her with facts;
- elaborate or explain the meaning of a question (if the applicant is confused by a question or gives a confused response, the interpreter should interpret that faithfully and completely to the member);
- summarise a long question or answer;
- censor or tone down what is said (even if, for example, the applicant is angry or rude);
- provide opinion about the accent and language of the applicant, except as it relates to the accuracy of the interpreting;
- make comments or asides to the applicant or the member (even if the applicant asks the interpreter a personal question, or says something which is irrelevant in the interpreter's opinion, it should be interpreted so that both the applicant and the member are aware of all communication during the hearing);
- express an opinion as to whether a document tendered as evidence is genuine or whether a statement made by the applicant is true or not true;
- discontinue interpreting because the interpreter considers the applicant has a reasonable command of English (it is for the member to decide whether the applicant's command of English is sufficient);
- provide cultural or other commentary during the hearing (in general, the member will seek clarification directly from the applicant if any cultural issues arise, for instance, non-verbal signs which may be culturally specific).

Interpreters should note the following:

- As all hearings are recorded, interpreters should interpret using the consecutive mode of interpreting rather than the simultaneous mode of interpreting to allow a more audible recording.
- Where an interpreter has concerns about any matter, he or she may ask the member a question. If the interpreter needs to clarify the applicant's words, the member's permission should be sought first.
- The interpreter should speak clearly and loudly enough for his or her voice to be picked up by the recording equipment.
- The interpreter should interpret in the first person according to normal practice (the member and applicant/witness should address each other directly).
- The interpreter should be neutral and impartial. The interpreter should take care with their demeanour and body language so that it does not show concurrence or disagreement with any party to the proceedings. It is important that the interpreter not create the perception of favouring anyone.
- If the interpreter has a question or request for the member, the interpreter should preface the question or request with a remark that indicates that what is about to be

said is coming from the interpreter and not from the applicant or witness (e.g. “I am not interpreting now...” or “This interpreter would like to ask/mention/explain...”).

- If a person addresses any questions to an interpreter personally, they should be interpreted directly to the member. Explanations should always be given by the member not the interpreter.
- Accuracy is more important than speed. If the member or applicant, or any other person at the hearing, uses language not familiar to the interpreter, the interpreter should not hazard a guess. The interpreter may consult a dictionary or his or her own glossaries, or seek clarification from the member or person speaking. The interpreter may also need to consult references in order to achieve greater accuracy. In such instances, the interpreter should inform the member and explain the reason to avoid unwarranted concern about the interpreter’s abilities.
- The interpreter should interpret as accurately as possible what is said. He or she should take care to ensure that information is not distorted by paraphrasing or exaggerating. Interpreters have an obligation to interpret precisely and accurately, and the communication of a particular word or phrase used can be critical to the outcome of the review. For example simple words such as ‘brother’ or ‘family’ can convey very different notions from one culture to another. If the interpreter finds it necessary to paraphrase a concept because of its absence in the target language, then he or she should explain to the member and the other party that this is occurring. Interpreters must also take particular care to interpret precisely when members explain legislative requirements as this too can be critical to the outcome of the review.
- If the interpreter finds that problems are arising as a result of the accent or dialect of the person they are interpreting for, he or she should draw this fact to the attention of the member. The member or applicant may also identify that there are problems with the interpreting. In all such circumstances the member will then decide whether it is necessary to adjourn or continue with the hearing.
- The member should speak in reasonable ‘bites’ of information as this is more efficient for the member, interpreter and applicant. If the member is speaking in ‘bites’ which are too long for the interpreter to accurately remember, the interpreter is expected to indicate that a pause is needed for interpreting.
- In keeping with accepted professional practice, interpreters may take notes during the hearing to ensure that they interpret everything. However, to maintain confidentiality, all notes must be left in the hearing room after the hearing so that they can be destroyed.
- When interpreting for a witness, the interpreter should speak loudly enough for the applicant to clearly hear everything that is being said to the witness.
- If a witness uses English, the interpreter must interpret everything said by that witness for the applicant. If the witness uses a language other than English and the language of the applicant and a second interpreter is present, the principal interpreter must interpret everything that is said for the applicant. In such cases, the interpreter should sit beside or just behind the applicant and provide simultaneous interpreting using the ‘whispering’ technique. This technique should also be used to interpret for the applicant any dialogue in English between the representative and the member.
- The interpreter should not discuss the case or any information relating to it with the applicant or any third party before or after the hearing.

Confidential information

Interpreters are bound by the Migration Act to maintain the confidentiality of any information obtained in the course of performing their duties at the tribunals (see Appendix D). There may also be negative consequences for an applicant, or a relative or other dependent of an applicant, if information discussed during the hearing was made publicly available. In some countries the mere knowledge that the applicant has applied for a protection visa could cause retribution.

Conflict of interest and bias

Interpreters must avoid any conflict of interest or bias, whether actual or perceived. Bias arises from prejudgement and involves a state of mind whereby a person is so committed to a conclusion that they are not open to persuasion. It is important that interpreters ensure that their general conduct does not display any actual bias or give the appearance of bias. Interpreters must be objective, neutral and impartial at all times.

Interpreters should not become too friendly with the member or applicant, or any other person at the hearing, and must not engage in discussion with any person about the merits of a case. If the interpreter is approached by an applicant, his or her representative, or support person during a break, that person should be referred to a tribunal officer. Interpreters are not on the side of the tribunals or the applicant and must not create the perception of favouring anyone. Interpreters must not attempt to give the review applicant or their friends or family members advice about tribunal procedure or their case during the hearing or at any other time.

A conflict of interest can give rise to actual bias or the appearance of bias. For this reason, the tribunals will not engage an interpreter specifically requested by name by the applicant or their representative. As the tribunals do not provide the names of applicants when booking interpreters, an interpreter may not become aware of a conflict of interest until the scheduled day and time of the hearing. If an interpreter believes that he or she may have a conflict of interest, whether actual or perceived, the member must be informed immediately.

If the applicant believes that there is a conflict of interest with the interpreter or if at any point during the hearing an applicant has concerns about the possibility of an interpreter exhibiting bias, he or she should inform the member immediately. If the applicant believes that his or her concerns have not been addressed then he or she may make a complaint to the tribunals (see 'Complaints').

The following are examples of situations where a conflict of interest would arise (this is not intended as an exhaustive list):

- where an interpreter is also a registered migration agent or where an interpreter has a financial or personal interest in the business of a migration agent (the tribunals' policy is not to book interpreters who are also registered migration agents);
- where an interpreter has a financial or personal association with an applicant, or his or her representative, support person, or any of his or her witnesses;
- in relation to refugee matters, where an interpreter is or has been employed by a foreign government (e.g. an embassy, high commission or consulate) in any capacity, including on a full-time, part-time, or contract basis.

Complaints

Interpreters should contact senior registry staff or the hearing officer and the interpreter agency if they have any concerns or questions.

If an interpreter or the applicant or other person is not satisfied with how the tribunals have dealt with a matter, and has not been able to resolve this by contacting the office or officer dealing with the case, the person may lodge a written complaint. The tribunals will respond to any such complaints in writing. A letter of complaint should be marked 'confidential' and may be forwarded to the address below:

Complaints Officer
Migration Review Tribunal and Refugee Review Tribunal
GPO Box 1333
Sydney NSW 2001

Complaints may also be forwarded by email to complaints@mrt-rrt.gov.au.

Complaints about the tribunals may also be made to the Commonwealth Ombudsman. The Ombudsman has an office in every State and Territory. The national contact phone number is 1300 362 072. Further information is available at www.ombudsman.gov.au.

APPENDIX A

Australian Institute of Interpreters and Translators (AUSIT) Code of Ethics

The Australian Institute of Interpreters and Translators (AUSIT) was founded to establish a national association for interpreting and translation professionals in Australia. The AUSIT Code of Ethics comprises the 'General Principles', the 'Code of Practice' and the 'Supplementary Notes to the Code of Practice'. It is not a code of ethics specific to the tribunals. Only the General Principles of the Code have been reproduced (with the approval of AUSIT) in this handbook. They have been included in this handbook because it is a national code throughout Australia and the tribunals believe that it is an appropriate code where it is relevant to the tribunals.

General Principles

1. Professional Conduct

Interpreters and translators shall at all times act in accordance with standards of conduct and decorum appropriate to the aims of AUSIT, the national professional association of interpreting and translation practitioners.

2. Confidentiality

Interpreters and translators shall not disclose information acquired during the course of their assignments.

3. Competence

Interpreters and translators shall undertake only work which they are competent to perform in the language area for which they are "accredited" or "recognised" by NAATI.

4. Impartiality

Interpreters and translators shall observe impartiality in all professional contracts.

5. Accuracy

Interpreters and translators shall take all reasonable care to be accurate.

6. Employment

Interpreters and translators shall be responsible for the quality of their work, whether as freelance practitioners or employed practitioners of interpreting and translation agencies and other employers.

7. Professional Development

Interpreters and translators shall continue to develop their professional knowledge and skills.

8. Professional Solidarity

Interpreters and translators shall respect and support their fellow professionals.

APPENDIX B

Frequently used words and phrases at tribunal hearings

Many terms used during hearings have an ordinary meaning as well as a technical/legal meaning in the tribunals' context. These terms should be interpreted with care and consistency. If an interpreter is unsure of the meaning of a term in context, he or she should ask the member to paraphrase or explain the term.

The following terms may be used by the tribunals in the review process:

- A** access
address for service (of documents)
adjourn (the hearing)
administrative
adverse (material/information)
adviser
affirm
affirmation
affidavit
appeal
applicant
application
approved (sponsor)
assessed score
assessment
assurance of support
authorised recipient
- B** breach (of visa conditions)
bridging visa
burden of proof
- C** calendar (days)
cancel/cancellation (of visa)
cease (visa)
character (grounds/assessment)
circumstance
class (of visa)
combined (application)
complementary protection
comply (with a condition/requirement)
condition (of visa)
confidential/confidentiality
constitute/constitution (of Tribunal)
contravene/contravention
credibility/credible
criterion/criteria (for the grant of a visa)
cumulative
- D** decision
deemed (to be)
defined (term)

- delegate (of the Minister/department)
- departmental
- Deputy Principal Member
- detain/detainee
- detention
- determine/determination
- DIAC (Department of Immigration and Citizenship)
- direction (given by the Minister)
- domestic violence

- E**
 - eligible/eligibility
 - entitled (to a visa)
 - error (of law)
 - evidence
 - expert opinion

- F**
 - failure (to appear/to comply)
 - false
 - family violence
 - finding (of fact)
 - fiscal year

- G**
 - gazette notice
 - grant (of visa)
 - grounds

- H**
 - health grounds
 - holder (of a visa)
 - humanitarian

- I**
 - 'I put to you'
 - IELTS test (International English Language Testing System test)
 - illegal (entrant)
 - incompetent
 - independent
 - instrument (written)
 - interdependent (relationship)
 - invitation (to comment)
 - issue (at review)

- J**
 - judicial (review)
 - jurisdiction

- K**

- L**
 - legislative (requirement)

- M**
 - Medical Officer of the Commonwealth (MOC)
 - member
 - Ministerial discretion
 - Ministerial intervention
 - misleading

- N** natural justice
nominate/nominator
nominated (occupation)
notify/notification
- O** oath
objective (assessment)
offshore
on the merits
on the papers (a decision)
onshore
onus
opportunity (to be heard/to comment)
oral (submission/evidence)
overstay (a visa)
- P** pass mark
permanent
points test (a component of some skilled migration and business skills visas)
policy (guideline)
pool mark
postpone (the hearing)
prescribed (periods)
Principal Member
primary (visa applicant)
procedural fairness
publication (of decision)
- Q**
- R** reasonable
reconsideration
refusal/rejection
regulation
relevant assessing authority
remit (an application)
removal (from Australia)
representative
review
Review Medical Officer of the Commonwealth (RMOC)
reviewable (decision)
revoke/revocation (a decision to cancel)
risk factor
- S** satisfy (criterion)
secondary (visa applicant)
Senior Member
sensitive (information)
set aside (a decision)
specified
sponsor/sponsorship
statement (of decision and reasons)

- statutory declaration
- statutory (requirement)
- subclass (of visa)
- subjective (assessment)
- submission
- substantial (compliance)
- substantive (visa)
- summons

- T**
 - temporary
 - testimony
 - time of (application/decision)
 - tribunal member

- U**

- V**
 - vacate (a decision)
 - valid/validity
 - vary (a decision)
 - voluntary

- W**
 - waiver
 - without permission
 - withdraw/withdrawal
 - working (day)
 - written (submission/evidence)

- X**
- Y**
- Z**

Words and phrases used in RRT hearings

Frequently used terms from the definition of ‘refugee’ in the Refugees Convention are in bold in the text below:

*owing to **well-founded fear** of being **persecuted** for reasons of **race, religion, nationality**, membership of a **particular social group** or **political opinion**, is outside the **country of his nationality** and is unable, or, owing to such fear, is unwilling to avail himself of the **protection** of that country; or who, not having a nationality and being outside the country of his **former habitual residence**, is unable or, owing to such fear, is unwilling to return to it.*

Other terms arising from the Refugees Convention, and related terms, which may be used in hearings, include:

exclusion clauses	refugee ‘sur place’	internal flight
stateless persons	refoulement	relocation

Interpreters should be prepared to handle a wide range of vocabulary. For RRT cases in particular this includes terms relating to:

political opinions – e.g. a range of political affiliations, party membership, party platforms, political ideologies, political activities such as demonstrations, petitions, formal or informal political groups/clubs, political institutions such as parliament, political control structures

religious beliefs – e.g. names of religions or sects, holy scriptures, places of worship, religious festivals/holy days, religious practices, ministers of religion and other religious offices such as nuns and monks, social practices based on religion, controls/expectations of behaviour based on religion

nationality, citizenship, ethnicity and race – e.g. ethnic background, cultural background, linguistic background, ancestry, country of birth, country of citizenship, country of residence

social structure, economic issues, educational issues – e.g. social class, occupational groups, employment/unemployment issues, poverty and restrictions on individual ownership of property, economic systems such as capitalism or communism, levels of education, access to education, levels of health care, access to health care, housing conditions

gender, sexuality and reproduction issues and treatment of children – e.g. women's issues, family planning, domestic violence, rights of children, homosexuality

punishments – e.g. imprisonment or detention, house arrest, harassment, penal code, torture, fines, discrimination, arrest, violent attacks

difficult country conditions – e.g. war, civil war, guerrilla warfare, violence, conscription, conscientious objection, exploitation, paramilitary groups, restrictions on freedom of movement or freedom of action, natural disasters

APPENDIX C

Definition of 'refugee' in the Refugees Convention

Article 1A(2) of the Refugees Convention as amended by the Protocol defines a refugee as any person who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

APPENDIX D

Disclosure of confidential information

Section 377 of the *Migration Act 1958* concerns the disclosure of confidential information in relation to the Migration Review Tribunal and reads as follows:

- (1) This section applies to a person who is or has been:
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) a person providing interpreting services in connection with a review by the Tribunal.
- (2) This section applies to information or a document if the information or document concerns a person and is obtained by a person to whom this section applies in the course of performing functions or duties or exercising powers under this Act.
- (3) A person to whom this section applies shall not:
 - (a) make a record of any information to which this section applies; or
 - (b) divulge or communicate to any person any information to which his section applies;unless the record is made or the information is divulged or communicated:
 - (c) for the purposes of this Act; or
 - (d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.

Penalty: Imprisonment for 2 years.

- (4) Subsection (3) applies to the divulging or communicating of information whether directly or indirectly.
- (5) A person to whom this section applies shall not be required:
 - (a) to produce in a court any document to which this section applies; or
 - (b) to divulge or communicate to any court any information to which this section applies;except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.
- (6) Nothing in this section affects a right that a person has under the *Freedom of Information Act 1982*.
- (7) For the purposes of this section, a person who is providing interpreting services in connection with a review by the Tribunal shall be taken to be performing a function under this Act.
- (8) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

produce includes permit access to.

Similarly, section 439 of the *Migration Act 1958* concerns the disclosure of confidential information in relation to the Refugee Review Tribunal and reads as follows:

- (1) This section applies to a person who is or has been:
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) a person providing interpreting services in connection with a review by the Tribunal.
- (2) This section applies to information or a document if the information or document concerns a person and is obtained by a person to whom this section applies in the course of performing functions or duties or exercising powers under this Act.
- (3) A person to whom this section applies must not:
 - (a) make a record of any information to which this section applies; or
 - (b) divulge or communicate to any person any information to which this section applies;unless the record is made or the information is divulged or communicated:
 - (c) for the purposes of this Act; or
 - (d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.

Penalty: Imprisonment for 2 years.

- (4) Subsection (3) applies to the divulging or communication of information whether directly or indirectly.
- (5) A person to whom this section applies must not be required to produce any document, or to divulge or communicate any information, to which this section applies to or in:
 - (a) a court; or
 - (b) a tribunal; or
 - (c) a House of the Parliament of the Commonwealth, of a State or of a Territory; or
 - (d) a committee of a House, or the Houses, of the Parliament of the Commonwealth, of a State or of a Territory; or
 - (e) any other authority or person having power to require the production of documents or the answering of questions;except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.
- (6) Nothing in this section affects a right that a person has under the *Freedom of Information Act 1982*.
- (7) For the purposes of this section, a person who is providing interpreting services in connection with a review by the Tribunal is taken to be performing a function under this Act.

- (8) In this section:

produce includes permit access to.

APPENDIX E

Standard forms of oaths and affirmations

Oath for witness (including an applicant)

The tribunal officer says:

Do you promise [before Almighty God / before Allah / as a Buddhist / before (insert name of deity)] that the evidence you give will be true?

The witness responds.

Affirmation for witness (including an applicant)

The tribunal officer says:

Do you promise that the evidence you give will be true?

The witness responds.

Oath for interpreter

The tribunal officer says:

Do you promise [before Almighty God / before Allah / as a Buddhist / before (insert name of deity)] that you will interpret what is said to the best of your ability; and that you will not record, divulge or communicate any information or document that you have become aware of in these proceedings other than as required by law?

The interpreter responds.

Affirmation for interpreter

The tribunal officer says:

Do you promise that you will interpret what is said to the best of your ability; and that you will not record, divulge or communicate any information or document that you have become aware of in these proceedings other than as required by law?

The interpreter responds.

