



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

ISSUES PAPER

2011-12 Caseload and Constitution Policy

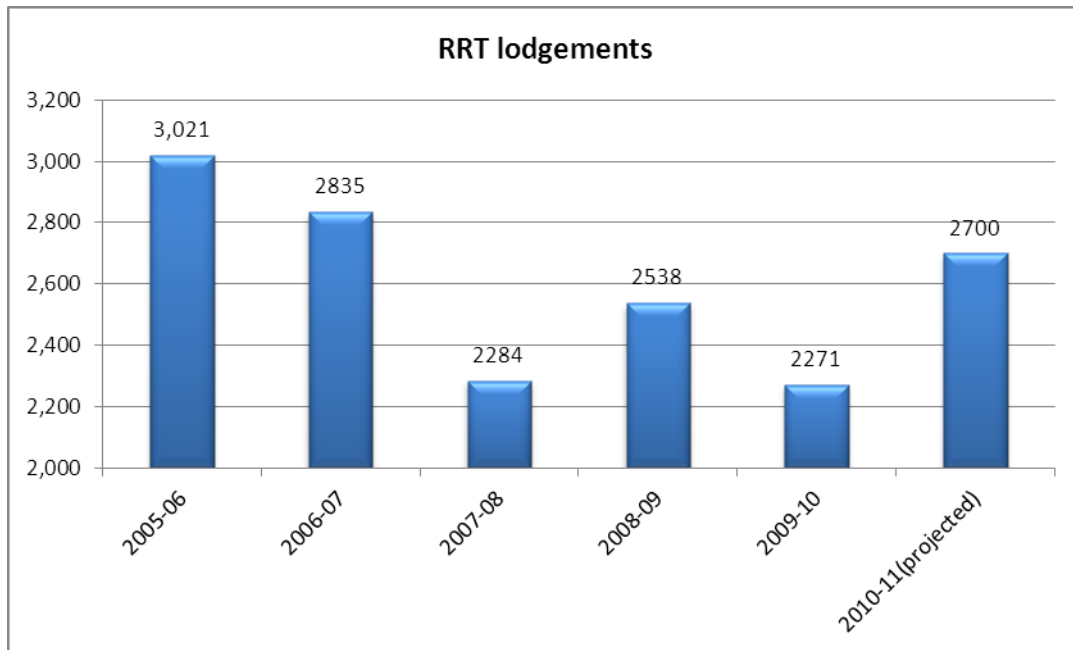
Background

1. The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) are statutory bodies established under the *Migration Act 1958* (the Act) to provide final independent merits review of visa and visa-related decisions made by the Minister for Immigration and Citizenship, or by delegates of the Minister. The Tribunals are required to provide a mechanism of review that is fair, just, economical, informal and quick (sections 353 and 420 of the Act).
2. Sections 353A and 420A of the Act give the Principal Member power to give written directions as to the operations of, and conduct of reviews by, the Tribunals. Amongst other things, the Principal Member's written directions may relate to the application of efficient processing practices to the conduct of reviews. Tribunal members and officers are required to comply, as far as practicable, with any written directions given by the Principal Member.
3. Sections 354 and 357 of the Act provide for the constitution of the MRT and section 421 provides for the constitution of the RRT. Sections 355 and 355A (for the MRT) and sections 422 and 422A (for the RRT) provide for the reconstitution of the Tribunal in certain circumstances.
4. [Principal Member Direction – 1/2010 \(PMD 1/2010\)](#), which contains the Tribunals' current caseload and constitution policy, took effect on 15 July 2010 and is now under review. This paper is intended to identify areas of possible change in the policy for 2011-12 and inform discussion as part of the review process.

Caseload projections

RRT

5. RRT lodgements have increased over the past 12 months. At 31 March 2011, the RRT had received 2,085 new applications for the 2010-11 financial year, which was 28% above the figure for the same time last year. If this trend continues, the RRT can expect over 2,700 lodgements for the 2010-11 financial year, which will be the highest number of lodgements since 2006-07 (2,835).



6. There has also been a change in source countries for RRT applications over the past 12 months, with particular increases in lodgements from India, Egypt and Zimbabwe.

Top 10 Lodgements	2009-10		2010-11 (31 March 2011)	
	Country	Monthly average	Country	Monthly average
1	China	63	China	66 ↑
2	Fiji	20	Fiji	23 ↑
3	Malaysia	17	Malaysia	17 →
4	India	12	India	17 ↑
5	Indonesia	10	Indonesia	11 ↑
6	Lebanon	7	Egypt	11 ↑
7	Sri Lanka	5	Lebanon	9 ↑
8	Pakistan	4	Zimbabwe	8 ↑
9	Egypt	4	Pakistan	7 ↑
10	Zimbabwe	4	Nepal	6 ↑

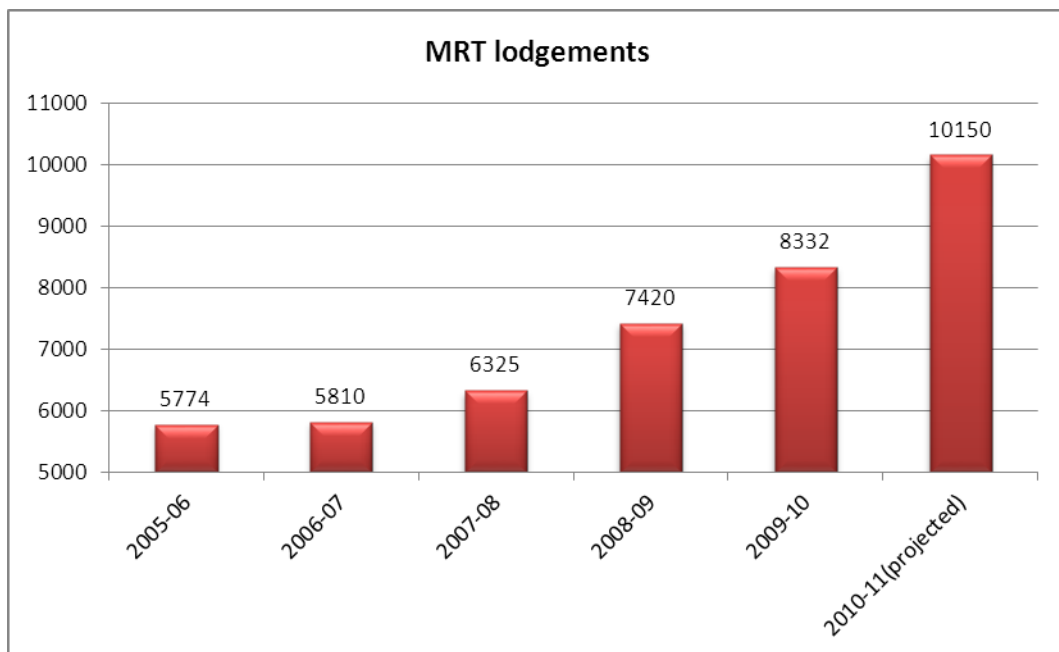
7. The RRT caseload is susceptible to volatility due to changes in country conditions, visa eligibility criteria and DIAC processing arrangements. Several factors point to a potential increase in RRT lodgements for 2011-12, including:

- Changing conditions in North African / Middle Eastern countries such as Egypt, Syria and Libya.
- A decline in the primary grant rate for protection visas.
- Increased DIAC Onshore Protection staffing levels.
- Tightening of eligibility criteria for Student and Skilled visas.
- Possible introduction of a Migration Amendment (Complementary Protection) Act.

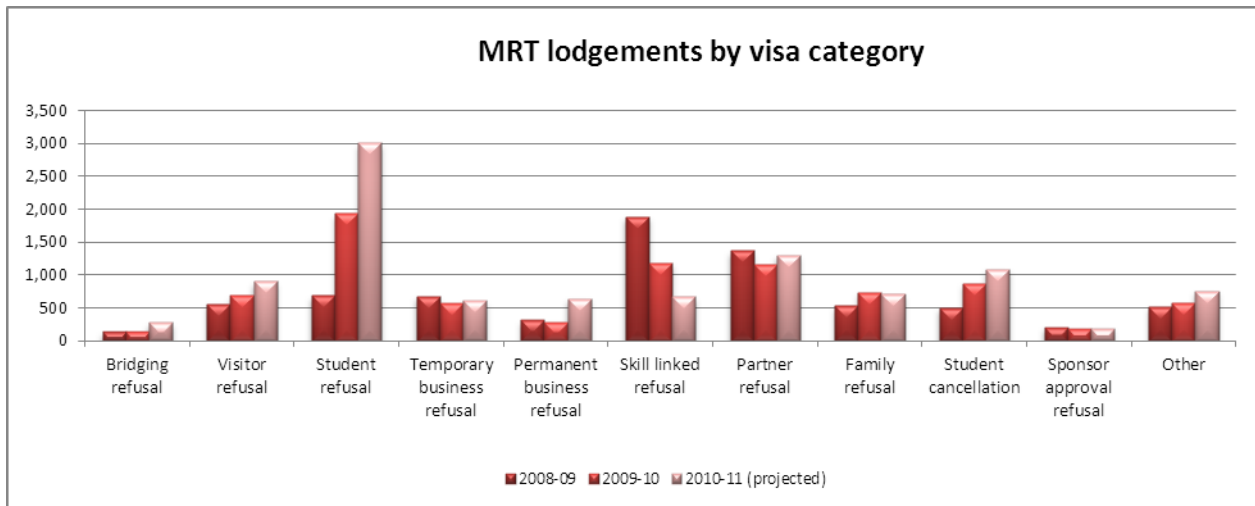
8. Consistently with the increase in RRT lodgements, there has been an increase in RRT constitutions and decisions in 2010-11. In 2009-10, an average of 184 constitutions and 180 decisions were made each month. In 2010-11 to 31 March, this has increased to an average of 215 constitutions and 218 decisions each month.
9. An important challenge for the RRT in the coming year will be to maintain the proportion of cases decided within the 90 day period established under s.414A of the Act. The Principal Member is required by s.440A of the Act to report to the Minister on cases older than 90 days every 4 months. In the 1 November 2010 to 28 February 2011 reporting period, 70% of cases were decided within 90 days and the average time to decision was 101 days. This constituted a decline in compliance from the previous reporting period, which saw 77% of cases decided within 90 days and an average of 89 days to decision.

MRT

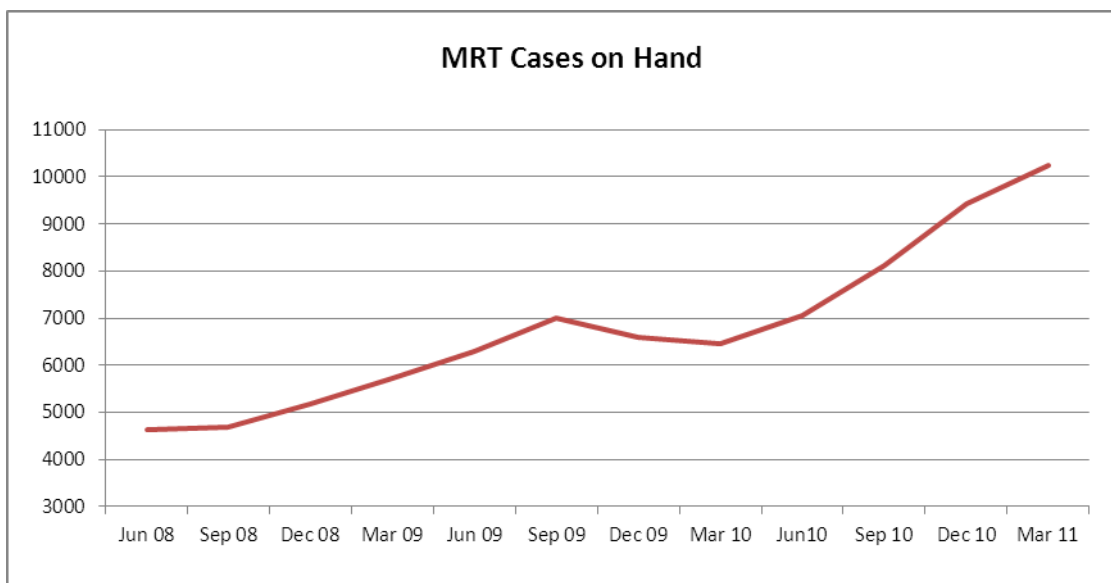
10. MRT lodgements have also increased over the past 12 months. At 31 March 2011, the MRT had received 7,613 new applications for the 2010-11 financial year, which was 27% above the figure for the same time last year. If this trend continues, the MRT could expect a total of around 10,150 lodgements for the 2010-11 financial year.



11. There has been significant variation in the types of MRT-reviewable decisions making up the MRT caseload. Based on current trends, 2010-11 is seeing a significant increase in the volume of student refusal, student cancellation, bridging refusal and permanent business refusal lodgements. Skilled, family and temporary business refusal lodgements are declining.



12. A significant challenge for the MRT in the coming year is the increasing caseload. The active MRT caseload increased significantly during 2010-11 and stood at 10,239 cases at 31 March 2011. This was 58% higher than the active caseload at 31 March 2010 (6,502). The average age of unconstituted MRT cases was 238 days at 31 March 2011, which was considerably older than both the 30 June 2010 figure of 195 days and the 31 March 2010 figure of 182 days.



13. While increased lodgements have contributed to the increase in the MRT backlog in 2010-11, a decline in MRT constitutions and decisions has also been significant. In 2009-10, an average of 600 constitutions and 632 decisions were made each month. In 2010-11 to 31 March 2011, that has reduced to an average of 507 constitutions and 491 decisions each month. Increases in most members' RRT caseloads and reduced member resources have been the primary factors contributing to the decline in MRT constitutions and decisions.

14. Amongst the other factors influencing the size and makeup of the MRT caseload are legislative amendments and changes to the interpretation of migration legislation by the courts. Recent legislative changes enabling certain skilled and business visas to be refused when an applicant provides a "bogus document" or information that is false or misleading have potential to increase the number of lodgements in these visa categories. A strategic review of the student

visa program, headed by the Hon Michael Knight AO, is due to report to the Government in mid-2011 and may also result in changes to student visa criteria.

Member resources

15. The planned membership for 2010-11 was for a total of 93 members, including 30 full-time members and 57 part-time members. Based on the mix of MRT and RRT cases and the mid-range of the bandwidth, this provided the potential capacity to decide cases at a rate of over 10,500 cases per year. However, with appointments not being taken up, resignations and the unavailability of members appointed as Independent Protection Assessors, the number of active members has reduced over the course of the last 6 months to a total of 81 members.
16. With a 27% increase in lodgements so far this year, planning for 2011-12 needs to consider that the tribunals are likely to need to decide at least 13,000 cases in 2011-12 if they are to keep pace with lodgements.
17. Member resources are expected to be boosted in 2011-12. The 17 members who took up appointments from 1 July 2010, are expected to become more productive. Interviews were also conducted in March 2011 in relation to Member and Senior Member positions advertised in November 2010. Additional members are expected to be appointed in the new financial year as a result.

Timeliness of decisions

18. Time standards for bridging visa (detention) cases and protection visa cases are set out in the Act and Regulations. For MRT cancellations and all other MRT cases, different standards apply from lodgment to constitution and constitution to decision. Lodgement to decision standards reflect the Tribunals' key performance indicators set out in the Portfolio Budget Statement. Constitution to decision standards are established by the caseload and constitution policy.
19. Compliance with the time standards for decisions made between 1 July 2010 and 31 March 2011 was as follows:

Case type	Cases	Time standard	Average days			% Within standard		
			NSW	Vic	Tot	NSW	Vic	Tot
MRT								
Bridging visas (detention)	198	7 working days from lodgement	7	6	7	97%	85%	96%
Visa cancellations	728	150 calendar days from lodgement	133	155	143	72%	62%	68%
		90 calendar days from constitution	81	112	94	65%	52%	59%
All other cases	3,497	350 calendar days from lodgement	338	314	327	55%	58%	56%
		150 calendar days from constitution	75	99	85	86%	78%	82%
<i>MRT total</i>	<i>4,423</i>	<i>Calendar days since lodgement</i>	<i>282</i>	<i>284</i>	<i>283</i>	<i>60%</i>	<i>59%</i>	<i>60%</i>
RRT								
Protection visas	1,960	90 calendar days from receipt of Department file*	93	105	96	75%	65%	72%

*90 calendar days from the date the Department's file is received or from the date of lodgement, whichever is later. The time taken to decide a case is taken from the date of constitution if the Department file received date is not available in CaseMate.

** "NSW" includes Qld, ACT and NT. "Vic" includes SA, WA and Tas.

Issues for consideration

Specialisation

20. Under the current policy, members have notional caseload allocations based on their knowledge and experience. At 31 March 2011, most members had a notional case mix of between 20-30% RRT and 70-80% MRT. Several members had a notional 100% MRT case mix and several others had a 100% RRT case mix.
21. During 2010-11, certain initiatives based on specialisation have been implemented including, the establishment of a pilot Student Refusal Taskforce in Victoria and a strategy involving 5 NSW members focusing on a limited range of MRT cases for a period of 6 months. Interim reviews of these initiatives suggest that greater specialisation can improve the timeliness of decision-making and increase member productivity, lead to more consistency in decision-making and potentially facilitate better quality decisions, through better familiarity with legal issues and country information. On the other hand, over-specialisation can potentially reduce flexibility to respond to changing caseloads, limit the development of a membership with a broad experience and knowledge base, and contribute to an expectation that members will only be allocated cases within their specialisation.
22. One option for increasing specialisation could be to require to members to identify, for example, in an allocations profile, 3 or so broad case types which they prefer to receive. Preferences could be changed periodically (e.g. annually) to reduce case fatigue and to enable members to maintain skills across a broad range of case types.
23. Alternatively, specialisation could continue to be used informally through voluntary batching strategies and the establishment or extension of specialist taskforces. These types of initiatives can be tailored to suit the characteristics of particular caseloads. For example, recently lodged student visa refusals were considered suitable for a taskforce approach due to the increasing size of the caseload, high incidence of decisions made on the papers, low hearing attendance rates and short hearing times where a hearing did proceed.

Issues

- 1. Should members be encouraged or required to have more specialised caseloads?**

Priorities

24. PMD 1/2010 gives priority for constitution to the following case types:
 - Cases involving persons being held in immigration detention.
 - All protection visa cases.
 - All bridging visa cases.
 - All visa cancellation cases (including non-revocation student cancellation cases).
 - All child, orphan relative and adoption visa cases.
 - All visitor refusal cases.

- Cases involving vulnerable persons.
 - Cases remitted or returned from a court for the Tribunal to reconsider.
 - Cases which have been remitted to the Department and which have again been refused, resulting in the applicant making a further application for review.
 - Cases which involve jurisdiction issues.
 - Cases which involve a decision to cancel approval as a business sponsor under section 137B and cases involving an action under section 140L in relation to a sponsor.
 - Cases where prospective marriage visa applicants have married.
 - Any case which the Principal Member, or a Member or officer authorised by the Principal Member, decides should be given priority because of special circumstances.
25. The migration legislation requires the tribunals to give priority to certain cases, including those involving applicants in immigration detention, certain visitor visa refusals and visa cancellations. Others are given priority under the caseload and constitution policy or at the discretion of authorised tribunal officers.
26. In relation to the MRT caseload, for 2010-11 to 28 April 2011, 2908 (or 35%) of all lodgements, 1381 (or 13%) of active cases and 724 (or 8%) of the unconstituted cases or backlog were priority cases. Of 5400 MRT cases constituted during the 10 months to 28 April 2011, 59% were priority cases.
27. The conferral of priority status has a significant impact on the time taken to dispose of a review. The more priority cases the tribunals have, the longer it takes to constitute cases without priority status. The time taken to constitute priority cases can also increase if there are more cases with priority received than can be quickly allocated. This situation has occurred during 2010-11, with a backlog of both RRT and priority MRT cases ready for constitution developing.
28. Feedback from registry staff and Community Liaison Meetings suggests that a large number of enquiries about delay and requests for priority status are received in relation to offshore partner and prospective marriage reviews. Unlike many 'onshore' cases, these are reviews where the visa applicant and sponsor are usually living in separate countries and have their lives on hold until the MRT makes its decision. In over 70% of these cases, the MRT ultimately finds in the applicants' favour. At 31 March 2011, the oldest unconstituted offshore partner / prospective marriage case was lodged in September 2009. It is possible that the average time from lodgement to constitution will increase to 2 years over the next 12 months.

Issues

- 2. Should any new categories of case be given priority status?**
- 3. Should any categories of case no longer have priority status?**