

NOTES OF ADELAIDE MRT-RRT COMMUNITY LIAISON MEETING

10.30am 8 December 2009

11th Floor, Hearing Room 2, 91 Grenfell Street, Adelaide

Present: John Lynch – Registrar, Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT); Peter Murphy – Senior Member, MRT-RRT; Belinda Wells - Member MRT-RRT; Carolyn Wilson – Member MRT-RRT; Hilary Lovibond, VIC District Registrar MRT-RRT; Bernie Goodwin - Australian Red Cross; Luci Lovelock - Australian Red Cross; Gabrielle Canny - Legal Services Commission of South Australia; David Pezzanite - Commonwealth Ombudsman; Sharon Wachtel - St Vincent de Paul Society; Clare Byrt - Administrative Appeals Tribunal; Vivienne Hope - Multicultural Communities Council of SA; Brian Jones - Migration Institute of Australia; Steve Thompson - Survivors of Torture and Trauma Assistance and Rehabilitation Service (STTARS); Slavica Dedijer - STTARRS.

Chair: Peter Murphy, Senior Member.

Notes: Hilary Lovibond, VIC District Registrar.

1. Welcome

Senior Member welcomed participants to the inaugural community liaison meeting in Adelaide. He noted that the inaugural meeting in Adelaide was part of the Tribunals' initiative in seeking to engage more with the community and stakeholders, particularly in regional areas and mirrored the processes in place in Melbourne, Sydney and more recently, Brisbane.

He outlined the purpose of the meeting as being to facilitate the distribution and exchange of information in relation to the Tribunals' processes and caseload; provide updates on relevant legislative developments as well as procedural and corporate developments within the Tribunals; and provide the opportunity for discussion of items that arise out of stakeholder dealings with the Tribunals or that relate to the Tribunals' operations in general.

2. Apologies

Apologies were received from Denis O'Brien - Principal Member MRT-RRT; Deborah Morgan - Member MRT-RRT; Eugenia Tsoulis - Migrant Resource Centre of South Australia; Graham Harbord - Law Society of SA; Bob Hart - St Vincent de Paul Society.

Senior Member Murphy explained that he was chairing the meeting on behalf of the Principal Member.

3. Executive Report

Senior Member Murphy highlighted some of the Tribunals' recent key achievements and developments.

Stakeholder Engagement Plan

The Tribunals are in the process of developing a Stakeholder Engagement Plan to support improved stakeholder engagement on a national level, consistent with the Government's policy for better access to justice. This will include consultations with the community and stakeholders, and a review of the Tribunals' client service charter.

Senior Member Murphy noted that a draft plan was circulated to participants for consideration and would be discussed later in the meeting.

Member appointments and recruitment

Senior Member Murphy advised that the Governor-General recently reappointed 31 Members and appointed 12 new Members for five year terms expiring on 30 June 2014, and changed the status from part-time to full-time of eight Members whose terms expire on 30 June 2010. As a result, the number of Members appointed on a full-time basis has increased from 6 to 24. He noted that the new Members attended a 4 day induction program during the week of 6 July 2009, and had a further 3 days induction during the week of 10 August 2009.

During October, advertisements were placed in all major newspapers to fill the Deputy Principal Member Positions (MRT and RRT). Applications closed on 1 November 2009.

Senior Member Murphy stated that earlier this month, the Government also initiated a recruitment round for Members. The appointments of a cohort of Members expire next year on 30 June. Applications for appointment closed on 22 November 2009.

Annual report 2008-09

Senior Member Murphy advised that the Tribunals' Annual Report for 2008-09 was tabled in Parliament on Friday, 15 October 2009 and was now available from the Tribunals' website. He noted that hard copies were distributed to the group out-of-session.

National Members' Conference 2009

Senior Member Murphy advised that a successful National Members' Conference was held over two days on 10-11 September 2009. The Conference had a Member professional development focus and provided a timely opportunity for Members to reflect on the future

direction of the Tribunals. He noted that the guest speakers brought a range of important and valuable perspectives to the proceedings. They included our Minister, Chris Evans, who opened the second day of the conference. The Minister's speech was very warmly received, giving Members an insight into the future direction for the Tribunals and the immigration portfolio. The keynote address was delivered by the Commonwealth Solicitor-General on the impact of migration law on the development of administrative law in Australia over the past 25 years.

Another highlight of the conference included a presentation by Ms Arja Keski-Nummi, First Assistant Secretary, Refugee, Humanitarian & International Division, DIAC, on the Complementary Protection Bill. Members also heard from Professor John Powers and Professor Robin Jeffrey about perspectives on religion in China and on India. There was a range of other speakers.

New caseload and constitutions policy

Senior Member Murphy reported that in July this year Principal Member Direction PMD 1/2009 Caseload and Constitution was issued. It takes into account expected lodgements for 2009-2010 financial year of 10,000 or more cases, and provides for strategies to reduce the number of MRT cases on hand.

The Direction sets out time standards which apply to the completion of cases and measures for more effective allocation of cases, including batching of cases with common issues to Members with particular expertise. The Principal Member welcomed feedback on the Direction, noting that it was available from the Tribunals' website.

Responding to a question from Brian Jones, the Registrar explained that there is some information about the batching strategy currently being used by the Tribunals in this Principal Member Direction. He noted that it is not based on priority and does not reflect the Tribunals' previous four-tier priority system but is a targeted approach to cases identified for special purposes, such as very old spouse cases, where the Principal Member decides that a number of cases should be targeted. Batching allows the Tribunals to address the common issues in cases and to gain efficiencies through improved Member proficiency, but acknowledged that a downside for some applicants is the fact that their cases may wait longer than would have otherwise.

Supplementary Budget Estimates

Senior Member Murphy reported that the Tribunals appeared before the Senate Legal and Constitutional Legislation Committee on 20 October 2009 as part of the Supplementary Budget Estimates hearings to give evidence.

The Registrar invited community liaison members to read the transcript of the hearing as there was interesting policy discussion on the procedural code, an issue the Principal Member has noted recently including in the Annual Report. The transcript is available at www.aph.gov.au.

The Registrar also suggested that a paper presented at the recent AIAL conference by DIAC Chief Lawyer Robyn Bicket may be of interest.

Publication of a daily list of MRT and RRT hearings

Senior Member Murphy advised that from 24 September 2009 the Tribunals have published a daily list of MRT and RRT hearings on our website. The lists are available from the 'Hearings' button on the home page. He noted that this information was provided in line with the Tribunals' current focus on engaging better with clients and operating in a more transparent way. He explained that information posted on the website is restricted as RRT hearings are private.

Refugee Week

Senior Member Murphy advised that as part of Refugee Week 2009, the RRT hosted open afternoons in Sydney, Melbourne and Perth. Visitors received an insight into RRT operations with mock hearings and presentations on legal and research work.

Guidance on Vulnerable Persons

Senior Member Murphy stated that the Tribunals have published *Guidance on Vulnerable Persons*. This provides Members, applicants and migration practitioners with guidance about how to approach cases involving vulnerable persons. The primary objectives are:

- to ensure that vulnerable persons are supported during the review process;
- to ensure that the inherent dignity of vulnerable persons is recognised and respected; and
- to heighten awareness of Members and staff of the need to consider implementation of procedures for dealing with vulnerable persons.

Senior Member Murphy stated that broad consultation was conducted on the document, noting that the guidance was available on the Tribunals' website.

Expert opinion evidence

Senior Member Murphy reported that the Tribunals have also published *Guidelines on Expert Opinion Evidence*. These guidelines are intended to assist persons providing expert opinions on matters before the Tribunals. They are intended to ensure that expert opinions are of relevance and of assistance to the decision-making task of the particular Tribunal. He advised that this document is also available on the Tribunals' website.

Member Professional Development

Senior Member Murphy reported that Member professional development and training is essential to the delivery of quality reviews. All Members are expected to participate in development and training activities on a regular basis and undertake development and training identified in performance appraisal processes.

In-house professional development sessions for Members have included training on issues such as amendments to the temporary business sponsorship scheme; student cancellations; seeking information under s.424 and s.359; new same sex provisions; and section 91R(3) issues.

Members have also benefited from sessions provided by external presenters including:

- Judge Patricia Milligan-Baldwin from the UK Asylum & Immigration Tribunal, who gave a presentation on the impact on her Tribunal of European Directives and the nature of Humanitarian Protection Provisions; and
- Dr Sandra Hale, Associate Professor at the School of Humanities and Languages at the University of Western Sydney, who conducted seminars on working effectively with interpreters for Members.

Senior Member Murphy invited questions in relation to the Executive Report. Ms Vivienne Hope asked what the Tribunals could do to assure the standard of interpreters. Senior Member Murphy replied that it is the Tribunal's obligation to ensure that the standard of interpreting for any hearing is sufficient to allow the applicant a fair hearing and avoid a finding of jurisdictional error on this basis by the Courts. The Tribunals' requirement is for NAATI level 3 interpreters in those languages that are tested and this is ensured as far as possible within the context of the Tribunals' contract with an interpreting services provider. However, as this contract does not cover Adelaide, many interpreters for South Australian cases are sourced through other agencies. While finding suitably skilled interpreters in

languages which are not tested can be problematic, the Tribunal must be satisfied through the Presiding Member in each case, that the interpreting allows effective communication. Member Wells confirmed that she would not continue with a hearing if she was not satisfied with the interpreting.

The Registrar noted that the Tribunals provide feedback to interpreting service provider to assist in improving standards and Senior Member Murphy reminded the meeting that the Tribunals' *Interpreters Handbook*, which is available on the website, is a useful source of information in this area.

In further discussion regarding interpreters, it was noted by Ms Slavica Dedijer that there are difficulties associated with the use of telephone interpreters and that clients generally feel more comfortable with an on site interpreter. Senior Member Murphy stated that while this was well recognised, sometimes it was not possible to provide interpreting services on-site, including in rare languages such as those where it is necessary to source interpreters from overseas, and that the Tribunal Member would pay close attention to any indications that the applicant was distressed or unable to communicate and if necessary, make use of other resources such as a bilingual representative or assistant to resolve this and determine whether the hearing could continue.

Following discussion, it was agreed that the Tribunals would take on consideration the question of whether and how the Tribunals should, in the course of opening a hearing, ask the interpreter to state their qualifications.

The Registrar drew the meeting's attention to the project being undertaken by Professor Sandra Hale which will develop guidance on the use of interpreters and improving the quality of interpreting in courts and tribunals, noting that Professor Hale is using the Tribunals' internal guidance material as a starting point.

Ms Luci Lovelock mentioned the difficulties sometimes associated with obtaining a suitable interpreter from within a small pool and the impact this can have on the applicant during the hearing. Senior Member Murphy explained that any concerns regarding the suitability of a specific interpreter should be brought to the Tribunal's attention as early as possible and preferably before the hearing to ensure that the applicant is not disadvantaged by the hearing being adjourned or rescheduled. It was noted that the process is designed to take applicants' needs into account and that the Tribunals' hearing invitation asks applicants to identify any

specific needs with regard to interpreting, including the gender of the interpreter, where relevant. Where necessary, the Tribunals can make very specific requests in relation to interpreters to ensure that a scheduled hearing can proceed without disruption.

Responding to observations from Mr Steve Thomas regarding the anxiety of clients affected by trauma, Senior Member Murphy noted that representatives should reassure clients that it is important to make the Tribunal aware of any issues which may affect their hearing or their case and that they should not fear that raising concerns about the process will affect their case. The Registrar advised the meeting that the Tribunals' guidelines on credibility were available on the web and that these provide a useful resource for representatives in assisting clients to prepare for a hearing. He noted further that the Tribunals' gender guidelines would soon be made available for information and comment as well. Comments were invited on any aspects of the Tribunals' published guidance material.

4. Caseload report and statistics

▪ 4.1 MRT and 4.2 RRT

Senior Member Murphy noted that the MRT and RRT caseload reports as at 30 November 2009 which were distributed at the outset of the meeting did not separately identify statistics for South Australia. He undertook to ensure that separate statistics for South Australia were available to participants for the next meeting.

He outlined statistics for the 2009 – 2010 financial year (as at 30 November 2009) where the residential state of the review applicant is given as South Australia as follows:

- SA makes up 4% (140) of all MRT lodgements (3,579) and 2% (20) of all RRT lodgements (848).
- The top four MRT SA lodgement case categories are 1) Skilled linked refusal 29 (21%); 2) Student refusals 23 (16%) and 3) Partner refusal 23 (16%) and 4) Student cancellation 17 (12%).
- The top three RRT SA lodgement by source countries were 1) China (PRC): 6 (30%); 2) Albania 4 (20%) and Egypt 2 (10%)
- As at 3 December 2009, there were 295 active SA cases, 277 MRT cases, 18 RRT.
- 138 cases were with Members - 53 (18%) were with SA Members. The majority of the SA cases not with SA members were with Vic Members.

5. Draft Stakeholder Engagement Plan

The Registrar spoke to the draft Tribunals' Stakeholder Engagement Plan circulated out-of-session, advising that the objectives of the Plan were to:

- enable better access to justice in the conduct of merits review by improving our communication with stakeholders and the information we provide about the Tribunals' procedures;
- inform our strategic direction, policy and operations through an improved understanding of our stakeholders' perspectives and needs; and
- shape the Tribunals' knowledge, attitudes and behaviours through communication with our stakeholders.

The Registrar opened the item for discussion, seeking comments from the group.

In response to questions regarding Complementary Protection, the Registrar explained that the legislation incorporates transitional provisions which would result in all applicants with matters before the Tribunal at the date of commencement being entitled to a decision on complementary protection criteria. While this is still some months away, with a possible implementation date in July, the Tribunals are keen to hear how practitioners' clients are likely to be affected and will seek input in relation to forms and other practical issues from stakeholders. Applicants who are unable to take advantage of the Complementary Protection provisions as their applications were finalised before commencement of the legislation will still have access to Ministerial Intervention.

The Registrar also outlined the Tribunals' initiative in publishing on its website country of origin information used in making decision on refugee claims, explaining that this increased the transparency of the Tribunals' processes. Some of the information available currently may be a little dated, but it is being updated regularly, although care is taken to avoid publishing very current information which might identify applicants before the RRT. In addition, the publication of 40% of Tribunal decisions on AustLII enables practitioners to see decisions on particular facts and to understand our processes.

6. Providing clients with better access to documents

The Registrar reported that the Tribunals were considering, subject to stakeholders views, to provide electronic access to documents under s.362A of the Migration Act to applicants. He noted that MRT applicants and their representatives could request documents under s.362A of the Act and have them delivered by email or on a CD.

As background, the Registrar advised that on average, the MRT currently receives about 1,500 requests for access to documents on an annual basis. Currently the Tribunal provides access to documents in hard copy by post or by file inspection. Should this proposal be implemented, the Tribunal would be able to provide faster and more efficient delivery of documents to stakeholders, when they opted to receive the information electronically. He invited feedback from community representatives on the proposal.

During discussion, the Registrar noted that the Tribunals consider it desirable that applicants receive all documents relevant to the review at the time they lodge their application, as mentioned by the Principal Member in the Annual Report. Subject to stakeholders' views, the Tribunals would seek to implement the new arrangements early in the New Year. Participants were invited to submit their views on the proposal by mail, email or by phone.

7. Email communication with applicants and representatives

The Registrar put to the meeting a second proposal currently under consideration by the Tribunal: in relation to a suggestion that consideration be given to using email communication for case correspondence, the Tribunals are exploring several options, including the use of a single national mailbox or separate Registry mailboxes. Case-related e-mails could be sent and received via the mailbox with the return e-mail address embedded in all Tribunal e-mails.

The use of mailboxes is considered preferable to expanding the use of individual email addresses as it will avoid some of the problems to which this can give rise; for instance when emails are sent directly to staff who are on leave and the difficulties in accessing emails sent by an officer who is not present etc. The use of mailboxes will also facilitate the integration of email correspondence into the Tribunals' electronic case management system which provides an operating framework with built in timeframes and safeguards.

Mr Brian Jones responded that establishing a mailbox would be a good idea but that it would be necessary to ensure it operated as effectively as the current fax service, on which practitioners rely heavily. He suggested that a further option might be to assign each case its own email address (in the format casenumber@mrt-rrt.gov.au) which might then allow emails to be captured directly to the case management system. The Registrar stated that this suggestion would be referred to the Tribunals' IT area for consideration.

8. Other Business

- **Guidance on the preparation of psychosocial reports (Mr Steve Thomas)**

Mr Steve Thomas noted that an old document from the Tribunal which had provided guidelines on the preparation of psychosocial reports had been very useful in guiding professionals working with survivors of torture and trauma in how such reports should be presented. He asked whether there was any updated version of this document available. The Registrar responded that he had recently discussed this with the Principal Member and that this was an area where more Member professional development was needed.

The Registrar also noted that the Tribunals' guidelines on expert opinion evidence address these issues to some extent and serve to make Members aware of the distinction between advocacy and the professional view, especially where the latter may be based on just a single consultation. It is the representative's responsibility to ensure that relevant information reaches the Member at hearing.

- **Disclosure certificates (Mr Brian Jones)**

Mr Brian Jones asked whether Members looked at information covered by a disclosure certificate and not released to the applicant as it was not always possible to know how this would be handled.

The Registrar explained that while there may be some variation in practice, Members are bound by certificates, although on occasion the Tribunal may go back to the Department and ask them to lift the certificate if it appears to have been applied in error. He suggested that concerns about the Department's practice in the area should be raised with the Department directly, but that as the Tribunal undertakes *de novo* review, any concerns regarding the adequacy of interpreting or other aspects of the primary application process should be brought to the Tribunal's attention as early as possible.

The Registrar said that he would take this feedback to the Tribunals' Management Board and to Members.

9. Date of next meeting

In closing, Senior Member Murphy asked participants to consider whether the meeting represented an appropriate mix of stakeholders and what use the forum had been to them, and to provide any feedback or observations about the meeting to any of the Tribunals' representatives.

Senior Member Murphy and the Registrar thanked all present for their participation and thanked AAT District Registrar Clare Byrt and Client Service Officer Brooke Howard for their assistance in providing the venue.

The next meeting will be held at the same venue in approximately 6 months.

**ACTION ARISING FROM SYDNEY MRT-RRT COMMUNITY LIAISON
MEETING OF 8 DECEMBER 2009**

3. Executive Report

- *Member professional Development*

Action Item: The Registrar will raise with the Tribunals' Interpreter Advisory Group, for their consideration, the question of whether and how the Tribunals should, in the course of opening a hearing, ask the interpreter to state their qualifications.

4. Caseload report and statistics

Action Item: The Registrar will ensure separate statistics for South Australia were available to participants at next meeting.

Action taken: Scheduled.

5. Draft Tribunals' Stakeholder Engagement Plan

Action Item: Members of the Community Liaison group will provide any further comments on the draft Tribunals' *Stakeholder Engagement Plan* out-of-session.

6. Providing Clients with better access to documents

Action Item: Members of the Community Liaison group will provide feedback on the proposal to provide electronic access to documents under section 362A out-of-session.

7. E-mail communication with applicants and representatives

Action Item: The Registrar will circulate a proposal on using email communication for case correspondence to community liaison group for consultation.

Action Item: The Registrar will raise Mr Brian's suggestion of assigning each case its own email address with the Director of Technology Services and the Deputy Registrar.